

## RETHINKING WORK AND CITIZENSHIP

Jennifer Gordon<sup>\*</sup>

R.A. Lenhardt<sup>\*\*</sup>

*This Article advances a new approach to understanding the relationship between work and citizenship that comes out of research on African American and Latino immigrant low-wage workers. Media accounts typically portray African Americans and Latino immigrants as engaged in a pitched battle for jobs. Conventional wisdom suggests that the source of tension between these groups is labor competition or the racial prejudice of employers. While these explanations offer useful insights, they do not fully explain the intensity and longevity of the conflict. Nor has relevant legal scholarship offered a sufficient theoretical lens through which this conflict can be viewed. In the absence of such a theory, opportunities for solidarity building are lost and normative solutions in the context of immigration and antidiscrimination law reform are unsatisfying. This Article critiques existing theories of the link between work and citizenship for failing to attend to the realities of immigration, job differentiation within the universe of low-wage work, and the extent to which a group's race, formal citizenship status, and history affect its relationship to work.*

*This Article fills this gap by arguing that citizenship—defined broadly as “belonging” in the broader community—provides an additional lens for understanding interactions between African American and Latino immigrant low-wage workers. This nuanced, context-based theory of citizenship, which is grounded in insights from Critical Race Theory, immigration scholarship, and constitutional law, reveals profound differences in the way that African Americans and Latino immigrant workers who appear to be similarly situated in the low-wage context conceive of and experience work, providing a more accurate window into the conflict between them. It also highlights important similarities and convergences*

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<sup>\*</sup> Associate Professor of Law, Fordham University School of Law.

<sup>\*\*</sup> Associate Professor of Law, Fordham University School of Law. We would like to thank Frances Ansley, Devon Carbado, Sheila Foster, Kevin Johnson, Rachel Moran, Alison Nathan, Steven Pitts, Catherine Powell, Russell Robinson, Leticia Saucedo, Carolyn Shapiro, and Benjamin Zipursky for helpful comments and direction on this project. We are also grateful to the faculties of the CUNY School of Law, Fordham Law School, and the UCLA School of Law for the opportunity to workshop earlier drafts of this article. Finally, we are thankful for the excellent research assistance provided by Jane Chung, Tanya Kalivas, Grace Pickering, and Cheri Veit and for the editorial assistance provided by the UCLA Law Review staff, especially Rakhi Patel, Ann Roller, and Karen Wong. Our work on this project benefited greatly from the generous support provided by the Dean's Office of the Fordham Law School.

*in the paths to the workplace taken by these groups, pointing to unique opportunities for increased solidarity between low-wage African American and Latino immigrant workers on the job.*

INTRODUCTION.....	1162
I. THE NATURE OF THE CONFLICT: EMERGING RESEARCH ON AFRICAN AMERICAN AND NEW LATINO IMMIGRANT WORKER INTERACTIONS .....	1170
II. STANDARD EXPLANATIONS FOR THE CONFLICT.....	1173
A. The Role of Employer Bias.....	1174
B. Existing Studies of Economic Competition.....	1179
C. Toward a More Complex Understanding.....	1183
III. ANOTHER LENS: OUR THEORY OF WORK AS A PATHWAY TO CITIZENSHIP .....	1185
A. Citizenship as a Framework.....	1185
B. Theories of Work and Citizenship.....	1191
C. Critique of Existing Theories of Work and Citizenship.....	1195
D. Our Theory: Work as a Pathway to Citizenship.....	1199
IV. WORK AS A PATHWAY TO CITIZENSHIP: TWO PERSPECTIVES.....	1202
A. The African American Experience of Work as a Pathway to Citizenship.....	1202
B. The New Latino Immigrant Experience of Work as a Pathway to Citizenship.....	1210
V. THE LENS APPLIED.....	1220
A. Two Different Yardsticks for the Citizenship Value of Work.....	1220
B. Workers as Agents in Constructing Work-Related Citizenship: Conflict.....	1223
C. Workers as Agents in Constructing Work-Related Citizenship: Solidarity .....	1229
1. Emerging Examples of Solidarity Between African American and Latino Immigrant Low-Wage Workers.....	1230
2. What Supports the Emergence of Solidarity in the Low-Wage Work Context? .....	1232
CONCLUSION .....	1236

## INTRODUCTION

Imagine a poultry processing plant situated in the hills of eastern North Carolina. The suffocating reek of raw chicken emanates from every corner of the building. In one room, two workers, Irving Johnson and Dinora Sanchez, stand beside one another at a deboning conveyor belt, ankle-deep in refuse. Exhausted and aching with pain caused by the repetitiveness of their movements, they struggle to keep pace, aware that failing to do so could cost them their jobs. These individuals share a workspace and an urgent need for the meager wages paid for their hard labor. But they have two very different experiences of their work.

For Irving, one of the few African Americans left in the plant, the workplace is evidence of declining opportunities for Blacks and a reversal of civil rights gains. A day earlier, Irving tried to rally his fellow black and Latino workers to protest management's speed-up of the deboning line. But the few Latinos who could communicate with him in English were reluctant to consider such action and refused to raise it with other Spanish-speaking workers. Such protests, though certainly risky, were not uncommon in the past, when Blacks comprised the majority of the plant's workers. But they have become rarer in recent years. Indeed, management has sought to avoid permitting workers regular breaks, maintaining a reasonable pace of work, and paying a decent wage by replacing the African Americans and native-born whites who once were the industry's principal employees with cheaper labor—people from places such as Guatemala and Ecuador who, desperate to avoid deportation, are willing to work faster, for longer hours, and at lower pay.

Irving has come to the conclusion that the new Latino immigrants—whose language he does not speak and whose travails he is unaware of—are partially responsible for the decline in conditions. They are “rate busters” in his mind—individuals whose compromise lowers the bar for native-born workers. No matter what conditions these new workers accept, Irving will not “work cheap”<sup>1</sup> or “be worked like a Mexican.”<sup>2</sup> Just this weekend he remarked to his son, “We’re citizens, you know. That should mean something.” Irving needs the job, but he wants to work under conditions that are safe,

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1. Barbara Ellen Smith, *Racial/Ethnic Rivalry and Solidarity in the Delta*, in *ACROSS RACES AND NATIONS: BUILDING NEW COMMUNITIES IN THE U.S. SOUTH* 51, 60 (Ctr. for Research on Women et al. eds., 2006). This narrative draws on work done by David G. Griffith on rural industry and Mexican immigration in North Carolina. See David C. Griffith, *Rural Industry and Mexican Immigration and Settlement in North Carolina*, in *NEW DESTINATIONS: MEXICAN IMMIGRATION IN THE UNITED STATES* 50, 50–75 (Rubén Hernández-León & Víctor Zúñiga eds., 2005). It also draws on other depictions of Black–Latino relationships in the changing poultry industry in the New South. See, e.g., LANCE COMPA, HUMAN RIGHTS WATCH, *BLOOD, SWEAT, AND FEAR: WORKERS' RIGHTS IN U.S. MEAT AND POULTRY PLANTS* (2004); STEVE STRIFFLER, *CHICKEN: THE DANGEROUS TRANSFORMATION OF AMERICA'S FAVORITE FOOD* (2005); Evan Pérez & Corey Dade, *Reversal of Fortune: An Immigration Raid Aids Blacks—for a Time*, *WALL ST. J.*, Jan. 17, 2007, at A1; Helen Marrow, *Not Just Conflict: Intergroup Relations in a Southern Poultry Processing Plant 14* (2006) (unpublished manuscript) (on file with the authors). It further relies on new research by Barbara Ellen Smith, Helen Marrow, Jamie Winders, Angela Stuesse, Anita Grabowski, Laura Helton, and David Mandel-Anthony on these groups in low-wage workplaces throughout the South. See *infra* text accompanying note 18.

2. Smith, *supra* note 1, at 60. This quote and others like it from recent scholarship that we draw on in this Article reveal an ugly reality with which some readers might not want to be confronted. Statements from actual workers, however, are crucial to laying bare the precise nature of the conflict between African Americans and Latino immigrants in the low-wage context, as well as the possibilities for greater solidarity.

fair, and reasonable. As it is, he works harder now and takes home less money than he ever has in his life.

For Dinora, who was born in Mexico, work in the plant is as dirty, demanding, and unpleasant as it is for Irving. She is working as hard as she has in her entire life. But as exhausted as Dinora feels, she sees the deboning line as a place of opportunity. Dinora entered the country illegally less than two years before and is reminded daily—often by the foreman, a Mexican American man—of the ever-present danger of deportation. She has had to earn money quickly to pay the smuggler, known as a “coyote,” who transported her to North Carolina and to support the two children and other family members she left behind in Mexico. So Dinora works furiously, knowing that she must impress an employer whose actions can decide whether she succeeds or fails in her mission. The \$5.85 per hour she receives for her work surpasses anything she could ever have earned in her home country, and she does not want to lose it.

Dinora knows that Irving and some of the other black workers think that their employer requires too much of them, but unaware of the history that informs this perspective, she chalks it up to laziness on their part.<sup>3</sup> In her view, “Hispanics work harder than blacks,”<sup>4</sup> who just “don’t like to work.”<sup>5</sup> She has no patience with those who complain about the pace of work or the lack of opportunities for rest. Her position is: “Latinos come to work. And they don’t care if they tell them, ‘Clean this, clean that corner.’ Things that other people wouldn’t do. Latinos are going to do it, and they’re going to clean that corner well.”<sup>6</sup> While the job may not make her a rich woman in the United States, she hopes it will provide enough money to make ends meet for her household in Mexico, put better food on her parents’ table, and allow her to pay off her debts and build up some savings. Dinora had thought that two years would be enough time to achieve her goals. But as she counts her earnings and wires money home, she has begun to realize that she may have to stay much longer to realize those dreams. She hears talk that one day the U.S. government may formally recognize her hard work and legalize her status. Right now, though, to cast her lot with Irving and other black workers in the plant is to risk the well-being of her family members—a risk she is unwilling to take.

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3. Marrow, *supra* note 1, at 14.

4. *Id.* at 13.

5. *Id.* at 13.

6. *Id.* at 14.

In the divide between Irving and Dinora—who are fictional, but whose attitudes and sentiments are based on those articulated by real workers in interviews reported in recent scholarship and journalism in this area—lies the kernel of the conflict between low-wage African American and Latino immigrant workers that this Article explores.<sup>7</sup> Members of these groups come to the workplace with different conceptions of the meaning of work in their lives and with assessments of one another shaped by stereotypes, employer manipulation, and the increased racialization of jobs and workspaces. This disconnect is significant, given that Latino immigrants—primarily Mexicans<sup>8</sup>—make up over 45 percent of all newcomers<sup>9</sup> to this country and nearly 50 percent of foreign-born participants in the labor force.<sup>10</sup> Encounters between new immigrants and African Americans are occurring with particular frequency today in the southern states that have become the country's fastest-growing immigrant destinations.<sup>11</sup>

Media reports play up tensions of the sort evident in the relationship between the two workers in our narrative. According to the mainstream press, African Americans and Latinos like Irving and Dinora are engaged in a

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7. We focus here on these two groups as an entry point to examination of the relationship between workers of many different races and ethnicities, and as a first step in addressing the relationship between African Americans and immigrants in arenas other than the workplace. We have chosen to first explore interactions between new Latino immigrants and African Americans because of the overwhelming predominance of Latinos in current immigration patterns and because those interactions are frequently in the public eye as paradigmatic of Black-immigrant relationships.

Furthermore, although this Article refers to “Latino” or “Latin American” immigrants as a group, we recognize that Spanish-speaking immigrants from different countries experience globalization, immigration, and work in the United States in very different ways. When Latino immigrants of different nationalities work together, the divisions between them can be profound, posing serious obstacles to organizing. JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS* 156–62 (2005); Angela C. Stuesse, *Race, Migration, and Labor Control: Neoliberal Challenges to Organizing Mississippi's Poultry Workers*, in *HEADING NORTH TO THE SOUTH: MEXICAN IMMIGRANTS IN TODAY'S SOUTH* 4, 15–18 (M. Odem & E. Lacy eds., forthcoming 2008). Moreover, grouping a tremendously diverse array of people under a single label such as “African Americans” or “Latinos” and discussing these groups as if they are monolithic in their perspective risks essentializing their individual qualities and eliding the wide range of beliefs and attributes of their members. Even as we remain aware of the dangers, we employ these terms here in order to examine views that appear to be shared by many—although by no means all—of the group's members.

8. In 2006, people born in Mexico made up 60 percent of the foreign-born Hispanic population in the United States. PEW HISPANIC CTR., *INDICATORS OF RECENT MIGRATION FLOWS FROM MEXICO* 6 (2007), <http://pewhispanic.org/files/factsheets/33.pdf>.

9. Elizabeth Grieco, *Characteristics of the Foreign Born in the United States: Results From Census 2000*, MIGRATION INFO. SOURCE, Dec. 2000, <http://www.migrationinformation.org/USfocus/display.cfm?ID=71>.

10. Report, *A Visual Essay: Blacks, Asians, and Hispanics in the Civilian Labor Force*, MONTHLY LABOR REV., June 2004, at 69, 72.

11. See AUDREY SINGER, BROOKINGS INST., *THE RISE OF NEW IMMIGRANT GATEWAYS* 5 (2004).

pitched battle. A growing population of Latino newcomers in areas and industries once dominated by African Americans has, we are told, left the two groups “competing for the same dry bone,”<sup>12</sup> turning the workplace into a “war”<sup>13</sup> between “rivals”<sup>14</sup> “the black jobless poor” and “the Latino working poor.”<sup>15</sup> Although a few pieces highlight efforts at collaboration,<sup>16</sup> the overall tenor is neatly summed up by the headline of a recent front-page *Christian Science Monitor* article: “Rising Black-Latino Clash on Jobs.”<sup>17</sup>

Recent studies on the interactions between African American and immigrant Latino low-wage workers in the South paint a more nuanced picture than media reports. Collectively, this research, which we discuss in some detail in the pages that follow, confirms that conflicts between Black and Latino workers do exist. Significantly, though, research also suggests that Black and immigrant Latino workers recognize their similar position as low-wage workers<sup>18</sup> and their shared status as people of color in a white-dominated world.<sup>19</sup> They are well aware of the extent to which employers manipulate the groups against one another,<sup>20</sup> taking advantage of their respective vulnerabilities—whether it be the lack of legal status for some Latino immigrants or the historic scarcity of higher-paying opportunities for Blacks. Furthermore, some workers assert that the labeling of members of one race or ethnicity as “hard workers” or “lazy” does not hold up when compared with their daily experience. As an African American

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12. Stephanie Chavez, *Racial Tensions Over South L.A. Jobs Grow*, L.A. TIMES, July 22, 1992, at B1 (quoting James Johnson, director of the Center for the Study of Urban Poverty at UCLA).

13. Dorothy Gilliam, *A Sad, Slow but Sure Awakening*, WASH. POST, May 13, 1992, at D1.

14. Gary Lee & Robert Suro, *Latino-Black Rivalry Grows*, WASH. POST, Oct. 13, 1993, at A1.

15. Ben Stocking, *Side By Side: Worlds Apart (Part 2)*, RALEIGH NEWS & OBSERVER, May 4, 1997, at A1 (quoting Professor Jim Johnson of UNC-Chapel Hill).

16. See, e.g., Steven Greenhouse, *Picking and Packing Portabellos, Now With a Union Contract*, N.Y. TIMES, July 21, 1999, at A14 (describing a successful United Farm Workers organizing campaign focusing on Latino and African American mushroom workers); *News and Notes With Ed Gordon: Black Hotel Workers Replaced by Immigrants* (NPR radio broadcast Mar. 27, 2006), <http://www.npr.org/templates/Story/Story.php?storyid=5303325> (describing efforts by the Hotel Workers Union, *inter alia*, to create solidarity between black and immigrant workers in the industry).

17. Daniel B. Wood, *Rising Black-Latino Clash on Jobs*, CHRISTIAN SCI. MONITOR, May 25, 2006, at 1. For similar claims made over a decade earlier, see Lee & Suro, *supra* note 14, at A1; Seth Mydans, *Los Angeles Riot Anger Spills Into Competition for Jobs*, N.Y. TIMES, Aug. 30, 1992, at A20.

18. Barbara Ellen Smith, *Market Rivals or Class Allies?: Relations Between African American and Latino Immigrant Workers in Memphis*, in GLOBAL CONNECTIONS AND NEW LOCAL RECEPTIONS: LATINO IMMIGRATION TO THE SOUTHEASTERN UNITED STATES (Frances Ansley & John Shefner eds., forthcoming 2009) (manuscript at 9, on file with authors). Smith notes that this recognition of economic commonality was limited to African Americans. “To the extent that immigrant interviewees voiced a general sense of shared status with African American workers, it was occasioned by racist treatment from their common employer.” *Id.*

19. *Id.* at 10.

20. *Id.* at 15–17.

warehouse worker in Memphis offered: “You have good Spanish workers and you have good Black workers, and like I said, you have a few slouches on this side and also on that side.”<sup>21</sup>

These accounts are encouraging. As legal scholars, we are particularly interested in exploring laws, policies, and employer practices that could increase the potential for solidarity. Our sense, however, is that a substantive inquiry into the conditions necessary to foster worker solidarity would be futile in the absence of an attempt to engage the negative feelings that must be overcome. African Americans’ belief that Latino workers are rate busters, working too hard for too little pay and thus undercutting native workers, and Latino immigrants’ notion that black workers make little effort on the job, recur in almost every study.<sup>22</sup> As sociologist Barbara Ellen Smith observed in her study of the relationship between African Americans and new Latino immigrants in Memphis, the issue that gives rise to the greatest conflict between the two groups in the low-wage workplace is “the acceptable intensity of work effort.”<sup>23</sup>

Tensions between native and immigrant workers such as Irving and Dinora are, of course, not new. Whites, African Americans, Latinos, and Asian Americans have long been pitted against each other and against newcomers from countries around the world, being cast at various times as scabs and rate breakers, or as good citizens threatened by outside competition.<sup>24</sup> Furthermore, today’s workplaces are home not just to African Americans and new Latino immigrants, but also to immigrants of various nationalities, as

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21. *Id.* at 13.

22. See, e.g., Smith, *supra* note 18; Smith, *supra* note 1; Stuesse, *supra* note 7, at 18; Rebecca M. Torres, E. Jeffrey Popke, & Holly M. Hapke, *The South’s Silent Bargain: Rural Restructuring, Latino Labor and the Ambiguities of Migrant Experience*, in *LATINOS IN THE NEW SOUTH: TRANSFORMATIONS OF PLACE* 37, 62 (Owen J. Furueth & Heather A. Smith eds., 2006); Jamie Winders, *Nashville’s New Sonido: Latino Migration and the Changing Politics of Race*, in *NEW FACES IN NEW PLACES: THE CHANGING GEOGRAPHY OF AMERICAN IMMIGRATION* (Douglass Massey ed., forthcoming 2008); Marrow, *supra* note 1.

On African Americans’ sense that immigrants are “taking our jobs,” see Stuesse, *supra* note 7, at 18. According to a report released in 2006 by the Pew Hispanic Center, 41 percent of African Americans “say either they or a family member has lost a job to an immigrant, compared with 15% of non-Hispanic whites who say this.” PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS & PEW HISPANIC CTR., *AMERICA’S IMMIGRATION QUANDARY* 43 (2006), <http://pewhispanic.org/files/reports/63.pdf>. The Pew poll also revealed that over a third of African Americans polled believe that immigrants take jobs from U.S. citizens, compared to a quarter of white respondents. Carroll Doherty, *Attitudes Toward Immigration: In Black and White*, PEW RES. CENTER PUBLICATIONS, Apr. 26, 2006, [http://pewresearch.org/pubs/21/attitudes\\_toward\\_immigration\\_in\\_black\\_and\\_white](http://pewresearch.org/pubs/21/attitudes_toward_immigration_in_black_and_white).

23. Smith, *supra* note 1, at 59.

24. See, e.g., Arnold Shankman, *Black on Yellow: Afro-Americans View Chinese-Americans, 1850–1935*, 39 *PHYLON* 1 (1978) (discussing, inter alia, the complexities of the early relationship between free Blacks and Chinese immigrants).

well as native-born white workers and workers of color. As an entry point to an examination of the conflicts that arise in this context, this Article takes a hard look at the persistent kernel of tension at the core of the relationship between black and new Latino immigrant workers. Our goal in the sections that follow is to ask how these conflicts can be best interpreted and, eventually, resolved.

It is a common intuition that the tensions between workers like Irving and Dinora have their source either in economic competition or the racial attitudes of employers. This Article begins by surveying the large body of scholarship on these topics, finding that it offers some important insights, but ultimately fails to capture vital dimensions of the work-related interactions between African Americans and new Latino immigrants. Accounts of economic competition and employer prejudice do not fully explain the intensity and longevity of the conflict.

As Irving's and Dinora's stories suggest, work is about more than getting a paycheck. It is about pride, dignity, and belonging—the societal standing that comes from providing for one's family and contributing to one's community.<sup>25</sup> Work serves a number of citizenship- and community-building functions. Adding citizenship as a lens through which to view the conflict between native-born Blacks and Latino immigrant low-wage workers enriches our understanding of the dynamics of their interactions.

Over the past decade, a number of legal scholars have articulated a connection between work and citizenship in the United States.<sup>26</sup> This Article builds upon and critiques this literature. On the one hand, we applaud its assertion that good work is an essential component of full citizenship, as well as an important site for the exercise of citizenship. Important, too, is its attention to the ways that discrimination based on race and gender compound the injuries of class in preventing women, people of color, and other disenfranchised groups from achieving full citizenship. On the other hand, this scholarship's value as an interpretive tool in a world of high-intensity labor migration, where both work and citizenship are racially and ethnically stratified, is limited by its core assumptions. Its presumption that the rights and benefits of work are distributed within a closed national sphere, its failure to take account of job differentiation within the universe of low-wage work, and its inattention to the extent to which a group's race, formal

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25. Political scientist Judith Shklar conceptualizes citizenship as standing in her book on the subject. See JUDITH N. SHKLAR, *AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION* 2 (1991); *infra* text accompanying notes 133–136.

26. See *infra* Part III.



citizenship status, history, and past labor experiences deeply affect its members' relationship to work and to belonging are all troubling. Relying on insights from critical race theorists, immigration scholarship, and constitutional law, this Article argues that to capture fully the connection between work and citizenship, we must interrogate the historical and contemporary workings of race, ethnicity, immigration status, and class as they manifest themselves in the particular path that a group has walked between work and citizenship.

In sum, we advocate the adoption of a more nuanced theory of work as a pathway to citizenship than has heretofore been developed by legal scholars. As our application of this lens to the experiences of African Americans and new Latino immigrants illustrates, such an analysis has the potential to uncover profound and conflict-generating differences between what on the surface seem to be similarly situated groups of low-wage workers. Take an African American warehouse worker, who finds that his wages buy him little economic advancement or societal respect within the United States. As a formal citizen, he is likely to feel that he is entitled to more in exchange for his labor, and he may resist his employer's efforts to speed up his work and will certainly protest any reduction in pay. An undocumented Latino immigrant in the same job at the same warehouse, by contrast, may be sending the bulk of his earnings home, where they elevate his family's standard of living and increase the government's recognition of his importance as a political actor. He may thus rate the citizenship or belonging value of his job quite highly, notwithstanding his exhaustion and his resentment of how the boss treats him and his coworkers. In any case, he fears that resistance would only lead to deportation. The two workers are likely unaware of the roots of the difference in their perceptions and behaviors, instead judging each other for the "laziness" or "servility" that they see on the surface. This Article shows how a deeper appreciation of these differences provides useful insights into each group's interactions with and views of the other. This Article then turns briefly to the possibilities for increased solidarity between workers such as Irving and Dinora that are revealed by our understanding of the experience of work in relation to citizenship.<sup>27</sup>

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27. We explore issues of solidarity and specific examples of collaboration between African Americans and new Latino immigrants in the workplace in a recent paper prepared for the Chief Justice Earl Warren Institute on Race, Ethnicity, and Diversity, University of California, Berkeley Law School. See Jennifer Gordon & R.A. Lenhardt, *Conflict and Solidarity Between African American and Latino Immigrant Workers* (Nov. 30, 2007), available at <http://www.law.berkeley.edu/centers/ewi/Gordon&LenhardtpaperNov30.pdf>.

Part I of this Article surveys new research on the relationship between African Americans and Latino immigrants in low-wage workplaces in the new South, where, because of recent demographic trends, these groups are increasingly meeting. It evaluates the standard explanations for the tensions between African American and Latino immigrant low-wage workers, surveying and critiquing scholarship on employer racial prejudice and economic competition, explaining why the literature fails adequately to account for the intensity and longevity of the conflict. Part II explores the benefits of viewing the conflict through the lens of citizenship or belonging. Part III applies our alternative approach to citizenship by mapping the unique paths that African American and Latino immigrant workers have taken to the workplace. Part IV explains how the distinct experiences these groups have had in the work context often result in different conceptions of and experiences with work, which produce the conflict that is the focus of this Article. Part IV then suggests how our new theory offers insights into the potential for solidarity between African American and Latino immigration low-wage workers. Toward this end, Part IV also documents emerging examples of workplace solidarity between Blacks and new Latino immigrants. The Article ends by considering how our approach could be deployed to elucidate further the ways in which race, immigration, and factors such as gender bear on matters of citizenship and belonging.

I. THE NATURE OF THE CONFLICT: EMERGING RESEARCH  
ON AFRICAN AMERICAN AND NEW LATINO IMMIGRANT  
WORKER INTERACTIONS

Until recently, efforts to characterize the relationship between African Americans and new Latino immigrants have primarily been the province of the media. Newspaper, television, and radio accounts have consistently portrayed workers such as Irving and Dinora as players in a desperate survival game, as “if [someone] . . . throw[s] out 200 bags of grain and 500 people are going for it.”<sup>28</sup> For instance, one newspaper quotes an African American lamenting the loss of opportunities for black workers, who seem always to stand at the bottom of the ladder of progress: “All the [black] people on the street know that Pedro, Paco and Maria are working and that they are not.”<sup>29</sup>

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28. Franco Ordoñez, *Blacks Fret Over Immigrant Gains: Latino Population Surge Puts Wages, Jobs, Clout at Risk, Some Say*, CHARLOTTE OBSERVER, May 21, 2006, at 1A (quoting Larry Watson, Professor, University of South Carolina).

29. Lee & Suro, *supra* note 14, at A1 (quoting Danny Bakewell, president of the Black Brotherhood Crusade).

Another reports the views of a Mexican immigrant who resents the implication that “we’re stealing their work.”<sup>30</sup> The media’s basic message has been that Latino immigrants and African Americans are in direct competition for jobs.

Social scientists skeptical of the media’s unidimensional account of the conflict between these groups have begun to study Black-Latino workplace interactions.<sup>31</sup> Sociologists Barbara Ellen Smith and Helen Marrow, geographer Jamie Winders, and anthropologist Angela Stuesse have undertaken important research focused on the relationships between immigrants and African Americans in the low-wage work context. Their scholarship examines workplace encounters between these groups that occur in the new South,<sup>32</sup> where African Americans and new Latino immigrants are increasingly meeting. From 1980 to 2000, the Latino population grew by almost 1000 percent in some southern cities.<sup>33</sup> Memphis, Nashville, Raleigh-Durham, and Atlanta are becoming popular destinations for Latino immigrants in search of work,<sup>34</sup> as are certain rural areas in Southern states.<sup>35</sup>

The findings of Smith, Marrow, Winders, and Stuesse confirm the existence of tensions between Blacks and Latino immigrants in the low-wage work context. Stuesse, Anita Grabowski, Laura Helton, and David Mandel-Anthony<sup>36</sup> have documented conflicts between black workers

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30. Ned Glascock, *Latinos Now Filling Bottom-Rung Jobs*, RALEIGH NEWS & OBSERVER, Oct. 29, 2000, at A1.

31. Other than economists examining data on job competition, few social scientists have focused in any depth on workplace interactions between African Americans and new Latino immigrants. For one exception, see Alex Stepick et al., *Brothers in Wood*, in *NEWCOMERS IN THE WORKPLACE: IMMIGRANTS AND THE RESTRUCTURING OF THE U.S. ECONOMY* 145, 145–63 (Louise Lamphere, Alex Stepick & Guillermo Grenier eds., 1994).

32. Until recently, most of the American South had experienced almost no Latino immigration. See Owen J. Furuseth & Heather A. Smith, *From Winn-Dixie to Tiendas: The Remaking of the New South*, in *LATINOS IN THE NEW SOUTH: TRANSFORMATIONS OF PLACE*, *supra* note 22, at 1, 1.

33. *Id.* at 8 tbl.12; see also Paula D. McClain et al., *Racial Distancing in a Southern City: Latino Immigrants’ Views of Black Americans*, 68 J. POL. 571, 572 (2006).

34. McClain et al., *supra* note 33, at 571–72. This influx is noteworthy, in part, because the number of African Americans returning to the South after having lived in the North for a number of years is also on the rise. The returnees include middle-class families and college graduates, as well as low-income workers. WILLIAM H. FREY, BROOKINGS INST., *THE NEW GREAT MIGRATION: BLACK AMERICANS’ RETURN TO THE SOUTH, 1965–2000*, at 7–8 (2004). This dual pattern of in-migration is occurring in places that already have substantial Black populations.

35. Furuseth & Smith, *supra* note 32, at 11–12.

36. Grabowski is a former masters degree student in Stuesse’s University of Texas anthropology department and is now the lead organizer with the Poultry Worker Project of the Center for Community Change. Helton and Mandel-Anthony are former undergraduate students in the department.

and Latinos in the poultry processing plants of central Mississippi.<sup>37</sup> Winders and Marrow, who study hotel workers in Nashville, Tennessee, and poultry workers in eastern North Carolina, respectively, have also confirmed the existence of tensions between African American and new Latino immigrant workers.<sup>38</sup>

This scholarship significantly complicates the typical story of conflict portrayed in the media. Among other things, this new research makes clear that tensions between African Americans and new Latino immigrants exist not just as to who gets the available jobs, but around a range of issues in the low-wage work context. Barbara Ellen Smith, who has attempted to measure the impact of immigration on labor markets in Memphis, reports that the pace of the work is a frequent site of tension between African Americans and Latino immigrants. In interviews with Smith, black workers expressed concern about being “worked like a Mexican,” a phrase used to signify exploitation.<sup>39</sup> Stuesse, in interviews with native-born African Americans in Mississippi, recorded comments such as “Hispanics are too willing to work for nothing,” and “they’re taking our jobs and forcing us to work even harder.”<sup>40</sup> Among Latino workers, Smith notes, “[t]he . . . counter-assertion . . . that ‘we can work twice as fast and produce twice as much [as] other workers’ is clearly a source of pride.” Many Latino workers surveyed regarded Blacks as “lazy,” people who “don’t want to work.”<sup>41</sup> Latino workers assert: “[W]e are as productive as they are for less money . . . . We work hard. They don’t work as hard as we do.”<sup>42</sup>

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37. See Stuesse, *supra* note 7; Angela C. Stuesse & Laura E. Helton, Race, Low-wage Legacies and the Politics of Poultry Processing: Intersections of Contemporary Immigration and African Immigration Labor Histories in Central Mississippi (Apr. 17, 2004) (unpublished paper) (on file with authors); Anita Grabowski, *La Pollera*: Latin American Immigrant Workers at the Koch Foods Poultry Plant in Morton, Mississippi (May 2003) (unpublished Masters Thesis, University of Texas at Austin) (on file with authors); David G. Mandel-Anthony, From Comitancillo to Carthage, Mississippi: Activist Research, Transnationalism, & Racial Formation in a Community of Guatemalan Mam Poultry Workers 71 (unpublished B.A. thesis, University of Texas at Austin, May 4, 2005) (on file with authors).

38. See Winders, *supra* note 22, at 327; Marrow, *supra* note 1, at 13–14.

39. Smith, *supra* note 1, at 60.

40. Stuesse, *supra* note 7, at 18. Smith grapples with African American workers’ perceptions of competition in the absence of data confirming direct displacement. Barbara Ellen Smith, *Job Competition and Tensions in the Workplace*, in ACROSS RACES AND NATIONS: BUILDING NEW COMMUNITIES IN THE U.S. SOUTH, *supra* note 1, at 77, 78–79. See generally Stephen Steinberg, *Immigration, African Americans, and Race Discourse*, in RACE AND LABOR MATTERS IN THE NEW U.S. ECONOMY 175, 180 (Manning Marable et al. eds., 2006) (arguing that economists have failed to find evidence of competition due to methodological flaws and aggregation).

41. Smith, *supra* note 1, at 60. Such sentiments appear to be pervasive. See, e.g., Marrow, *supra* note 1, 13–14; Stuesse, *supra* note 7, at 21–22.

42. Glascock, *supra* note 30.

Further, this research underscores the extent to which the conflict between African Americans and new Latino immigrants may operate differently in different contexts. For example, the work of researchers such as Helen Marrow and Jamie Winders make clear that, for reasons we discuss in Part IV, the experiences of low-wage Blacks and Latinos will not necessarily be uniform across sectors or even job sites. Scholars have found that tensions appear likely to diminish where work is structured so that African Americans and new immigrants have ongoing contact with each other over the course of the day, job tasks require teamwork to complete, and employees are insulated from direct competition for assignments.<sup>43</sup>

## II. STANDARD EXPLANATIONS FOR THE CONFLICT

Because the research we discussed in the previous section is so new—indeed, much of it is still unpublished—it has yet to figure in any meaningful way into the conversation about the relationship between Blacks and Latino immigrants in the low-wage context. The uniform story of all-out conflict told by the media—that African Americans are losing jobs to immigrants as the two groups fight for the same positions—has intuitive resonance, given that nationally, African Americans and Latino immigrants are both disproportionately represented in the low-wage workforce.<sup>44</sup> Furthermore, in a range of industries—food processing, janitorial, and hotel work among them—the past few decades have seen a shift from a workforce with strong African American representation to one that is predominately immigrant.<sup>45</sup> The visible transformation of those industries

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43. For a full discussion of this phenomenon, see *infra* text accompanying notes 335–341.

44. In 1998, 38.4 percent of African Americans and 44.8 percent of Latinos earned less than \$15,000 per year; only 29.5 percent of white workers fell in that category. Anthony P. Carnevale & Stephen J. Rose, *Low Earners: Who Are They? Do They Have a Way Out?*, in *LOW-WAGE WORKERS IN THE NEW ECONOMY* 45, 52 (Richard Kazis & Marc S. Miller eds., 2001).

On the common attribution of Black unemployment to immigration, see Earl Ofari Hutchinson, Op-Ed, *Rising Latino Numbers, Rising Black Fears*, BOSTON-BAY ST. BANNER, Dec. 6, 2007, at A1, available at <http://www.baystatebanner.com/issues/2007/12/06/opinion12060758.htm> (“The prime reasons for chronic black unemployment . . . are lingering racial discrimination and the lack of job skills, training and education. No matter; many blacks still blame their job plight on illegal immigrants.”).

45. On poultry, see STRIFFLER, *supra* note 1, at 96. Cf. Timothy J. Dunn, Ana María Aragonés & George Shivers, *Recent Mexican Migration in the Rural Delmarva Peninsula: Human Rights Versus Citizenship Rights in a Local Context*, in *NEW DESTINATIONS: MEXICAN IMMIGRATION IN THE UNITED STATES*, *supra* note 1, at 155, 160 (“[L]atino workers are filling the poultry labor gap.”); Pérez & Dade, *supra* note 1, at A1 (“[T]he number of black workers at [chicken-processing company] Crider declined steadily to 14% in early 2006 from as high as 70% a decade ago, the company says.”). On the hotel industry see, for example, ROGER WALDINGER, *STILL THE PROMISED CITY? AFRICAN AMERICANS AND NEW IMMIGRANTS IN POSTINDUSTRIAL NEW YORK* 155–70

reinforces the popular sense that immigrants are taking black workers' jobs. In this section, we examine and contest the conventional framing of this phenomenon.

#### A. The Role of Employer Bias

Although the popular rhetoric positions immigrants as the primary actors in the job competition story, it is employers, not workers, who make decisions about who to hire and about how to structure the workplace. As the literature on employer hiring preferences and so-called ethnic niches demonstrates, employers' actions drive changes in hiring patterns and lay the groundwork for the conflict between black and new Latino immigrant workers.<sup>46</sup>

Social scientists who have studied employer attitudes toward African Americans concur that employers have considerable prejudice against native-born black workers.<sup>47</sup> Some of this bias extends to U.S.-born

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(1996) (analyzing the shift from Blacks to immigrants in the New York hotel industry), and *News and Notes With Ed Gordon: Black Hotel Workers Replaced by Immigrants*, *supra* note 16 (describing the replacement of African Americans by immigrants in the Los Angeles hotel industry). On the janitorial industry see, for example, Cynthia Cranford, *Networks of Exploitation: Immigrant Labor and the Restructuring of the Los Angeles Janitorial Industry*, 52 SOC. PROBS. 379, 386 (2005) ("In the pre-World War II and immediate postwar periods, the janitorial workforce primarily comprised African Americans, many of whom were migrants from southern states. The proportion of African Americans began to decline in the 1970s and continued to fall as the de-unionization of the industry accelerated in the 1980s. In contrast, the proportion of Mexicans, Salvadorans, and Guatemalans rose throughout the 1980s."). Arguing that the influx of immigrants into janitorial work was the consequence of de-unionization and the deterioration of cleaning jobs, rather than its cause, see RUTH MILKMAN, L.A. STORY: IMMIGRANT WORKERS AND THE FUTURE OF THE U.S. LABOR MOVEMENT 6–9, 104–13 (2007).

46. See, e.g., ROGER WALDINGER & MICHAEL I. LICHTER, *HOW THE OTHER HALF WORKS: IMMIGRATION AND THE SOCIAL ORGANIZATION OF LABOR* (2003); WALDINGER, *supra* note 45. Legal scholar Leticia Saucedo explores these issues in depth in her article, Leticia M. Saucedo, *The Employer Preference for the Subservient Worker and the Making of the Brown Collar Workplace*, 67 OHIO ST. L.J. 961 (2006).

47. See Joleen Kirschenman & Kathryn M. Neckerman, "We'd Love to Hire Them, But . . .": *The Meaning of Race for Employers*, in *THE URBAN UNDERCLASS* 203, 204 (Christopher Jencks & Paul E. Peterson eds., 1991); see also WALDINGER & LICHTER, *supra* note 46, at 166–67; Kirschenman & Neckerman, *supra*, at 210 (indicating that employers also use race to distinguish between immigrant groups). For studies on the role race plays in employer decisions between native Blacks and Whites, see Devah Pager & Lincoln Quillian, *Walking the Talk? What Employers Say Versus What They Do*, 70 AM. SOC. REV. 355, 366 (2005) (documenting employer preferences for hiring white rather than black ex-offenders); Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Brenda More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination* 2–3 (Nat'l Bureau of Econ. Research, Working Paper No. 9873, 2003) (studying bias evinced in employer attitudes toward resumé of individuals with names thought to signal African American heritage).

Biases against African Americans appear particularly marked for the lowest-skilled positions. Waldinger and Lichter note that "[s]omewhat higher up in the hierarchy, where the demand for

workers of all races and ethnicities and is rooted in the belief that native workers do not want to work hard.<sup>48</sup> But much of it resides in stereotyping of African Americans in particular, as “unstable, uncooperative, dishonest, and uneducated,”<sup>49</sup> “lazy,” “not as dependable,” and as people with an “attitude.”<sup>50</sup> As an exception to this generalized bias, black workers may be actively sought out by store owners in African American neighborhoods where they are perceived as cultural brokers who will attract and serve predominantly black customers.<sup>51</sup> Even then, however, black immigrants are vastly preferred as employees over African Americans.<sup>52</sup>

In contrast, employers have an overwhelmingly positive view of new immigrants—positive, that is to say, to the extent that subservience is characterized as a positive trait in low-wage jobs offering few opportunities for advancement.<sup>53</sup> One employer in Roger Waldinger and Michael Lichter’s study spoke for many when he said of Latino immigrants: “They are willing to come and do whatever job you tell them without question.”<sup>54</sup> Another employer added candidly, “I think immigrants are very hardworking, they are responsible, and most importantly are willing to receive meager salaries for the work they put in.”<sup>55</sup> Again and again, in comparative studies, managers characterize new immigrants as desirable employees for their willingness to work long hours at dirty, boring, or dangerous jobs for low wages

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subordination was not so great and the compensation more likely to motivate native-born workers, managers evinced a somewhat different view.” WALDINGER & LICHTER, *supra* note 46, at 177–78. In this context, black workers were likely to be seen as more desirable than immigrants because of their literacy, English language abilities, and ambition. *Id.* at 178.

48. See WALDINGER & LICHTER, *supra* note 46, at 157–59, 176–77.

49. Kirschenman & Neckerman, *supra* note 47, at 204. For a comprehensive survey of employer views of African American workers, see PHILIP MOSS & CHRIS TILLY, *STORIES EMPLOYERS TELL: RACE, SKILL, AND HIRING IN AMERICA* 85–208 (2001).

50. MOSS & TILLY, *supra* note 49, at 100–03; see also WALDINGER & LICHTER, *supra* note 46, at 170–76.

51. Jennifer Lee, *The Racial and Ethnic Meaning Behind Black: Retailers’ Hiring Practices in Inner-City Neighborhoods*, in *COLOR LINES: AFFIRMATIVE ACTION, IMMIGRATION, AND CIVIL RIGHTS OPTIONS FOR AMERICA* 168, 168 (John David Skrentny ed., 2001) (exploring the preference of small businesses in New York City and Philadelphia for “hiring Blacks because of their perceived utility . . . in dealing with a predominately black clientele”).

52. See *id.* at 178 (“Merchants generally agree that native-born Americans of any kind . . . are unwilling to work in small business and put in the long hours and the physically exhausting labor for so little pay.”). As a result, when they perceive a need for a black employee to act as a cultural bridge, they turn to African and Caribbean immigrants. *Id.* at 177–84.

53. WALDINGER & LICHTER, *supra* note 46, at 144, 160–63; Saucedo, *supra* note 46, at 978–79.

54. WALDINGER & LICHTER, *supra* note 46, at 162.

55. *Id.* at 162–63.

and for their compliant attitude and work ethic.<sup>56</sup> “They will do the jobs Americans won’t do” was the overriding sentiment expressed by employers—one that is frequently wielded in discussions about immigration but goes largely unexamined, particularly where the issue of how certain jobs come to be undesirable to U.S.-born workers is concerned.<sup>57</sup>

Employers do more than just harbor biases of the sort just described; they operationalize prejudices in important ways.<sup>58</sup> Ultimately, the racial, ethnic, and immigration-status hiring preferences of employers are instrumental in driving the changes in who works where.<sup>59</sup> One manifestation of these preferences is the transformation of certain job categories into ethnic niches dominated by workers of one race or ethnicity to the exclusion of others. Title VII of the Civil Rights Act of 1964,<sup>60</sup> which prohibits employment discrimination on the basis of race, has been of little help in eliminating these racially segregated workspaces, despite the fact that the segregation reflects employers’ oft-expressed racial preferences. Leticia Saucedo has argued in a recent series of articles that the “brown collar” workplaces created when low-wage employers exclusively hire immigrants of color represent a form of discrimination, with harm both to the workers in those jobs (because of their low quality) and to other workers excluded from the opportunity to work in those enterprises.<sup>61</sup> Yet current interpretations

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56. In addition to WALDINGER & LICHTER, *supra* note 46, at 160–67, see, for example, Karen D. Johnson-Webb, *Employer Recruitment and Hispanic Labor Migration: North Carolina Urban Areas at the End of the Millennium*, 54 PROF. GEOGRAPHER 406, 412–13 (2002); Jeffrey Leiter, Leslie Hossfeld & Donald Tomaskovic-Devey, *North Carolina Employers Look at Latino Workers* (Apr. 2001) (paper presented at the Annual Meeting of the Southern Sociological Society, Atlanta, Ga., Apr. 2001) (discussing employer preference for Latino workers over non-Latinos).

57. See, for example, the recent statement of the Essential Worker Immigration Coalition (EWIC), to which the Chamber of Commerce and many other large business associations belong, regarding the need for a guest worker program to fill jobs “that most Americans take for granted but won’t do themselves.” Essential Worker Immigration Coalition, 5 Myths Regarding Immigration and Comprehensive Immigration Reform in the U.S., [http://www.ewic.org/index2.php?option=com\\_content&do\\_pdf=1&id=44](http://www.ewic.org/index2.php?option=com_content&do_pdf=1&id=44) (last visited Apr. 5, 2008).

58. On how employers structure jobs in ways that increase Americans’ resistance to doing them, see Saucedo, *supra* note 46, at 973–76, and Smith, *supra* note 18, at 4–5.

59. For a discussion of employers’ structuring choices and opportunities for women in the workforce, see Vicki Schultz, *Telling Stories About Women and Work: Judicial Interpretations of Sex-Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 HARV. L. REV. 1749, 1816–38 (1990).

60. 42 U.S.C. §§ 2000e to 2000e-17 (2000).

61. Leticia M. Saucedo, *Addressing Segregation in the Brown Collar Workplace: Toward a Solution for the Inexorable 100%*, 41 U. MICH. J.L. REFORM (forthcoming 2008) (on file with the authors); Saucedo, *supra* note 46.



of Title VII frequently “assume[] that there is no discrimination violation if immigrants have opportunities to take the jobs that no one else will take.”<sup>62</sup>

Ethnic niches are prevalent in a number of industries. They vary by region and by ethnic group and often turn over from one group to another over time. Examples include the pattern of Korean managers of small groceries in New York City (itself an ethnic ownership niche) shifting from hiring Korean employees to newly-arrived Mexicans,<sup>63</sup> and the predominance of Latinos in the landscaping businesses in California, Texas, and New York. Although ethnic niches are usually understood to refer to an occupation as a whole, employers may also maintain a racially stratified workforce within a single enterprise, with workers of each race or ethnicity being channeled into particular jobs.<sup>64</sup> Once certain jobs are identified as immigrant work, they become less desirable to black workers—even if they pay similar wages to other low-skilled work—because of their perceived lower social status.<sup>65</sup>

The tension between African American and new Latino immigrant workers in areas undergoing demographic change is heightened by employers’

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62. Saucedo, *supra* note 61, at 14. For further critiques of Title VII in the context of a multiracial workforce, see our discussion of the works of Noah Zatz and Elizabeth Iglesias, *infra* notes 329 and 330, respectively, and accompanying text.

63. For a study of the development and evolution of this niche, see Dae Young Kim, *Beyond Co-Ethnic Solidarity: Mexican and Ecuadorean Employment in Korean-Owned Businesses in New York City*, 22 ETHNIC & RACIAL STUD. 581 (1999).

64. Title VII cases in which plaintiffs have challenged racially and ethnically stratified workplaces amply illustrate this practice in workplaces around the United States. See, e.g., *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989), *superseded by statute*, Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1074 (finding unsuccessful the plaintiffs’ allegation of race discrimination in a work setting where the vast majority of skilled positions were held by white workers and the more arduous cannery positions were held by Native Alaskans and Filipinos and where each ethnic group had separate housing facilities). Anthropologist Carol Stack documents the segregation of fast food workers by race and ethnicity in Oakland, California, finding that African American workers are relegated to the least desirable late-night shifts. Carol B. Stack, *Beyond What Are Given as Givens: Ethnography and Critical Policy Studies*, 25 ETHOS 191, 202 (1997). On racial and gender stratification within Silicon Valley, see Karen J. Hossfeld, *Their Logic Against Them: Contradictions in Sex, Race, and Class in Silicon Valley*, in TECHNOLOR: RACE, TECHNOLOGY, AND EVERYDAY LIFE 34, 39–40 (Alondra Nelson & Thuy N. Tu eds., 2001). For a recent example of an employer’s use of race and immigration to divide workers in one meatpacking enterprise, the Smithfield Packing Company, see Charlie LeDuff, *At a Slaughterhouse, Some Things Never Die: Who Kills, Who Cuts, Who Bosses Can Depend on Race*, N.Y. TIMES, June 16, 2000, at A1.

65. WALDINGER & LICHTER, *supra* note 46, at 9. This process is and always has been fluid. For an account of how “black jobs” and “white jobs” were naturalized as categories in the North Carolina lumber industry in the early 1900s, see William P. Jones, *Black Workers and the CIO’s Turn Toward Racial Liberalism: Operation Dixie and the North Carolina Lumber Industry 1946–1953*, 41 LAB. HIST. 279, 281–85 (2000). For a discussion of the devaluation of jobs associated with Blacks, see Robin D.G. Kelley, “We Are Not What We Seem”: *Rethinking Black Working-Class Opposition in the Jim Crow South*, 80 J. AM. HIST., June 1993, at 75, 101 (“But once derogatory social meaning is inscribed upon the work (let alone the black bodies that perform the work), it undermines its potential dignity and worth—frequently rendering ‘nigger work’ less manly.”).

efforts to play the two groups off against each other to keep competition high and wages low. The poultry industry offers a useful example.<sup>66</sup> Through the 1970s and early 1980s, the chicken processing plants that dot the South largely employed African American, and to a lesser extent, native-born white workers. The industry came under increasingly consolidated ownership in the last quarter of the twentieth century.<sup>67</sup> To squeeze more profit out of the line, those companies cut wages, reduced safety protections, and quickened the pace of work.<sup>68</sup> As our opening narrative and discussion reflects, observers of the poultry industry could attest to the nearly complete replacement of a once significantly African American workforce with a new immigrant one within the period of two decades.<sup>69</sup> Jobs in those industries became work “Americans . . . won’t do themselves.”<sup>70</sup>

The truth, however, is more complicated than this oft-used phrase conveys. For understandable reasons, many African Americans are reluctant to work under the increasingly abusive and poorly remunerated conditions in the poultry industry.<sup>71</sup> But just two decades earlier, those same jobs had been work Americans would do.<sup>72</sup> Employers actively created the conditions that led native workers to leave the industry and hastened the process by

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66. For a similar example in a different context, see Ruth Milkman’s account of the shift from African American to immigrant labor in Los Angeles’s janitorial industry. MILKMAN, *supra* note 45, at 104–13.

67. COMPA, *supra* note 1, at 15; LEON FINK, *THE MAYA OF MORGANTON: WORK AND COMMUNITY IN THE NUEVO NEW SOUTH* 12 (2003); STRIFFLER, *supra* note 1, at 51–52.

68. COMPA, *supra* note 1, at 11–14. African Americans left poultry jobs in droves. See Pérez & Dade, *supra* note 1. Employers hired Latino immigrants to replace them. See STRIFFLER, *supra* note 1, at 96.

69. See sources cited *supra* note 45.

70. See, e.g., Essential Worker Immigration Coalition, *supra* note 57. The example of meatpacking provides another useful illustration of a job’s progression from desirable to undesirable in the eyes of U.S. workers. Once heavily unionized and dominated by native-born workers, meatpacking at one time paid wages 15 to 19 percent higher than the average in U.S. manufacturing. As enormous companies such as Iowa Beef Processors consolidated their control over the industry in the late 1980s and 1990s, they aggressively fought unionization and succeeded in automating and speeding up the work and lowering the pay. Today, offering 24 percent less than the average U.S. manufacturing wage for dirty and dangerous labor, these jobs have fallen into the category of “work Americans won’t do” and are increasingly held by immigrants. COMPA, *supra* note 1, at 11–14; Marc Cooper, *The Heartland’s Raw Deal: How Meatpacking Is Creating a New Immigrant Underclass*, *THE NATION*, Feb. 3, 1997, at 11, 11–17.

71. See, e.g., Steven Greenhouse, *Immigrant Crackdown Upends a Slaughterhouse’s Work-force*, *N.Y. TIMES*, Oct. 12, 2007, at A1; Pérez & Dade, *supra* note 1, at A1.

72. See Stuesse & Helton, *supra* note 37, at 4 (quoting a Mississippi resident on the shift from black to white to immigrant workers: “The Whites left for more money, so they brought in Blacks. Then when Blacks wanted more money, they brought immigrants.”).

recruiting immigrants to replace them.<sup>73</sup> In some cases, employers carried out an intentional strategy of pitting African Americans against new arrivals.<sup>74</sup> But in most situations they simply hired immigrants as jobs opened up. In turn, the chicken processing industry became known as “immigrant work,” thus increasing the stigma associated with those jobs for African Americans and further perpetuating the turnover cycle. By the 1990s, some workforces that were once primarily African American had become largely immigrant-staffed.<sup>75</sup> Although the story of chicken processing is particularly dramatic, residents of many communities in the South have seen a similar shift in other industries, particularly construction, warehousing, and manufacturing.<sup>76</sup>

#### B. Existing Studies of Economic Competition

It is tempting to jump to the conclusion that these shifts in hiring patterns represent an economic loss for black workers. But African Americans job losses are not, by and large, due to immigration. The bulk of Black unemployment is the product of ongoing racial discrimination and the loss

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73. FINK, *supra* note 67, at 13–18; Stuesse & Helton, *supra* note 37, at 7–8. For a similar story in the janitorial, garment, construction, and trucking industries in Los Angeles, see MILKMAN, *supra* note 45, at 104–13.

74. The employer strategy of placing African Americans in opposition to other groups is an old phenomenon. Over the past two centuries, African Americans have been used by employers to threaten and unseat other workers and have also been situated as the group to be unseated. W.E.B. Du Bois documented the complaint often made by Irish workers before emancipation that freedmen and women were undermining wages in cities like Philadelphia and New York through their sheer numbers and their willingness to work for little pay. W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA 1860–1880*, at 18–19 (Atheneum 1935). Employers openly fanned the flames of the hostility that resulted. BRUCE NELSON, *DIVIDED WE STAND: AMERICAN WORKERS AND THE STRUGGLE FOR BLACK EQUALITY 19–20* (2001). Meanwhile, the tables were turned on African American workers in traditionally black-held jobs, who were told that immigrants would do their jobs better and more cheaply. As Frederick Douglass lamented of the economy in the North in 1853, “every hour sees the black man elbowed out of employment by some newly arrived emigrant, whose hunger and whose color are thought to give him a better title to the place.” 2 *THE LIFE AND WRITINGS OF FREDERICK DOUGLASS 224* (Philip Foner ed., 1950); *see also id.* at 265 (discussing a similar phenomenon in Southern states).

Immigrants have long been used to play similar roles in relation to each other and to white workers. For example, Ronald Takaki has documented the way that Hawaiian sugarcane planters “used Chinese laborers as an ‘example’ for the native workers” in the mid-1800s, pointing out how hard they worked and calling the native Hawaiians “wahine” or “women” by comparison. Ronald Takaki, *Ethnicity and Class in Hawaii: The Plantation Labor Experience, 1835–1920*, in *LABOR DIVIDED: RACE & ETHNICITY IN UNITED STATES LABOR STRUGGLES, 1835–1960*, at 33, 40 (Robert Asher & Charles Stephenson eds., 1990).

75. *See* STRIFFLER, *supra* note 1, at 96; Dunn, Aragonés & Shivers, *supra* note 45, at 160; *see also* Pérez & Dade, *supra* note 1 (“[T]he number of black workers at [chicken-processing company] Crider declined steadily to 14% in early 2006 from as high as 70% a decade ago . . .”).

76. Smith, *supra* note 40, at 79–80.

of manufacturing jobs and public employment opportunities rather than encroachments by immigrants.<sup>77</sup> On related fronts, key empirical issues include whether a reduction in African Americans' wages or a diminished range of job opportunities for Blacks can be traced to immigrants. Current scholarship does not offer a definitive answer.

Economic studies of the impact of recent immigration on African American wages abound, but sorting through their often contradictory conclusions is difficult. Some economists, including George Borjas, argue that new immigrants have a significant negative impact on low-skilled native workers' wages.<sup>78</sup> Borjas estimates that high school dropouts suffered approximately an 8 percent wage decrease as a result of the 11 percent increase in male immigrants in the labor force between 1980 and 2000,<sup>79</sup> although in later work with Lawrence Katz, he suggested that the decrease might be considerably lower using different assumptions about the elasticity of capital.<sup>80</sup> Borjas noted that the impact fell far more heavily on African American and U.S.-born Latino workers because they are overrepresented among the low-skilled workforce in the United States.<sup>81</sup> He

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77. See, e.g., David Bacon, *The Political Economy of Migration*, NEW LAB. F., Fall 2007, at 57, 63 ("Very little of the rise in African American unemployment is a result of direct displacement by immigrants. It's caused overwhelmingly by the decline in manufacturing and cuts in public unemployment."); DeWayne Wickham, *Immigrants a Scapegoat for Blacks' Unemployment*, USA TODAY, Aug. 7, 2007, at A9 ("We examined the overall question of [the] black economic fate in the labor market, and [found that] there is not a clear link between the presence of immigrants and those adverse economic outcomes for African-Americans," says Steven Pitts, a labor policy specialist at the University of California-Berkeley's Labor Center. For example, despite a steady increase in foreign-born immigrants from 1980 to 2000, Pitts says, U.S. black unemployment dropped sharply during those years."); see also Hutchinson, *supra* note 44.

78. See, e.g., George J. Borjas, *The Labor Demand Curve Is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market*, 118 Q.J. ECON. 1335, 1370 (2003) [hereinafter Borjas, *The Labor Demand Curve*]; George J. Borjas, *Increasing the Supply of Labor Through Immigration: Measuring the Impact on Native-Born Workers*, BACKGROUNDERS, May 2004, at 1, available at <http://www.cis.org/articles/2004/back504.pdf> [hereinafter Borjas, *Increasing the Supply*].

Economist Vernon Briggs has also long argued that immigration has negative economic consequences for African Americans. See, e.g., Vernon M. Briggs, Jr., *The Economic Well-Being of Black Americans: The Overarching Influence of U.S. Immigration Policies*, in THE IMPACT OF IMMIGRATION ON AFRICAN AMERICANS 1, 1-26 (Steven Shulman ed., 2004).

79. Borjas, *The Labor Demand Curve*, *supra* note 78, at 1370 (estimating 8.9 percent); Borjas, *Increasing the Supply*, *supra* note 78, at 1 (estimating 7.4 percent).

80. See George J. Borjas & Lawrence F. Katz, *The Evolution of the Mexican-Born Workforce in the United States* 63 (Nat'l Bureau of Econ. Research, Working Paper No. 11281, 2005); Eduardo Porter, *Cost of Illegal Immigration May Be Less Than Meets the Eye*, N.Y. TIMES, Apr. 16, 2006, at 3.

81. Borjas, *Increasing the Supply*, *supra* note 78, at 1, 6; see also Daniel S. Hamermesh & Frank D. Bean, *Introduction to HELP OR HINDRANCE?: THE ECONOMIC IMPLICATIONS OF IMMIGRATION FOR AFRICAN-AMERICANS* 1, 8-9 (Daniel S. Hamermesh & Frank Bean eds., 1998) (concluding that immigration has a small but "clearly identifiable" negative impact on the wages of all African Americans, with a stronger impact on low-skilled African Americans).

remains a staunch advocate for the position that immigrants reduce opportunities for low-skilled native workers.<sup>82</sup>

In contrast, some economists, such as David Card, look at aggregate relative wages over time at the national level and conclude that “[t]he evidence that immigrants harm native opportunities is slight.”<sup>83</sup> Card acknowledges that immigration of low-skilled workers increases the supply of such workers in the labor markets where they arrive, but finds that “wages of less skilled natives are insensitive to the relative supply pressure created by unskilled immigrants.”<sup>84</sup> To explain these counterintuitive findings, Card hypothesizes that firms in immigrant-heavy industries adapt their methods of production to the influx, absorbing the new arrivals without much of an impact on native workers.<sup>85</sup> Card’s findings are supported by the majority of other scholars and policy analysts. For example, a recent report issued by the Pew Hispanic Center that examined Census data between 1990 and 2004 concluded that “employment prospects for native-born workers do not appear to be related to the growth of the foreign-born population,” even in a close examination of the “less educated and relatively young native-born workers” with whom the immigrants are presumably in direct competition.<sup>86</sup>

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82. Borjas’s most recent position is characterized in Roger Lowenstein, *The Immigration Equation*, N.Y. TIMES MAG., July 9, 2006, at 36, 38 (“To Borjas . . . the truth is pretty obvious: immigrants hurt the economic prospects of the Americans they compete with . . . especially African-Americans . . .”).

83. David Card, *Is the New Immigration Really So Bad?* 3 (Nat’l Bureau of Econ. Research, Working Paper No. 11547, 2005) [hereinafter Card, *New Immigration*]; see also David Card, *Immigrant Inflows, Native Outflows, and the Local Labor Market Impacts of Higher Immigration*, 19 J. LAB. ECON. 22 (2001) [hereinafter Card, *Immigrant Inflows*].

84. Card, *New Immigration*, *supra* note 83, at 12.

85. *Id.* at 24–25. In other words, where immigrant labor is abundant, employers turn towards less skill-intensive methods of production, using more workers instead. See Ethan Lewis, *How Did the Miami Labor Market Absorb the Mariel Immigrants?* 21 (Fed. Reserve Bank of Phila., Working Paper No. 04-3, 2004), available at <http://philadelphiafed.org/files/wps/2004/wp04-3.pdf>.

86. RAKESH KOCHHAR, PEW HISPANIC CTR., GROWTH IN THE FOREIGN-BORN WORKFORCE AND EMPLOYMENT OF THE NATIVE BORN 27 (2006), <http://www.pewhispanic.org/files/reports/69.pdf>. The differences between the two sides depend largely on the assumptions each makes. For example, economists who make predictions about outcomes assuming that immigrants and natives are perfect substitutes for each other in the workplace will find that an increase in immigration creates direct job competition. Those who assume that job markets are segmented and that immigrants and natives hold different positions in them posit that the presence of immigrants may increase the demand for native workers in supervisory positions, thus benefiting natives. See Howard F. Chang, *The Economic Impact of International Labor Migration: Recent Estimates and Policy Implications*, 16 TEMP. POL. & CIV. RTS. L. REV. 321, 327–29 (2007); see also Lowenstein, *supra* note 82, at 10–11. Similarly, when economists calculate the impact of immigration without taking into account the possibility that an influx of labor will draw new capital to the industries where immigrants labor, they find a greater negative impact. Chang, *supra*, at 329–30; see also Borjas, *The Labor Demand Curve*, *supra* note 78, at 1368 (calculating the wage impact of immigration under the assumption that capital stock is constant). Once capital is presumed to adjust to the increased economic activity from immigration, the wage effects diminish or disappear. Chang, *supra*, at 330–31.

The work just described is limited in its usefulness, however, because it examines only a subset of immigration's effects. Additionally, this scholarship inadequately addresses a number of important issues, such as the extent to which native and immigrant workers, given differences in English proficiency, among other things, can be regarded as "perfect substitutes for one another."<sup>87</sup> Moreover, the research at issue in the economic competition debate generally focuses on the national effects of immigration,<sup>88</sup> failing to account for the unique labor market characteristics of each locality—the level where the conflict between African American and new Latino immigrants is most keenly experienced.<sup>89</sup>

A particularly large hole in the literature is the absence of substantial studies on job displacement.<sup>90</sup> In sectors where immigrants do work once done by Blacks, have the black workers gone on to better jobs, to equivalent or worse jobs, or to no work at all? The limited work that has been done in this field largely concludes that immigrants displace "some low-skilled workers and/or African American[s]" from their jobs.<sup>91</sup> This outcome, from the perspective of economists, is a net positive, largely because most black workers are believed to have found equivalent or better work in other industries.<sup>92</sup> However, further empirical work is necessary to fill this critical gap in the research.

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87. Steven Raphael & Lucas Ronconi, *The Effects of Labor Market Competition With Immigrants on the Wages and Employment of Natives: What Does Existing Research Tell Us?* 23 (Jan. 2007) (unpublished manuscript), available at [http://irle.berkeley.edu/cwed/ronconi/immigration\\_existing\\_research.pdf](http://irle.berkeley.edu/cwed/ronconi/immigration_existing_research.pdf); see also *id.* at 23–25 (discussing factors such as English proficiency, education, and incarceration).

88. The exception is a handful of case studies of natural experiments that arose when a large discrete group of immigrants arrived in a particular city or local economy at one time. *Id.* at 18. The arrival of the Mariel Cubans in Miami is one example. See, e.g., David Card, *The Impact of the Mariel Boatlift on the Miami Labor Market*, 43 INDUS. & LAB. REL. REV. 245 (1990).

89. For further critiques of the economic competition theory, see Smith, *supra* note 18, at 3–6. Smith grapples with African American workers' persistent perceptions of competition in the absence of data confirming direct displacement in Smith, *supra* note 40, at 78–79. See also Steinberg, *supra* note 40, at 180 (arguing that the studies that find no displacement are flawed because they aggregate data across sectors, rather than examining industries individually).

90. One exception is the work of Roger Waldinger, who has explored displacement in Los Angeles and New York, among other settings. WALDINGER, *supra* note 45.

91. Julie Murray, Jeanne Batalova, & Michael Fix, *The Impact of Immigration on Native Workers: A Fresh Look at the Evidence*, 18 MIGRATION POL'Y INST. INSIGHT 7 (2006).

92. For example, Roger Waldinger analyzes the shift from African Americans to immigrants in New York's hotel and garment industries and concludes:

In the end, immigrants may have hastened the African-American exodus from New York's low-skilled sectors, but if so, they only pushed along a development that was well underway before they arrived. African-Americans stopped doing New York's dirty work more than a generation ago . . . . Today's areas of African-American concentration are to be found in

This said, a few findings emerge from the existing wage competition studies that bear noting here. While the majority of studies conclude that the aggregate economic impact of immigration on the wages of native-born workers as a whole is either insignificant or positive,<sup>93</sup> many scholars concur that immigration does have a measurable negative impact on the wages of less-skilled native-born workers, particularly those who have not completed high school.<sup>94</sup> As Borjas points out, African Americans (and native-born Latinos) bear more of this economic burden than the rest of the population because they make up a disproportionate share of the low-skilled group relative to their representation in the population as a whole.<sup>95</sup> Losing out in the battle to secure employment carries a particular sting for African Americans, who win the contest for work in the United States far less often than their white counterparts.<sup>96</sup>

### C. Toward a More Complex Understanding

So where do these studies leave us? Are external factors of economic competition and racial preference sufficient to explain tensions between African American workers and new Latino immigrants like Irving and Dinora? The literature on employer preferences supports the observations of African American workers in communities experiencing a rapid influx of immigrants that jobs that they once occupied have been deskilled, deunionized,

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areas that require more schooling and provide much greater rewards. But this particular path of adaptation leaves behind the low-skilled.

WALDINGER, *supra* note 45, at 173. Michael J. Rosenfeld and Marta Tienda tentatively offer the better jobs hypothesis. See Michael J. Rosenfeld & Marta Tienda, *Mexican Immigration, Occupational Niches, and Labor-Market Competition: Evidence From Los Angeles, Chicago, and Atlanta, 1970–1990*, in IMMIGRATION AND OPPORTUNITY: RACE, ETHNICITY, AND EMPLOYMENT IN THE UNITED STATES 64, 97–98 (Frank D. Bean & Stephanie Bell-Rose eds., 1999). Not all economists agree that this is the case. See Murray, Batalova & Fix, *supra* note 91, at 4–6 (summarizing the debate).

93. See, e.g., KOCHHAR, *supra* note 86, at 15; Murray, Batalova & Fix, *supra* note 91, at 4–6; Raphael & Ronconi, *supra* note 87, at 19–20.

94. Murray, Batalova & Fix, *supra* note 91, at 4–5.

95. Borjas, *Increasing the Supply*, *supra* note 78, at 1, 6; see also Carnevale & Rose, *supra* note 44, at 52 (noting that while only 1 in 16 white workers have not completed high school, 1 in 8 Blacks and 1 in 3 Latinos do not have a high school diploma).

96. See BUREAU OF LABOR STATISTICS, THE EMPLOYMENT SITUATION: SEPTEMBER 2007, NEWS 1 (2007), available at [http://www.bls.gov/news.release/archives/empisit\\_10052007.pdf](http://www.bls.gov/news.release/archives/empisit_10052007.pdf) (stating the official unemployment rate for September 2007 as 4.2 percent for white workers, 8.1 percent for African Americans, and 5.7 percent for Latinos). The official rate does not include discouraged workers who had not searched for work in the four weeks prior to the survey. *Id.* at 3. The actual numbers of jobless people are therefore much higher. And African Americans make up over 28 percent of the long-term jobless, more than twice their representation in the population as a whole. ECON. POL'Y INST., FACTS & FIGURES: AFRICAN-AMERICANS 2 (2006).

reduced in pay, and labeled “work Americans won’t do.”<sup>97</sup> It may be that the voices most opposed to Latino immigration and convinced of its direct negative impact on African Americans are coming from these industries in new high-immigration states such as Tennessee, Georgia, and North Carolina.<sup>98</sup> However, even those national studies that argue that African American wages are reduced by immigration have recorded a relatively small impact. And puzzlingly, the conflict seems to recur even where there is no clear pattern of substitution.

How should we understand this apparent contradiction? The distinction between national and local labor markets we noted earlier is relevant here. Economists are primarily measuring aggregate national effects, while individual workers are observing changes in a range of local labor markets.<sup>99</sup> Most people draw conclusions about how the world works from their personal observations, not from a countrywide average.<sup>100</sup> While aggregate data may show little impact on black workers, it is undeniable that local labor markets change when immigration swells, with immigrants coming to predominate in some industries where African American workers once were the primary employees. African Americans who continue to work in what have become predominately immigrant industries are likely to see wages fall and workplace protections ignored.<sup>101</sup> It may be true that the majority of the black workers who once labored in these jobs have moved on to better ones, whether in their home communities or elsewhere. As we have already

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97. This may be particularly true in the South where, as we indicated earlier, surges in Latino immigration are occurring in areas with substantial African American populations. On the influx of immigrants to the South, see SINGER, *supra* note 11, and *supra* text accompanying note 11. On the high concentration of African Americans in the South, see Jesse McKinnon, *The Black Population 2000*, at 3–4 (Census 2000 Brief, 2001), available at <http://www.census.gov/prod/2001pubs/c2kbr01-5.pdf>.

98. On changing immigration patterns and the increase in Latino immigration to Southern states, see SINGER, *supra* note 11, at 5.

99. See Steinberg, *supra* note 40, at 180. For additional efforts to square the outcomes of the economic competition studies with African American workers’ persistent perceptions of competition, see Smith, *supra* note 40, at 78–79, and Smith, *supra* note 18, at 3–6.

100. For an argument that immigration has different labor market effects in different locations, see Frank D. Bean, Jennifer Van Hook & Mark A. Fossett, *Immigration, Spatial and Economic Change, and African American Employment*, in IMMIGRATION AND OPPORTUNITY: RACE, ETHNICITY, AND EMPLOYMENT IN THE UNITED STATES, *supra* note 92, at 31; see also Steinberg, *supra* note 40, at 180.

101. Economist Lisa Catanzarite has consistently found that when large numbers of recent Latino immigrants cluster in a line of work in a particular location, African American and earlier-immigrant Latino workers pay a particularly high wage penalty for continuing to work in that occupation. See Lisa Catanzarite, *Dynamics of Segregation and Earnings in Brown-Collar Occupations*, 29 WORK & OCCUPATIONS 300 (2002); Lisa Catanzarite, *Occupational Context and Wage Competition of New Immigrant Latinos With Minorities and Whites*, in THE IMPACT OF IMMIGRATION ON AFRICAN AMERICANS, *supra* note 78, at 59, 68–69.



indicated, though, the perception among local observers—and among others who hear their stories and are aware of rising levels of black unemployment—is often very different.

More fundamentally, we think it unlikely that current economic analysis could, without more, begin to account fully for the impact of immigration in the low-wage context in the United States. Immigration is a complex phenomenon involving people from countries around the globe arriving in urban, suburban, and rural economies in the United States, affecting different industries in diverse ways. And whatever its net impact, its interpretation is a separate question. Even if we could develop a perfect economic model for the impact of immigration on African American wages and job opportunities, it would be unable to capture African Americans' and new Latino immigrants' observations of each other as workers or to predict what they will make of what they see. The next section lays out a new perspective that complements the information gained from theories of employer bias and economic competition.

### III. ANOTHER LENS: OUR THEORY OF WORK AS A PATHWAY TO CITIZENSHIP

#### A. Citizenship as a Framework

“Citizenship” is a concept with many dimensions. Its meanings encompass the formal status of being a citizen, the possession of certain rights or benefits, the exercise of political participation, and inclusion in a collective social and cultural identity.<sup>102</sup> Although at first glance citizenship appears to function as a unitary package, upon closer inspection it is clear that these aspects of citizenship can and do operate independently of each other. A group granted legal citizenship by the state may nonetheless be denied the exercise of political participation rights, access to social benefits, and/or recognition as a part of the collectivity that formal status is ordinarily thought to entail.<sup>103</sup> The experience of African Americans under the Black Codes enacted by states during Reconstruction and the laws of the Jim Crow era, which this Article discusses in later sections, is instructive on this

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102. Linda Bosniak, *Citizenship Denationalized*, 7 *IND. J. GLOBAL LEGAL STUD.* 447, 455 (2000); Leti Volpp, “Obnoxious to Their Very Nature:” *Asian Americans and Constitutional Citizenship*, 8 *ASIAN L.J.* 71, 71–72 (2001).

103. To cite the most obvious example, women have always been U.S. citizens but were long denied the right to vote, among many other privileges and benefits of citizenship. See, e.g., *Minor v. Happersett*, 88 U.S. 162 (1875).

point.<sup>104</sup> On the other hand, even a noncitizen may achieve some amount of inclusion. For example, many noncitizen Latino immigrants living in the United States enjoy benefits, such as free public education for their children and emergency medical care, and exercise certain rights—such as political participation, including voting in some local contexts—that are ordinarily understood as part and parcel of citizenship.<sup>105</sup>

This Article's primary focus is the aspect of citizenship that has to do with full acceptance within the local and national community, which we and others refer to as belonging. The term belonging in legal theory is probably most closely associated with Professor Kenneth Karst. In a series of articles and most notably in his book entitled *Belonging to America: Equal Citizenship and the Constitution*,<sup>106</sup> Karst argues that belonging is an integral part of equal citizenship.<sup>107</sup> In his view, "[t]he principle of equal citizenship presumptively insists that the organized society treat each individual as a person, one who is worthy of respect, one who 'belongs.'"<sup>108</sup> Citizenship,

104. See *infra* Part IV.A. During slavery, of course, Blacks were not regarded as citizens. See *Dred Scott v. Sandford*, 60 U.S. 393, 407–08 (1857) (rejecting the claim that a black man held as a slave could be regarded as a citizen for the purpose of bringing suits in federal court). Formal legal citizenship was not conferred on Blacks until ratification of the Fourteenth Amendment. And even then, the substantive benefits of citizenship were denied to the vast majority of African Americans. See *infra* pp. 1203–1211; see also Jennifer Gordon & R.A. Lenhardt, *Citizenship Talk: Bridging the Gap Between Immigration and Race Perspectives*, 75 *FORDHAM L. REV.* 2493, 2502–04 (2007) (discussing the concept of second-class citizenship in Critical Race scholarship and the notion that the substantive benefits of formal citizenship have yet to be accorded African Americans).

105. Linda Bosniak, *Citizenship and Work*, 27 *N.C. J. INT'L L. & COM. REG.* 497, 505 (2002) [hereinafter Bosniak, *Citizenship and Work*]; Linda Bosniak, *Constitutional Citizenship Through the Prism of Alienage*, 63 *OHIO ST. L.J.* 1285, 1307–1308 (2002) [hereinafter Bosniak, *Constitutional Citizenship*]. For a discussion of noncitizen voting, see RON HAYDUK, *DEMOCRACY FOR ALL: RESTORING IMMIGRANT VOTING RIGHTS IN THE UNITED STATES* (2006); Gerald L. Neuman, "We Are the People": *Alien Suffrage in German and American Perspective*, 13 *MICH. J. INT'L L.* 259 (1992); Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 *U. PA. L. REV.* 1391 (1993); Gerald M. Rosberg, *Aliens and Equal Protection: Why Not the Right to Vote?*, 75 *MICH. L. REV.* 1092 (1977).

106. KENNETH L. KARST, *BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION* (1989) [hereinafter KARST, *BELONGING*]; see also KENNETH L. KARST, *LAW'S PROMISE, LAW'S EXPRESSION: VISIONS OF POWER IN THE POLITICS OF RACE, GENDER, AND RELIGION* (1993) [hereinafter KARST, *LAW'S PROMISE*]; Kenneth L. Karst, *Paths to Belonging: The Constitution and Cultural Identity*, 64 *N.C. L. REV.* 303 (1986) [hereinafter Karst, *Paths to Belonging*]; Kenneth L. Karst, *The Supreme Court, 1976 Term—Foreword: Equal Citizenship Under the Fourteenth Amendment*, 91 *HARV. L. REV.* 1 (1976) [hereinafter Karst, *Equal Citizenship*].

107. KARST, *BELONGING*, *supra* note 106, at 3 ("The principle of equal citizenship, as I use the term, means this: Each individual is presumptively entitled to be treated by the organized society as a respected, responsible, and participating member. Stated negatively, the principle forbids the organized society to treat an individual as a member of an inferior or dependent caste or as a nonparticipiant. The principle thus centers on those aspects of equality that are most closely bound to the sense of self and the sense of inclusion in a community.").

108. Karst, *Equal Citizenship*, *supra* note 106, at 6 (footnote omitted).

Karst maintains, ultimately concerns one's inclusion in a "community of meaning" and "at the very least implies 'a perception of common humanity, some minimum of sympathy and respect for other members of the community.'"<sup>109</sup> This is the principal sense in which this Article employs the term citizenship.<sup>110</sup> The legal status one achieves through birth or naturalization processes is just one part of what belonging encompasses. Our conception of citizenship is broad enough to include formal and informal notions of belonging and, in this sense, extends to citizens and non-citizens alike.<sup>111</sup> Like Denise Morgan and Rebecca Zeitlow, who argue that all individuals enjoy specific rights to belonging,<sup>112</sup> we adopt an inclusive vision of the term.<sup>113</sup> For us, belonging entails "the realization by individuals and groups of genuine participation in the larger political, social, economic

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109. *Id.* at 31 (citations omitted).

110. Other scholars have employed the term membership in arguing for a broad conception of citizenship. See, e.g., Renè Galindo et al., *Dual Sources of Influence on Latino Political Identity: Mexico's Dual Nationality Policy and the DREAM Act*, 11 *TEX. HISP. J.L. & POL'Y* 75, 78 (2005) (advocating the need for a "view of citizenship that is understood in terms of societal membership"); Joel F. Handler, "Constructing the Political Spectacle:" *The Interpretation of Entitlements, Legalization, and Obligations in Social Welfare History*, 56 *BROOK. L. REV.* 899, 967 (1990) (discussing concept of membership); Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 *U. ILL. L. REV.* 525, 536–37 & n.51 (discussing the contributions of LatCrit theory on the study of membership and citing authorities on membership theory); Rachel F. Moran, *The Terms of Belonging*, in *THE CONSTITUTION IN 2020* (Jack Balkin & Reva Siegal eds.) (unpublished manuscript on file with author); see also Kevin R. Johnson, *The Case Against Racial Profiling in Immigration Enforcement*, 78 *WASH. U. L.Q.* 675, 692, 717, 724, 728–34 (2000) (discussing racial profiling as a barrier to full membership for Latinos).

111. See Denise C. Morgan & Rebecca E. Zietlow, *The New Parity Debate: Congress and Rights of Belonging*, 73 *U. CIN. L. REV.* 1347, 1393 (2005). In this respect, our conception of citizenship arguably goes beyond that articulated by Karst in 1989. For example, *Belonging to America* addressed the issue of immigration, but only insofar as it shaped how we think about American identity. See KARST, *BELONGING*, *supra* note 106, at 81–104. Karst was certainly concerned about issues that affect noncitizen immigrants, such as bilingual education, see *id.* at 98–100, but did not engage as directly as we do here the social standing or status of noncitizens. His work is principally concerned with how law has informed and shaped what it means to be a citizen.

112. See Morgan & Zietlow, *supra* note 111, at 1392–93; see also DENISE C. MORGAN ET AL., *AWAKENING FROM THE DREAM: CIVIL RIGHTS UNDER SIEGE AND THE NEW STRUGGLE FOR EQUAL JUSTICE*, at xv (Denise C. Morgan et al. eds., 2006). Morgan and Zietlow understand "[r]ights of belonging' [to] . . . includ[e] rights that historically were not considered to be civil rights—such as economic rights, like the right to a living wage, and social rights, like equal access to public accommodations and the right to adequate education." Morgan & Zietlow, *supra* note 111, at 1392 (citations omitted). In their view, various laws create rights of belonging. See *id.* at 1392–93 ("Labor laws create right of belonging when they empower workers to bargain effectively for economic mobility. Similarly, social welfare laws create rights of belonging when they enhance the ability of poor people, the disabled, and the elderly to participate more fully in the national community. Federal education legislation creates rights of belonging when it makes education more accessible because adequate education is essential to economic and political success.").

113. See Morgan & Zietlow, *supra* note 111, at 1392–93.

and cultural community.”<sup>114</sup> It is the relationship between work and citizenship in this sense that we seek to plumb.

We recognize that it may seem odd to propose citizenship or belonging as a framework for insight into the tensions between African Americans and immigrants. After all, like Dinora, most Latino newcomers are not U.S. citizens,<sup>115</sup> and many of them—some because they are undocumented, others for different reasons—are not currently eligible for legal citizenship. Furthermore, although African Americans have long been recognized as citizens of the United States, the rights and benefits that ordinarily accompany that status are still routinely denied to many of them, particularly—as the government’s response to Hurricane Katrina so painfully illustrated in 2005—those who are both black and poor.<sup>116</sup> Katrina revealed, as we have noted elsewhere, a “conveniently ignored fact: American society is divided by deeply entrenched lines of race and class that, over time, have erected a second-class citizenship effectively reserved for poor people of color.”<sup>117</sup>

For these and other similar reasons, some legal scholars have cautioned against “attempts to resuscitate citizenship [as a framework] for progressive purposes.”<sup>118</sup> Citizenship, it has often been noted, is an inherently

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114. Gordon & Lenhardt, *supra* note 104, at 2494–95; see also Morgan & Zietlow, *supra* note 111, at 1394 (“[I]n order to ‘belong to America’ one must have rights that ensure inclusion, participation, equal membership, economic mobility, and freedom from stereotyping in our diverse national community.”).

115. We say “most” because some newcomers are U.S. citizens from Puerto Rico, and others are citizens by virtue of having U.S. citizen parents although they may never have entered the United States before.

116. Two recent volumes eloquently make this point: AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA (David Dante Troutt ed., 2006), and WHAT LIES BENEATH: KATRINA, RACE, AND THE STATE OF THE NATION (South End Press Collective ed., 2007). On the critical intersection between race and class, see John O. Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 FORDHAM L. REV. 1927 (1999).

117. Gordon & Lenhardt, *supra* note 104, at 2495.

118. Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. REV. 405, 480 (2005); see also BOAVENTURA DE SOUSA SANTOS, TOWARD A NEW COMMON SENSE: LAW, SCIENCE AND POLITICS IN THE PARADIGMATIC TRANSITION 311–12 (1995) (claiming that “[b]y means of its territorial grounding, the concept of citizenship keeps its integrity only by creating, in sociological terms, second-class, third-class and even fourth-class citizens,” but calling for “a new theory of citizenship” that is democratic, deterritorialized, and permits multiple affiliations); Donna Baines & Nandita Sharma, *Migrant Workers as Non-Citizens: The Case Against Citizenship as a Social Policy Concept*, STUD. POL. ECON., Autumn 2002, at 75, 94–96; Moran, *supra* note 110. In contrast, as we note in an earlier work, critical race scholars have retained their faith in the citizenship concept as a framework despite their critiques of the racist foundations of the U.S. citizenship regime, its disenfranchisement of black voters, and its disentanglement of black citizens to the substantive benefits of citizenship. See Gordon & Lenhardt, *supra* note 104, at 2504.

exclusionary concept.<sup>119</sup> As Leti Volpp has stated, its reinstatement “relies on the liberal assumption that there can be an ever expanding circle of membership. And this is not possible: Looking to history, we see that notions of universal equality and democratic inclusion have masked particular exclusions, while proceeding in the name of abstract citizenship.”<sup>120</sup> Citizenship is flawed as an egalitarian ideal not only because it inevitably leads to line-drawing to separate the ins from the outs, but because it relies on the very fact of exclusion to define those who are members.<sup>121</sup> In a world where people are constantly in motion across national borders, the traditional citizenship construct is used to avoid considering whether immigrants should be granted rights and benefits, serving as a shortcut to justify the denial to noncitizens of entitlements that insiders receive as a matter of course.<sup>122</sup> And yet, citizenship’s formalism is belied both by the ways that the state denies the full privileges of citizenship to many of those to whom it grants the title of citizen and by the fluid identities and contributions of real people.

Our sense is that citizenship has more resonance than these or other similar critiques might suggest. At the same time, we are cognizant of the limitations of the citizenship rubric. For example, existing frameworks fail to address adequately the struggle for belonging that occurs at the local level. Ideas of citizenship tethered to membership in the nation state or to notions of patriotism do not begin to capture the struggle for inclusion that might occur at the neighborhood grocery store, among members of a local church, synagogue, or mosque, or between Blacks and new Latino immigrants inhabiting the same residential area. Places such as these are, in our view, where belonging and the acceptance necessary for full inclusion in the broader community are frequently realized. While we are reluctant to jettison those aspects of citizenship that pertain to rights or to political

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119. See, e.g., Linda Bosniak, *Critical Reflections on “Citizenship” as a Progressive Aspiration*, in *LABOUR LAW IN AN ERA OF GLOBALIZATION: TRANSFORMATIVE PRACTICES AND POSSIBILITIES* 339, 342–43 (Joanne Conaghan et al. eds., 2002); Alexander Aleinikoff, *Citizenship Talk: A Revisionist Narrative*, 69 *FORDHAM L. REV.* 1689, 1692 (2001); Ediberto Román, *The Citizenship Dialectic*, 20 *GEO. IMMIGR. L.J.* 557, 568–72, 573–75 (2006).

120. Volpp, *supra* note 118, at 481.

121. See Dorothy E. Roberts, *Welfare and the Problem of Black Citizenship*, 105 *YALE L.J.* 1563, 1573–76 (1996) (reviewing LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 1890–1935* (1994), and JILL QUADAGNO, *THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY* (1994)); see also Gary P. Freeman, *Migration and the Political Economy of the Welfare State*, *ANNALS AM. ACAD. POL. & SOC. SCI.*, May 1986, at 51, 52 (“[T]he concept of membership implies the existence of persons who are not members and who are, therefore, excluded from the process of sharing.”).

122. Moran, *supra* note 110, at 19.

participation, we too are beginning to wonder whether another frame would better address the range of factors about which we are concerned here.<sup>123</sup> For now, however, we think our particular construct of citizenship or belonging adequate for the purposes in which we employ it here: to develop a sufficiently nuanced theoretical lens through which to view the complexities of the workplace conflict between low-wage African American and Latino immigrant workers.

This Article captures and builds on the intuitions of many African Americans and Latino immigrants that, both in working and at work, they are engaged in a struggle for citizenship and belonging. Despite the flaws and inconsistencies in the citizenship framework, for the subjects of this Article it retains a great deal of vitality in conjunction with work. As Irving says to his son in our opening narrative, “We’re citizens, you know. That should mean something.” As an African American who has yet to see the promises of citizenship realized, Irving sees the degradation of his work as further proof of how far he is from achieving full belonging in American society.<sup>124</sup> He is angry at the newcomers—all noncitizens—whom he perceives as threatening to cut off his access to a decent job. His insistence on resisting speed-ups and pay cuts is not just about safety or remuneration, but also about the respect due him as a citizen. For her part, Dinora knows that she has no claim (yet) to formal citizenship. But she believes that her hard work should be recognized, and she, too, sees her labor as a route to belonging—in part in Mexico, in part in the United States.

To pick up on the thread in African Americans and immigrants’ own narratives that portrays work as an aspect of a collective struggle to belong sheds new light on an old problem. As we explain further in the section that follows, this perspective offers insight into how Irving and Dinora might both see work as important in their struggle for place, for acceptance, for standing generally,<sup>125</sup> and yet understand the ties between work, formal citizenship, and belonging quite differently, leading them to act in disparate ways that generate conflict on the job.

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123. A number of alternative models show some promise. As we noted earlier, the concept of membership has been advanced by some scholars. See *supra* note 110. In addition, notions of personhood and denizenship have been suggested by scholars. See, e.g., Moran, *supra* note 110. We are persuaded that, in addition to these models, an economic model of citizenship or belonging might be particularly beneficial, especially given our focus on the experiences of workers in the low-wage context. As we indicate above, however, we do not adopt any one of these frames here.

124. On the impact of abusive employer behavior on black workers, see Regina Austin, *Employer Abuse, Worker Resistance, and the Tort of Intentional Infliction of Emotional Distress*, 41 STAN. L. REV. 1, 23–25 (1988).

125. See SHKLAR, *supra* note 25, at 2.

## B. Theories of Work and Citizenship

This Article's central contention is that work functions as an important pathway to citizenship as a form of belonging. We are not the first to make the connection between work and citizenship. Indeed, two clusters of scholars have elaborated quite different understandings of the link: one envisioning work itself as a site for the exercise of citizenship, and the other arguing that work is an essential element of and conduit to full citizenship in society.

In the perennially segregated United States, the workplace is a—perhaps the—place where people of different races and ethnicities regularly mix.<sup>126</sup> Scholars such as Cynthia Estlund have offered a robust account of the role of the workplace in constructing a shared sense of exercise of citizenship in a diverse society.<sup>127</sup> Estlund argues that “the process of working together”<sup>128</sup> in a diverse context builds relationships across lines of race, promotes a sense of “interdependence and common fate,”<sup>129</sup> and provides “a significant deliberative forum”<sup>130</sup> for issues related to the particular workplace and to broader political issues. In all these ways, Estlund and others contend, work is a place where people develop and exercise the skills of citizenship across racial and ethnic boundaries.<sup>131</sup>

Along a somewhat different track, legal scholars William Forbath, Kenneth Karst, and Vicki Schultz have each argued that “[w]ork is indispensable

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126. Cynthia L. Estlund, *Working Together: The Workplace, Civil Society, and the Law*, 89 GEO. L.J. 1, 17 (2000); Kenneth L. Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 CORNELL L. REV. 523, 550–52 (1997); Marrow, *supra* note 1, at 10 (citing KATHERINE S. NEWMAN, *NO SHAME IN MY GAME: THE WORKING POOR IN THE INNER CITY* (1999)); Vicki Schultz, *Life's Work*, 100 COLUM. L. REV. 1881, 1888 (2000).

127. Estlund's comprehensive vision of the workplace as a critical civil society institution builds on earlier ideas put forth by Susan Sturm and Lani Guinier, Kenneth Karst, and others. See, e.g., Karst, *supra* note 126, at 550–53; Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953, 1031 (1996) (“Virtually every aspect of citizenship is channeled through participation in the workplace.”).

128. Estlund, *supra* note 126, at 25. For an overview of the literature examining the workplace as a site for the exercise of citizenship, see Eddie A. Jauregui, Note, *The Citizenship Harms of Workplace Discrimination*, 40 COLUM. J.L. & SOC. PROBS. 347, 359–61 (2007).

129. Estlund, *supra* note 126, at 30. On work as a place through which people contribute to the larger society and as a “building block for community,” see Schultz, *supra* note 126, at 1888–90.

130. Estlund, *supra* note 126, at 53.

131. *Id.* at 52. Estlund also touches on the idea, see *id.* at 74–76, which others have more fully developed, that the workplace itself is—or could be—a microcosm of democracy. Mark Barenberg, *The Political Economy of the Wagner Act: Power, Symbol, and Workplace Cooperation*, 106 HARV. L. REV. 1379 (1993); Craig Becker, *Democracy in the Workplace: Union Representation Elections and Federal Labor Law*, 77 MINN. L. REV. 495 (1993).

to equal status.”<sup>132</sup> Political scientist Judith Shklar advanced a similar claim in her 1991 book, *American Citizenship: The Quest for Inclusion*.<sup>133</sup> Indeed, we find Shklar’s contention that citizenship is best conceptualized as a kind of standing—e.g., as a matter of an individual’s “social place, defined by income, occupation, and education” in the broader community<sup>134</sup>—rooted in two activities widely regarded as the “most elementary and essential components” of citizenship, voting and earning,<sup>135</sup> extremely helpful and provocative as we approach our current project.<sup>136</sup> As Shklar has argued, “[T]he dignity of work and of personal achievement”<sup>137</sup> have at some level, been integral to matters of social standing, personal identity,

132. William E. Forbath, *Caste, Class, and Equal Citizenship*, 98 MICH. L. REV. 1, 18 (1999); see also Karst, *supra* note 126, at 539–48; Schultz, *supra* note 126, at 1883–84.

133. SHKLAR, *supra* note 25, at 63–64, 99–101.

134. *Id.* at 2.

135. *Id.* at 101. Shklar highlights these two activities—possessing the right to cast a ballot and the independence that flows from being “a free remunerated worker, one who [in contrast to a slave] is rewarded for the actual work he has done”—because of the devastating impact of their denial on groups such as women, Native Americans, and African Americans. *Id.* at 15. She explained that “[i]t is because slavery, racism, nativism, and sexism, often institutionalized in exclusionary and discriminatory laws and practices, have been and still are arrayed against the officially accepted claims of equal citizenship that there is a real pattern to be discerned in the tortuous development of American ideas of citizenship.” *Id.* at 13–14.

136. Shklar makes clear that a primary goal in writing the book was “to recall . . . the enduring impact of slavery not merely on black Americans and on the Civil War generation generally, but also on the imagination and fears of those who were neither threatened by enslavement nor deeply and actively opposed to it.” *Id.* at 22. Shklar stays true to this goal throughout her text, exploring the dimensions and citizenship-related implications of the “peculiar institution.” See KENNETH M. STAMPP, *THE PECULIAR INSTITUTION: SLAVERY IN THE ANTEBELLUM SOUTH* (1956). This partially accounts for our conclusion that *American Citizenship* provides a useful starting point for our project. For reasons we explain later, see *infra* Part IV, we are persuaded that there is something in the patterns of citizenship for African Americans and Latinos—the paths that they have taken to the workplace—that sheds light on the nature of the tensions evident in their workplace interactions.

This said, our approach differs from Shklar’s. For example, in employing the term “standing,” we believe that Shklar herself understood “[t]he struggle for citizenship in America . . . [as] a demand for inclusion in the polity, an effort to break down excluding barriers to recognition, rather than an aspiration to civic participation as a deeply involving activity.” SHKLAR, *supra* note 25, at 3. In our view, Shklar adopts too formalistic an interpretation of citizenship, one that is too closely tied to political activities, like voting, that legal citizens—assuming the nonexistence of overtly discriminatory laws or policies—engage in. For reasons already articulated, we prefer the concept of belonging.

Additionally, as our discussion thus far suggests, we think work a better term for the pathway that relates to financial compensation than earning. The ability and right to be compensated for one’s work distinguishes a person from the quintessential noncitizen, the slave. *Id.* at 16, 36. But there is more to autonomy than simply being able to earn wages. Equally important to one’s dignity and self-respect is the ability to control how one’s labor is defined and to have some authority over the place and pace of that labor. Our sense is that work captures this notion of control and dignity, as well as the compensation-related aspects of citizenship identified by Shklar.

137. SHKLAR, *supra* note 25, at 1.



and “American civic self-identification” since the earliest periods of American history.<sup>138</sup> Even today, work remains a kind of “prize, a subject of contention, a means of gaining status and denying status to others.”<sup>139</sup> As Frank Munger has asserted, “[i]n America, social rights—and, therefore, full citizenship—follow from fulfillment of the obligation to work. Full social citizenship is a benefit derived from fulfillment of a social contract and not from legal status as a citizen.”<sup>140</sup>

There are several axes along which work or the meaning associated with it facilitates belonging.<sup>141</sup> One is the historical link between work and political citizenship. From the moment of the founding of the United States, if not before, paid work—at least of certain kinds<sup>142</sup>—was seen as intimately tied to full membership in the polity, a ticket to participate politically and to claim all other citizenship rights.<sup>143</sup> As Shklar explains, “[t]his vision of economic independence, of self-directed ‘earning,’ as the ethical basis of democratic citizenship”<sup>144</sup> crystallized during the Jacksonian era, and has continued to hold sway over the public imagination ever since. “We are citizens,” Shklar avers, “only if we ‘earn.’”<sup>145</sup>

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138. *Id.* It bears noting that property ownership was also deemed fundamental to American citizenship, particularly in the early years. See HERBERT APPLEBAUM, *THE AMERICAN WORK ETHIC AND THE CHANGING WORK FORCE: AN HISTORICAL PERSPECTIVE* 9 (1998) (“In the beginning America was the land and the land was America. Land was the dream that drew settlers to American shores, the dream of ownership that had eluded most of them in Europe. Land was waiting for them, waiting to be acquired, granted, seized, bargained for, rented, and above all, worked on and accumulated for one’s family and heirs.”).

139. Karst, *supra* note 126, at 538.

140. Frank Munger, *Poverty, Welfare, and the Affirmative State*, 37 *LAW & SOC’Y REV.* 659, 674 (2003) (book review). The rhetoric employed during the welfare reform efforts of the 1990s and the language used to describe the unemployed reinforce the notion that failure to work decreases one’s social status. Cf. Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform’s Marriage Cure as the Revival of Post-Bellum Control*, 93 *CAL. L. REV.* 1647, 1669, 1672 (2005); Gwendolyn Mink, *Welfare Reform in Historical Perspective*, 26 *CONN. L. REV.* 879, 883, 888, 891–92 (1994).

141. Vicki Schultz, for example, has argued that “work has been fundamental to our conception of the good life. It has been constitutive of citizenship, community, and even personal identity.” Schultz, *supra* note 126, at 1886.

142. See Forbath, *supra* note 132, at 18. For “Jefferson, Madison, or most other eighteenth-century political thinkers,” the low-wage worker or “hireling was, in theory, free and self-owning, still his hireling status meant he had forfeited not simply his property in his own labor, but his economic independence, and with it, the franchise.” *Id.* at 18–19. As Professor William Forbath has explained, “status [characterized by] . . . dependence and submission disqualified [a man] . . . for citizenship.” *Id.* at 19. The disenfranchisement of slaves at the founding attests to this. See *id.* at 19–20. Autonomy and control over one’s work was essential to citizenship status. See *id.* at 19–20.

143. See Forbath, *supra* note 132, at 18–19; Schultz, *supra* note 126, at 1886–87.

144. SHKLAR, *supra* note 25, at 67.

145. *Id.* As we note above, given the link between citizenship and property earlier in American history, it might have been better said that we are citizens only if we own.

Beyond work's historical role in shaping our conceptions of equal citizenship, scholars agree, there is a sense in which work provides us with self-identity and helps us to define ourselves in relationship to the broader community.<sup>146</sup> In other words, as Vicki Schultz has urged, "jobs create people."<sup>147</sup> In saying "I am a lawyer" or "I am a teacher," Karst suggests an individual assigns herself a role and status within society, and may also internalize characteristics associated with that role in a way that serves both to distinguish her from others and shape how she conceives of herself.<sup>148</sup> In a way, work gives one a sense of one's own value.<sup>149</sup> Our jobs "affect other people's evaluations of us."<sup>150</sup> Of course, these authors hasten to point out, different kinds of work function differently in this regard. Some jobs and workers are seen as socially valuable; others, less so.<sup>151</sup> But still, they contend, the idea of work is important for an individual's dignity and sense of participation in society,<sup>152</sup> even when the reality of the work is degrading.

The third respect in which work has been said to facilitate belonging relates to family and to economic advancement. Work, as Dinora's narrative reminds us, enables us to provide for our loved ones, to ensure that they are fed, well, and protected from danger.<sup>153</sup> As Karst has noted, "[t]o speak of family status and family security is to recognize that work means much

146. See Schultz, *supra* note 126, at 1889–90; see also Karst, *supra* note 126, at 533.

147. Schultz, *supra* note 126, at 1890 (discussing ROSABETH MOSS KANTER, *MEN AND WOMEN OF THE CORPORATION* (1977)).

148. Karst, *supra* note 126, at 533. Karst made the point about the internalization of characteristics quite nicely. See *id.* Examples he gave in this regard include "terms [such] as initiative, dependability, industry, attention to detail, and cooperativeness." *Id.*

As feminist scholars have pointed out, the downside of a conception of citizenship in which paid work carries such weight is that it excludes those who are not members of the labor force, with particular detriment to women, who are far more likely than men to play an unpaid caregiving role family. MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH: A THEORY OF DEPENDENCY* 34–40 (2004); Martha M. Ertman, *Love and Work: A Response to Vicki Schultz's Life's Work*, 102 COLUM. L. REV. 848, 852 (2002); Nancy Fraser & Linda Gordon, *Civil Citizenship Against Social Citizenship? On the Ideology of Contract-Versus-Charity*, in *THE CONDITION OF CITIZENSHIP* 90 (Bart van Steenberg ed., 1994); Judy Fudge, *After Industrial Citizenship: Market Citizenship or Citizenship at Work?*, 60 REL. INDUSTRIELLES/INDUS. REL. 631 (2005); Alice Kessler-Harris, *In Pursuit of Economic Citizenship*, 10 SOC. POL. 157, 163 (2003); Carol Pateman, *The Patriarchal Welfare State*, in *DEMOCRACY AND THE WELFARE STATE* 231 (Amy Gutmann ed., 1988); see also *infra* p. 1238.

149. See Forbath, *supra* note 132, at 16 (noting that "[w]ork, the nature of a person's contribution to the social enterprise and how that contribution is socially valued, goes a long way toward determining her status or standing").

150. Karst, *supra* note 126, at 533.

151. See Forbath, *supra* note 132, at 18–20; Karst, *supra* note 126, at 533.

152. Forbath, *supra* note 132, at 90; Karst, *supra* note 126, at 530, 571; Schultz, *supra* note 126, at 1928.

153. On work and the extent to which it enables us to provide for our families and loved ones, see Karst, *supra* note 126, at 532.

more than a paycheck: it is the exercise of responsibility.”<sup>154</sup> Tied to this is the idea that work is the channel through which one can advance one’s family economically and socially, “ris[ing] to a better condition through hard work”<sup>155</sup> and bringing one’s spouse and children along.

Finally, work paves the road to the worker’s admission as a citizen to the community of citizens. There is the formal sense in which this is true.<sup>156</sup> Work history plays a role in immigration law, whether in bolstering a judge’s decision about whether to grant relief from deportation or in the determination of whether an immigrant possesses the “good moral character” that is a requirement for naturalization.<sup>157</sup> But work operates this way in broader respects as well. As Karst and others have argued, “the workplace is one of our most important arenas for the public interaction of social groups.”<sup>158</sup> It is in their recognition of the import of this fact that Karst and others who see work as a pathway to citizenship intersect with those, such as Estlund, who view the worksite itself as a site for citizenship’s exercise.

### C. Critique of Existing Theories of Work and Citizenship

The connections between work and citizenship that these scholars have identified is central to the theory that we offer here. At the same time, an attempt to apply the insights of that scholarship in the context

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154. *Id.* This responsibility, of course, extends not just to our loved ones, but also to one’s community and self. See APPLEBAUM, *supra* note 138, at x.

155. Karst, *supra* note 126, at 532.

156. Schultz, *supra* note 126, at 1887–88 (providing examples).

157. Although it is rarely outcome-determinative, work history is a relevant consideration in the government’s decision to grant noncitizens certain forms of discretionary relief from removal, and in an immigrant’s demonstration of good moral character for the purpose of naturalization. See, e.g., *In re Arreguin*, 21 I & N Dec. 38, 41 (1995) (granting relief under INA former section 212(c) to a woman in deportation proceedings, considering, among other factors, the applicant’s long history of employment, payment of taxes, and the prospect of full-time employment upon her release); *Yaquib v. Gonzalez*, No. 1:05-cv-170, 2006 U.S. Dist. LEXIS 36727 (S.D. Ohio June 5, 2006) (granting a Pakistani man’s application for naturalization, on the grounds that his successful educational and employment endeavors, his future employment prospects, and his positive community contributions all show he “has been and still is a person of good moral character” within the meaning of the statute).

158. Karst, *supra* note 126, at 543; see also Estlund, *supra* note 126, at 17, *passim*; Michael B. Katz et al., *The New African American Inequality*, 92 J. AM. HIST. 75, 89–92 (2005) (discussing integration of white collar workplaces by African Americans). Note that, as an historical matter, groups have also been excluded from the workplace on grounds such as race, gender, and sexual orientation. See Karst, *supra* note 126, at 543–44 (citing examples of racial exclusion); see also *Bradwell v. State*, 83 U.S. 130 (1872) (upholding a woman’s exclusion from the state bar on gender grounds as constitutional); *Padula v. Webster*, 822 F.2d 97 (D.C. Cir. 1987) (discussing FBI policy of excluding gays and lesbians from employment).

of the relationship between African Americans and immigrants in the workplace today reveals the limitations of its understanding.

For scholars such as Karst, Schultz, Forbath, and Shklar, work is a foundational element of citizenship, one rooted in the U.S. Constitution.<sup>159</sup> In recognizing this unifying aspect of their work, we do not mean to suggest that the projects of these scholars are identical. Karst, for example, emphasizes notions of equal citizenship informed, in part, by this country's struggles with slavery and diversity,<sup>160</sup> while Forbath underscores the importance of social citizenship or inclusion.<sup>161</sup> Yet, Karst and Forbath, in particular, have a common goal: to demonstrate that the government is obligated to do more to support decent work for its citizens. We are generally in accord with their arguments and sympathetic in many regards to their projects as a whole. This said, the work of these and other scholars troubles us for its exclusive focus on the formal citizen, reflecting an inattention to immigration and the global dimension of work in today's economy.<sup>162</sup> Beyond this, our analysis of the conflict between African Americans and new Latino immigrants in the contemporary workplace makes clear the limitations of the generic eye with which these scholars have viewed both work and the experience of citizenship. Our project demands a deeper account of the connections between different kinds of work and different kinds of citizenship for particular groups in the United States today.

Today, global migration is an unavoidable reality, nowhere more so than among the low-wage workforce. Yet when legal scholars such as Forbath, Karst, Shklar and Schultz talk about the citizenship-enhancing capacity of work, they implicitly do so within the closed sphere of the nation-state. None seriously engage with immigration as a factor in the contemporary workplace; instead, the world of work they describe is populated by the native-born, and the racial markers they reference are most often black and

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159. See, e.g., Forbath, *supra* note 132, at 17–18; Karst, *supra* note 126, at 538–48; Schultz, *supra* note 126, at 1883–85.

160. See KARST, BELONGING, *supra* note 106, at 43.

161. Forbath, *supra* note 132, at 1–7 (describing the concepts of social citizenship and inclusion).

162. Linda Bosniak criticizes Karst, Forbath, Schultz, and Shklar for this reason. Bosniak, *Citizenship and Work*, *supra* note 105, at 501; Bosniak, *Constitutional Citizenship*, *supra* note 105, at 1319–21.

The scholars who explore work as a site for the exercise of citizenship also fail to grapple with the implications of their theories in a context where many in the workplace are not citizens at all. See, e.g., Estlund, *supra* note 126, at 4 (crediting the workplace for “the formation and interchange of political and social views among the majority of adult citizens” and arguing that “for ordinary citizens, workplace interactions among co-workers . . . can help to foster an ephemeral but essential sense of connectedness among citizens”).

white.<sup>163</sup> As Linda Bosniak has pointed out, this is a common feature of constitutional scholarship calling for a broadening of substantive dimensions of the government's commitments to equality, which generally approaches equal citizenship as a "nationally-bounded universalist project,"<sup>164</sup> "avoid[ing] direct attention to citizenship in its bounded aspect" even as its "substantive accounts of equal citizenship within the nation often presuppose such boundaries."<sup>165</sup>

The work-and-citizenship scholars' failure to engage with the issue of immigration and the extent to which new immigrants now populate the American workplace weakens their theoretical contribution.<sup>166</sup> To understand fully the role of work in our society and its capacity for enhancing belonging for low-wage workers, scholarship must begin to grapple with the stories of all those who come to the workplace—citizen and noncitizen alike. The notion that only citizens can comprehend or benefit from the dignity and status-promoting dimensions of work is belied by the experiences of the millions of immigrants—documented and undocumented—who come to this country seeking, and in many cases, to some extent securing, a better way of life for themselves and their families.<sup>167</sup> Immigration also complicates

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163. This said, Karst has considered the treatment accorded so-called aliens. See Karst, *Equal Citizenship*, *supra* note 106. He concludes that because such individuals lack formal citizenship status, certain restrictions on their political participation might be permissible. *Id.* at 45. However, he seems to suggest that limitations on other rights necessary to achieve belonging would not be consistent with his conception of equal citizenship. *Id.* at 42–45.

164. Bosniak, *Constitutional Citizenship*, *supra* note 105, at 1321; see also Bosniak, *Citizenship and Work*, *supra* note 105, at 500–01.

165. Bosniak, *Constitutional Citizenship*, *supra* note 105, at 1321.

166. Shklar makes a similar omission in her book. Indeed, Shklar discusses openly the choices she makes with respect to the relative weight accorded to issues such as slavery and exclusionary immigration policies in trying to trace the pattern or path of American citizenship. See SHKLAR, *supra* note 25, at 14–15. We share Shklar's sense of the centrality of slavery to notions of citizenship in the United States. How well Americans navigated the "glaring inconsistencies between their professed principles of citizenship and their deep-seated desire to exclude certain groups permanently from the privileges of membership" must be part of any examination of American citizenship. *Id.* (quoting JAMES H. KETTNER, *THE DEVELOPMENT OF AMERICAN CITIZENSHIP, 1608–1870*, at 288 (1978)). But in contrast to Shklar, we also believe that the exclusionary naturalization and immigration policies that have historically constrained the ability of individuals who were not native-born should be part of the focus here. We do not think it necessary to choose which legacy of exclusion has had the greatest impact on the American terrain. As we explained in a recent article, citizenship in the United States cannot fully be understood without attentiveness to the role that both race and immigration play in this context. See Gordon & Lenhardt, *supra* note 104, at 2497, 2511–16.

167. Though it goes somewhat beyond our specific project in this Article, we feel compelled to note that the failure to engage the reality of immigration undermines the normative agenda evident in the work of Karst, Schultz, and Forbath, who argue that the availability of decent work should be understood as an important guarantee of equal citizenship. See Forbath, *supra* note 132, at 90–91; Karst, *supra* note 126, at 571; Schultz, *supra* note 126, at 1928–29. Whatever one thinks about

the account of scholars who position the workplace as an essential forum for deliberation among coworkers.<sup>168</sup> To cite the most obvious example, at the many low-wage worksites where new immigrants labor together with longtime residents and citizens, language barriers can inhibit even the most basic communication, much less the sort of rich interchange that is required for deliberation on worksite issues or political questions.<sup>169</sup>

In addition, we have concerns about the existing citizenship scholarship's undifferentiated view both of low-wage work and of such work's citizenship-producing potential. Karst and Forbath both decry the epidemic of bad jobs in the United States. In generic terms, they describe work with perennially poor wages and conditions, and the negative effect it has on those who perform it.<sup>170</sup> They offer a blanket condemnation, in Forbath's words, of "such degraded toil and its consequences in second class citizenship."<sup>171</sup> On the other side of the line is good work, which alone provides the meaning and satisfaction that render it worthy of Schultz's title phrase, "life's work."<sup>172</sup> In this view, a job is either good or bad. A good job has citizenship value; a bad job does not. The current context of low-wage work, we posit, demands more nuance. On closer examination, low-wage jobs can be quite different from each other, both inherently and in terms of the way they are experienced by different groups of workers.<sup>173</sup> As a result, some low-wage worksites have more capacity to lead to a sense of belonging and to serve as a site for citizenship's exercise than others.<sup>174</sup>

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the capacity of the state to be generous with its benefits, *see* Freeman, *supra* note 121, at 54), it seems clear that, in today's context of massive immigration, a policy of full economic citizenship for citizens only creates a second tier of non-citizen workers, and jeopardizes the very principle of equality that lies at the core of Karst and Forbath's scholarship.

168. Estlund places a great deal of weight on the importance of such interchanges. Estlund, *supra* note 126, at 52 ("People practice skills of deliberation at work—they communicate their views, listen to others, compromise, and often participate in making decisions. . . . They also discuss public issues that have nothing to do with the workplace." These exchanges, she argues, would appear to render "the workplace . . . a leading site of public discourse.").

169. For an exploration of the role of language barriers in reinforcing the estrangement between African Americans and new Latino immigrant workers, as well as of efforts to bridge the gap, *see* Gordon & Lenhardt, *supra* note 27, at 17–18, 35, 41–42.

170. Forbath, *supra* note 132, at 17; Karst, *supra* note 126, at 547.

171. Forbath, *supra* note 132, at 17.

172. *See* Karst, *supra* note 126, at 527, 533–34. On the cut between good work and bad work, *see* Forbath, *supra* note 132, at 16–18.

173. With regard to work as a site for the exercise of citizenship, Estlund explicitly makes the argument that work should be broadly considered an important civil society institution despite its frequently undemocratic and hierarchical character. Estlund, *supra* note 126, at 71–73. As we explain in Section V.A., however, we suspect that a number of workplaces in the low wage context simply do not meet the threshold requirements to play this citizenship function.

174. We develop this point further in Part V.C.

On a related note, the same work done by different people will not necessarily deliver the same citizenship value to both. This observation is particularly true where racially stigmatized groups are concerned. As the previous section discussing employer preferences and ethnic niches suggests, the work in which these groups engage is often devalued simply because it is people of color rather than Whites who are doing it; the social value of a job turns not only on the citizenship status but the racial classifications of those who carry it out. Furthermore, in ways that have gone unexplored in work and citizenship scholarship, different individuals and groups have different historical relationships to work and to citizenship in the United States. Although, as we noted earlier, this body of scholarship typically recognizes the particular experience of Blacks with slavery and Jim Crow, it does not explore the impact of this history on the relationship of work to belonging for African Americans or explore the effects of the diverse experiences of other groups. To capture these fundamental differences, a more complex legal theory of work in relation to citizenship is required than has heretofore been advanced.

#### D. Our Theory: Work as a Pathway to Citizenship

Under our theory, work is a pathway to belonging, but its direction turns very much on who is traveling it at a given moment in time. For African Americans, as we will show, the road to citizenship in the United States has been paved by notions of work. It began with the fight to end slavery and win the right to paid labor, and continued through labor changes and struggles in Reconstruction, Jim Crow, and the Civil Rights era. Throughout history, the link between decent work and citizenship-as-belonging has been explicit for black people in the United States.<sup>175</sup> And yet, for too many African Americans today, work has failed to deliver on its citizenship promises.

For workers who are not citizens, and particularly for those who are undocumented and/or have only been in the country a short time, the relationship between work and citizenship is quite different. Because most have no hope of attaining legal citizenship any time soon, work is no path to formal citizenship at all. And yet, work history may bolster a worker's claim to legalize and enhance her ability to naturalize. Furthermore, migrant workers like Dinora, who send most of their income back to their country and initially anticipate a swift return home, may find that low-wage work in

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175. See also *infra* p. 1201 (discussing the importance of work and land ownership to early African American citizens).

the United States delivers on many of its citizenship promises—advancing one's family's economically, increasing one's political standing, and augmenting one's perceived worth—but, ironically, in the migrant's home country rather than here.

Our understanding of work as a pathway to citizenship is rooted in recognition of the importance of these differences between groups' experiences of work and of citizenship. It is particularly attentive to the ways in which citizenship is experienced differently by new immigrants and native-born citizens. As the histories of African Americans and new Latino immigrants are laid side by side in the section that follows, the equations offered by earlier scholars of work and citizenship are enriched by more nuanced insights into the relationship between African American and Latino immigrant workers discussed in Part I.

A closer look at low-wage work reveals that the social meaning of labor depends to a great extent not only on the objective characteristics of a job but on the race and ethnicity of the people who do it. Some jobs that look bad—dirty, dangerous, and degraded—have, as the result of organizing, patronage, racial preferences, or some mixture of the three, become desirable, decently-compensated, and dominated by white workers. Garbage collection in New York City is one such example. Some jobs that once looked good in terms of the pay and tangible benefits they could deliver to people with little formal education, such as meatpacking, became devalued and symbolic of racial subjugation as a result of employers' restructuring and recruitment of people of color.<sup>176</sup> Furthermore, jobs that are objectively similar may provide different economic and citizenship value to those who hold them depending on the worker's race, immigration status, and ethnicity: compare a British nanny to a babysitter from Trinidad.

Even in the same job, with the same pay, working conditions, and social status—as with Irving and Dinora, standing side by side deboning chickens—different groups of workers experience their work's citizenship value differently. To understand what a given job offers to a given worker, we must explore whether that job is likely to be a source of mobility for that worker. We must map the changing social meaning of a particular job as it is reflected in the eyes of workers and of mainstream society. We must ask, not on some generic scale but in the places where that worker actually spends her money, how much it buys in terms of societal respect and economic advancement for herself and her family. We must ask what history and contemporary experience has taught this worker about

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176. COMPA, *supra* note 1, at 11–14.



the likely consequences of acceding to the demands made by her employer: Will subservience increase or decrease the job's citizenship value for her?

In arguing, as we do, that even low-wage work can serve as a pathway to belonging for workers such as Irving and Dinora, we do not mean to align ourselves with the school of American thought that suggests, to borrow a phrase from an 1843 book by Thomas Carlyle, that "All work, even cotton spinning, is noble."<sup>177</sup> Bad work abounds in the United States, and we are well aware that it is people of color and women who primarily carry it out, often working fourteen-hour-days in jobs that offer no benefits or time off and earning wages so meager that supporting one person, not to mention an entire family, is near impossible.<sup>178</sup> We do not subscribe to the view that all work is transformative or good. Some of it is exploitative and alienating and should be objected to on those grounds.<sup>179</sup>

This said, not all bad jobs are the same. Some jobs are isolating, while others bring workers into contact with a network of people who may be the key to future job opportunities, integration into a web of social support, and a fuller sense of community.<sup>180</sup> Some bad jobs are stepping stones to better ones, while others are pools of stagnation.<sup>181</sup> Furthermore, the same jobs may offer very different opportunities to different groups of workers.<sup>182</sup> An examination of the objective features of particular occupations is essential to understanding whether and when they may be springboards to citizenship despite their many negative aspects.

Our focus on the differences in groups' experiences of low-wage work and of citizenship leads to the recognition that groups may measure the citizenship value of the same work very differently. The following sections explore how these distinctions may lead African American and new Latino immigrants to very different perspectives on the range of possible responses to employers' demands in the context of low-wage work. They suggest a source for Irving and Dinora's contrasting attitudes toward their work environment and provide new insights into opportunities for solidarity between them.

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177. DANIEL T. RODGERS, *THE WORK ETHIC IN INDUSTRIAL AMERICA, 1850-1920*, at xi (1978) (quoting THOMAS CARLYLE, *PAST AND PRESENT* (1843)).

178. See generally Arne L. Kalleberg, Barbara F. Reskin, & Ken Hudson, *Bad Jobs in America: Standard and Nonstandard Employment Relations and Job Quality in the United States*, 65 *AM. SOC. REV.* 256, 260-61 (2000).

179. See Kelley, *supra* note 65, at 79-84.

180. For further elucidation of one such contrast between two low-wage job categories within a single enterprise, see Jamie Winders' analysis of the difference between laundry and room attendant jobs in Hotel Nashville. Winders, *supra* note 22. For a comparison of domestic work and day labor along similar lines, see GORDON, *supra* note 7, at 100-01.

181. GORDON, *supra* note 7, at 95, 100-01.

182. See discussion *infra* pp. 1221-1224.

#### IV. WORK AS A PATHWAY TO CITIZENSHIP: TWO PERSPECTIVES

##### A. The African American Experience of Work as a Pathway to Citizenship

After the Civil War's end, thousands of freed black men and women left plantations and traveled the battle-torn roads of the deep American South searching for family, for food, for land, and most of all, for work. For these migrants,<sup>183</sup> whose degraded status as noncitizen slaves had been justified not only by their blackness, but also by the forced nature of the labor in which they engaged,<sup>184</sup> work offered a means of survival and a "modicum of dignity" that had been denied them.<sup>185</sup> They regarded the "[e]conomic

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183. We use the term "migrants" to describe Blacks in this section in an effort to draw a parallel between their experiences and those of Latino immigrants. Obviously, voluntary migration is only one part of African American history. Early slaves were, of course, involuntary migrants to this country. Cf. Gerald L. Neuman, *The Lost Century of American Immigration Law (1776–1875)*, 93 COLUM. L. REV. 1833, 1837 n.18 (1993) (discussing whether the slave trade should be characterized as involuntary immigration); see also Nell Irvin Painter, *Foreword to THE GREAT MIGRATION IN HISTORICAL PERSPECTIVE: NEW DIMENSIONS OF RACE, CLASS, AND GENDER*, at viii, viii (Joe William Trotter, Jr. ed., 1991). As we note in this section, this difference has had real consequences for the path taken by African Americans to the modern workplace.

184. See, e.g., *Dred Scott v. Sandford*, 60 U.S. 393, 407 (1856) (citing former enslavement as one justification for denying citizenship status to black man and claiming that Blacks were "so far inferior that they had no rights which the white man was bound to respect"). Poor Whites frequently justified their right to legal citizenship by placing themselves in opposition to black slaves. See SHKLAR, *supra* note 25, at 36; Forbath, *supra* note 132, at 20. The ability to direct the course of one's labor, to engage in work more dignified than what, in some contexts, would become regarded as "nigger work," see Kelley, *supra* note 65, at 101, to obtain wages, and to secure some measure of self-ownership, helped to establish their claim to citizenship, see SHKLAR, *supra* note 25, at 36, 67, as well as whiteness itself. See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709 (1993) (arguing that "[s]lavery as a system of property facilitated the merger of white identity and property"); see also Kelley, *supra* note 65, at 100 ("The limited privileges afforded white workers as whites meant a subordinate status for African-American workers. Hence even the division of labor was racialized—black workers had to perform 'nigger work.' And without the existence of 'nigger work' and 'nigger labor,' whiteness to white workers would be meaningless."). The distinction between whiteness and blackness was, of course, one that had serious ramifications during slavery. See, e.g., *Gobu v. Gobu*, 1 N.C. (Tay.) 188 (1802) (discussing the legal presumption that blackness itself defined one's status as a slave); see also Harris, *supra*, at 1716–21.

185. Kelley, *supra* note 65, at 75, 89. The link between land and citizenship, see *supra* note 138, was also particularly important to African Americans as they emerged from bondage. For example, a group of black religious leaders conferring with Union representatives in the aftermath of the Civil War argued that land would be central to black men and women's ability to transcend the wreckage of American slavery:

The way we can best take care of ourselves is to have land, and turn in and till it by our labor—that is, by the labor of the women, and children, and old men—and we can soon maintain ourselves and have something to spare . . . We want to be placed on land until we are able to buy it and make it our own.

Garrison & Frazier, *Colloquy With Colored Ministers*, 16 J. NEGRO HIST. 88, 91 (1931).

For a time, it seemed that freedmen and women might be successful in securing land. In the wake of the Civil War, the Freedmen's Bureau, which was established by the federal government to

independence” work provided “as a corollary of freedom”<sup>186</sup> and viewed the opportunity to “work at a pace and under terms commensurate with their new status” as the difference between freedom and bondage.<sup>187</sup>

For African Americans, the link between work and citizenship has always been explicit. Slavery, as Shklar noted in *American Citizenship*, “stood at the opposite social pole from full citizenship and so defined it;”<sup>188</sup> black slaves were the quintessential noncitizens.<sup>189</sup> At the dawn of Reconstruction, however, it seemed possible that Blacks, because of the formal citizenship subsequently conferred upon them by the Fourteenth Amendment, might succeed in using “the rights resulting from emancipation to establish the conditions, rhythms, and compensation of their work” and to achieve some measure of belonging in postwar society.<sup>190</sup> Blacks who had engaged in skilled labor during slavery initially found work as craftsmen.<sup>191</sup> Many of those who

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assist former slaves with the transition to freedom, was authorized to administer a program under which the government would sell or lease land parcels confiscated by Union troops or abandoned by white Southerners to Blacks for cultivation. See DONALD G. NIEMAN, *TO SET THE LAW IN MOTION: THE FREEDMEN’S BUREAU AND THE LEGAL RIGHTS OF BLACKS, 1865–1868*, at 46 (1979); see also Adoja A. Aiyetoro, *Formulating Reparations Litigations Through the Eyes of the Movement*, 58 N.Y.U. ANN. SURV. AM. L. 457, 458–61 (2003) (discussing Field Order 15 and various changes in Bureau authority to provide land to freedmen and women); Charles J. Ogletree, Jr., *Repairing the Past: New Efforts in the Reparations Debate in America*, 38 HARV. C.R.-C.L. L. REV. 279, 303 n.136 (2003) (referencing a brief in a black farmer reparations case noting the land leases and grants made by Freedmen’s Bureau); Brent Staples, *Forty Acres and a Mule*, N.Y. TIMES, July 21, 1997, at A16 (noting also that General Sherman, under Special Field Order 15, had also declared that newly freed Blacks in the Georgia Sea Islands and portions of South Carolina would receive land allotments of forty acres and an Army mule as part of an effort to provide them with food and the means for self-support). The Bureau, however, lacked the land necessary to satisfy the claims of all freedmen and women. The program was ultimately terminated by President Andrew Johnson, who, as part of his Reconstruction program, sought to placate white Southerners property owners whose land had been confiscated during the Civil War. NIEMAN, *supra*, at 46–53. As many commentators have noted, “forty acres and a mule” remains a popular phrase among African Americans to this day, a reminder of substantive benefits promised but never provided Blacks upon gaining formal legal citizenship. See, e.g., Aiyetoro, *supra*, at 458; Emma Coleman Jordan, *A History Lesson: Reparations for What?*, 58 N.Y.U. ANN. SURV. AM. L. 557, 603–04 (2003); Rhonda V. Magee, Note, *The Master’s Tools, From the Bottom Up: Responses to African American Reparations Theory in Mainstream and Outsider Remedies Discourse*, 79 VA. L. REV. 863, 891 n.141 (1993); Staples, *supra*, at A16.

186. R.A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. Rev. 803, 854 (2004).

187. Leon F. Litwick, *The Ordeal of Black Freedom*, in *THE SOUTHERN ENIGMA: ESSAYS ON RACE, CLASS, AND FOLK CULTURE* 5, 7 (Walter J. Fraser, Jr. & Winfred B. Moore, Jr. eds., 1983).

188. SHKLAR, *supra* note 25, at 16.

189. See *id.* at 16.

190. ERIC FONER, *RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION, 1863–1877* 140 (1988).

191. See Carole Marks, *The Social and Economic Life of Southern Blacks During the Migration*, at 37, 38, 41, in *BLACK EXODUS: THE GREAT MIGRATION FROM THE AMERICAN SOUTH* (Alferdteen Harrison ed., 1991).

had slaved in the fields began to negotiate labor contracts with white landowners, “setting their own hours of labor and demand[ing] extra compensation for . . . work not directly related to the growing crop . . . .”<sup>192</sup> It quickly became evident, however, that legal citizenship alone would not guarantee substantive equality or acceptance. Blacks encountered often violent resistance from white trade unionists and immigrant workers from Ireland and other European countries intent on pushing former slaves out of increasingly scarce jobs in the North and South<sup>193</sup> and establishing their superiority to Blacks in the racial hierarchy.<sup>194</sup> White landowners, worried about maintaining access to a cheap workforce, posted even fiercer opposition, securing passage of draconian measures designed to control black labor in the rural South and thereby reconstructing the worst aspects of slavery.<sup>195</sup> As one commentator lamented, “[t]he slave went free; stood for a brief moment in the sun; then moved backward again toward slavery.”<sup>196</sup>

The substantive benefits of work, education, and voting that Blacks thought would be forthcoming after the Fourteenth Amendment extended them legal citizenship remained thoroughly elusive.<sup>197</sup> Black Codes enacted

192. FONER, *supra* note 190, at 136. Freedmen’s Bureau officials deployed to the South to oversee Reconstruction assisted in brokering and enforcing these contracts, but ideological commitments to free labor made them more focused on ensuring that freedmen engaged in “diligent toil” than on the fairness of the terms under which they did so. NIEMAN, *supra* note 185, at xvii; see also Lacy Ford, *Labor and Ideology in the South Carolina Up-Country: The Transition to Free-Labor Agriculture*, in THE SOUTHERN ENIGMA: ESSAYS ON RACE, CLASS, AND FOLK CULTURES, *supra* note 187, at 25 (discussing efforts of Freedmen’s Bureau officials); John Scott Strickland, “No More Mud Work:” *The Struggle for Control of Labor and Production in Low Country South Carolina, 1863–1880*, in THE SOUTHERN ENIGMA: ESSAYS ON RACE, CLASS, AND FOLK CULTURES, *supra* note 187, at 43, 50 (discussing attitudes of Bureau officials).

193. Herbert Hill, *Race and Ethnicity in Organized Labor: The Historical Sources of Resistance to Affirmative Action*, 12 J. INTERGROUP REL. 5, 19–21, 31 (1984); see also Susan Olzak, *Labor Unrest, Immigration, and Ethnic Conflict in Urban America, 1880–1914*, 94 AM. J. SOC. 1303, 1312–13 n.8 (1989) (giving the railroad industry as an example of one industry in which Blacks were pushed out of positions by Whites). New white immigrants frequently engaged in acts of violence against black workers, whom they often perceived as willing to work for lower wages and under conditions less favorable than those under which Whites would work. See KARST, *BELONGING*, *supra* note 106, at 89; Hill, *supra*, at 31 (citing riots and other similar examples of violence); Olzak, *supra*, at 1306 (noting white violence against Chinese and new European immigrants, as well as Blacks); James Gilbert Ryan, *The Memphis Riots of 1866: Terror in a Black Community During Reconstruction*, 62 J. NEGRO HIST. 243 (1977) (discussing race riots involving Irish immigrants and Blacks). White union workers frequently regarded Blacks as strikebreakers. Olzak, *supra*, at 1304.

194. See Hill, *supra* note 193, at 6–7.

195. LEON F. LITWACK, *BEEN IN THE STORM SO LONG: THE AFTERMATH OF SLAVERY* 367–68 (1980).

196. DUBOIS, *supra* note 74, at 30.

197. Critical Race Theory scholars note that these benefits continue to be withheld from many people of color today, establishing what is essentially a second tier of citizens. See Gordon & Lenhardt, *supra* note 104, at 2502–05 (citing sources); see also Lenhardt, *supra* note 186, at 806–09 (discussing the persistence of racial inequalities).

by legislatures throughout the South extinguished black laborers' efforts to be autonomous agents by limiting their movement, imposing restrictions on contract termination and skilled black labor, and reinstating corporal punishment and forced labor programs.<sup>198</sup> These harsh measures, which functioned to "kee[p] freedmen on . . . plantations"<sup>199</sup> and thereby "to provide [white] planters with an obedient and reliable labor force,"<sup>200</sup> faced little, if any, opposition. Indeed, the U.S. Supreme Court, in *Plessy v. Ferguson*,<sup>201</sup> fully endorsed the racially separate economic and social structures erected first by the Codes and later by the Jim Crow measures that replaced them.<sup>202</sup>

By the early part of the twentieth century, black citizens living under the Jim Crow system were separated from and subordinated to their white counterparts in virtually every area of life, but especially in the area of employment.<sup>203</sup> Work was extremely racialized, with Blacks occupying the great majority of positions at the very bottom of the economic ladder.<sup>204</sup> This was even true in industries where, by the 1920s and 1930s, Blacks comprised the majority of the workforce.<sup>205</sup> A "pyramid-like structure, with white skilled workers at the top, semi and unskilled black workers at the base" existed in many workplaces.<sup>206</sup> A Mississippi paper worker described his experience in a plant of this era: "When I first went there, you didn't do anything but whatever a white person didn't want to do. They didn't want to dig no ditches, and didn't want to run no jackhammers, this kind of thing,

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198. See Forbath, *supra* note 132, at 27; Lenhardt, *supra* note 186, at 861–63.

199. NIEMAN, *supra* note 185, at 75.

200. *Id.* at 90.

201. 163 U.S. 537 (1896) (holding that racially segregated rail cards did not offend the Fourteenth Amendment).

202. *Id.* at 544 ("Laws permitting, and even requiring, th[e] separation [of the races], in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally recognized as within the competency of the state legislatures in the exercise of their police power."); see also *id.* at 544–48 (citing examples of laws requiring racial segregation with approval).

203. See generally C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* (3d rev. ed. 1974) (discussing the history of Jim Crow laws and their relation to the contemporary situation of American Blacks).

204. See James R. Grossman, *Black Labor Is the Best Labor: Southern White Reactions to the Great Migration*, in *BLACK EXODUS: THE GREAT MIGRATION FROM THE AMERICAN SOUTH*, *supra* note 191, at 52; Marks, *supra* note 191, at 42–43, 47.

205. See Jones, *supra* note 65, at 282–83.

206. *Id.* at 282. The Supreme Court later addressed whether Title VII of the Civil Rights Act of 1964 prohibited segregation of this sort in the workplace. See *Griggs v. Duke Power*, 401 U.S. 424 (1971) (holding that employer was prohibited from requiring tests or passage of certain standards as precondition of employment or transfer, where requirements were unrelated to the job at issue and had a disparate impact on African American workers).

so that's what we did. . . . The whites get the better jobs, blacks get the lower-paid jobs. . . ."<sup>207</sup> In sum, the Jim Crow workplace was organized to disabuse Blacks of the notion that they might, through work, realize the promises of citizenship.<sup>208</sup>

African Americans labored within this structure of necessity but did not necessarily acquiesce in it. Acts of resistance were a common method of protesting the marginalization of black workers on the job, as well as in social and political contexts outside of work.<sup>209</sup> During slavery, black men and women frequently engaged in work stoppages, "slowdowns, absenteeism, [and] tool breaking," among other things.<sup>210</sup> Black workers of subsequent eras carried on this legacy by engaging in similar actions. These small protests rendered black workers vulnerable to accusations of idleness and sloth from white employers,<sup>211</sup> just as they had slaves a generation earlier.<sup>212</sup> The citizenship payoff of such resistance far outweighed this cost, however.<sup>213</sup> These protests enabled black workers to exercise some control over the often back-breaking labor in which they engaged and—perhaps most importantly—to assert their basic humanity in the face of a system premised on its nonexistence.

Coordinated labor protests—particularly those that occurred in the 1930s and 1940s, when black soldiers returning from World War II "demanded that the federal government live up to the rhetoric of democracy and equality that it had deployed against fascism"<sup>214</sup>—were another important

207. TIMOTHY J. MINCHIN, *THE COLOR OF WORK: THE STRUGGLE FOR CIVIL RIGHTS IN THE SOUTHERN PAPER INDUSTRY, 1945–1980*, at 33 (2001).

208. See Hill, *supra* note 193, at 7 (noting that white ethnic laborers, often due to the discriminatory efforts of labor unions, had access to status-transforming wages, whereas Blacks did not).

209. See Kelley, *supra* note 65, at 76–78 (discussing the need for greater acknowledgement of the acts of resistance in which black workers engaged during Jim Crow).

210. *Id.* at 93; see also *id.* at 91 (discussing sabotage efforts of black workers).

211. *Id.* at 93–94.

212. W.E.B. Du Bois, the great scholar of and activist for black liberation, once commented on the ways in which Whites misinterpreted the behavior of black slaves:

All observers spoke of the fact that the slaves were slow and churlish; that they wasted material and malingered at their work. Of course, they did. This was not racial but economic. It was the answer that any group of laborers forced down to the last ditch.

They might be made to work continuously but no power could make them work well.

Kelley, *supra* note 65, at 93 (quoting DU BOIS, *supra* note 74, at 40).

213. Indeed, there are some ways in which this stigmatization may not be regarded as a significant cost. Kelley suggests that, at different points in history, African American workers may have exploited negative stereotypes about them—performing tasks in a way that reinforced the message carried by the stereotype—as a way as exerting control over the pace of work. Kelley, *supra* note 65, at 93–94.

214. Thomas J. Sugrue, *Affirmative Action From Below: Civil Rights, the Building Trades, and the Politics of Racial Equality in the Urban North, 1945–1969*, 91 J. AM. HIST. 145, 148 (2004).

strategy. Black workers frequently banded together on an informal basis to establish pace controls<sup>215</sup> or to “achieve higher [service] fees at a uniform rate,” as the experience of tobacco workers in North Carolina and black washerwoman in Atlanta attests.<sup>216</sup> Union campaigns, which drew upon “the culture of resistance” first established by black slaves, provided an even greater collective challenge to the conditions under which African Americans were forced to labor.<sup>217</sup>

Black unions—whether national, such as the Brotherhood of Sleeping Car Porters, led by early civil rights leader A. Phillip Randolph,<sup>218</sup> or local, such as the Transport Workers Association of Norfolk, Virginia<sup>219</sup>—extracted important concessions from employers and, in the case of the black Pullman Porters, from the federal government as well.<sup>220</sup> Historically segregated white unions, despite their complicated relationship with black workers, were also instrumental here.<sup>221</sup> The Congress of Industrial Organizations launched an initiative called “Operation Dixie” in 1946, “a million dollar campaign to organize southern workers, support equal rights for blacks, and . . . [develop] a voting coalition of black and white working-class voters.”<sup>222</sup> The campaign had successes in industries such as tobacco and

215. See Kelley, *supra* note 65, at 89–90.

216. TERA W. HUNTER, *TO JOY MY FREEDOM: SOUTHERN BLACK WOMEN’S LIVES AND LABORS AFTER THE CIVIL WAR* 88 (1997) (discussing efforts of washer women in Atlanta and others to secure fixed rates for wash); see also Kelley, *supra* note 65, at 90 (discussing tobacco worker efforts to “control the pace of work or to strike out against employers”). Kelley notes that “[t]heft at the workplace was [also] a common form of working-class resistance.” *Id.* at 90. Equipment sabotage was also a strategy employed to counter speedups mandated by employers. *Id.* at 91.

217. Jones, *supra* note 65, at 288.

218. For more on A. Philip Randolph and the organizing efforts of the Pullman Porters, see ERIC ARNESEN, *BROTHERHOODS OF COLOR: BLACK RAILROAD WORKERS AND THE STRUGGLE FOR EQUALITY* 59, *passim* (2001).

219. Kelley, *supra* note 65, at 96–97.

220. Sugrue, *supra* note 214, at 248 (discussing A. Philip Randolph’s role in persuading President Franklin D. Roosevelt to sign “Executive Order 8802, creating a Fair Employment Practices Committee (FEPC), the first federal agency since Reconstruction to handle matters of civil rights”).

221. Early in organized labor’s history, African Americans were regarded as rivals rather than potential allies by white unionists, who saw black workers as strikebreakers. KIMBERLY L. PHILLIPS, *ALABAMA NORTH: AFRICAN-AMERICAN MIGRANTS, COMMUNITY, AND WORKING CLASS ACTIVISM IN CLEVELAND, 1915–1945*, at 38 (1999). In the late 1800s and early 1900s, white labor unions engaged in actions designed to displace black workers in various sectors, such as the railroads and steel mills. Hill, *supra* note 193, at 21. Furthermore, the vast majority of unions had constitutions or bylaws that expressly excluded black members. See *id.* at 21–27. Unions that did permit African American members frequently consigned them to segregated black locals that sometimes limited the agency of black workers in the collective bargaining process rather than protecting their interests. *Id.* at 26.

222. MICHAEL K. HONEY, *GOING DOWN JERICHO ROAD: THE MEMPHIS STRIKE, MARTIN LUTHER KING’S LAST CAMPAIGN* 17 (2007).

helped to ensure that “black workers . . . were in the vanguard of efforts to transform race relations” in the United States.<sup>223</sup>

Finally, migration emerged as an essential strategy for black workers whose wages could not buy the belonging automatically accorded white workers.<sup>224</sup> The same desire for freedom and economic independence that led former slaves to travel the pathways of the South in the wake of the Civil War inspired African Americans of this period to leave the South and migrate North.<sup>225</sup> Declining opportunities in agriculture first led many black workers to leave the jobs they had secured on former plantations and to seek out industrial work in metropolitan areas within the South.<sup>226</sup> Starting around 1910, waves of African American workers discouraged by crop failures, the scarcity of industrial jobs, and the brutality of life under Jim Crow began to leave the South entirely, beginning a period in African American history that would become known as the “Great Migration.”<sup>227</sup> Between 1915 and 1960, the push of economic difficulties in the South and the pull of job opportunities created in the North by federal limits on immigration and the growth of industrial centers led approximately five million Blacks to leave for cities such as New York, Chicago, and Detroit.<sup>228</sup> These migrants “came North in search of” economic opportunity, but also something more, “something black Americans had once hoped they would win from emancipation; their rightful place as ‘part of the great whole of the mighty American nation. . . .’”<sup>229</sup>

For many African American workers, the path out of the South and into the northern workplace did lead to greater opportunities, as well as to increased standing in their families and communities. It would, however, take the

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223. Robert Korstad & Nelson Lichtenstein, *Opportunities Found and Lost: Labor, Radicals, and the Early Civil Rights Movement*, 75 J. AM. HIST. 786–87 (1988).

224. Kelley, *supra* note 65, at 95 (describing the Great Migration as a form of protest).

225. PHILLIPS, *supra* note 221, at 16, 39.

226. *Id.* at 39–40; Katz et al., *supra* note 158, at 78, 89.

227. See William Cohen, *The Great Migration as a Lever for Social Change*, in BLACK EXODUS: THE GREAT MIGRATION FROM THE AMERICAN SOUTH, *supra* note 191, at 72; see also Nell Irvin Painter, *Foreword* to THE GREAT MIGRATION IN HISTORICAL PERSPECTIVE: NEW DIMENSIONS OF RACE, CLASS, AND GENDER, at viii–x (Joe William Trotter, Jr. ed., 1991) [hereinafter THE GREAT MIGRATION IN HISTORICAL PERSPECTIVE].

228. Alferdteen Harrison, *Preface* to BLACK EXODUS: THE GREAT MIGRATION FROM THE AMERICAN SOUTH, *supra* note 191, at vii. This exodus had tremendous “consequences . . . as blacks, at the start of the twentieth century primarily a southern and rural people, became at its end an urban population distributed far more equally throughout the nation”. Katz et al., *supra* note 158, at 78; see also *id.* at 105–06.

229. James R. Grossman, *The White Man’s Union: The Great Migration and the Resonance of Race and Class in Chicago, 1916–1922*, in THE GREAT MIGRATION IN HISTORICAL PERSPECTIVE, *supra* note 227, at 97.



second phase of the Civil Rights movement begun by black unionists in the 1930s and 1940s to secure truly meaningful gains.<sup>230</sup> The black activism of the 1950s and 1960s resulted in judicial decisions, such as *Brown v. Board of Education*,<sup>231</sup> and legislative enactments that opened doors to African Americans and provided them with more effective weapons for battling entrenched racial hierarchies. Title VII of the Civil Rights Act of 1964, in particular, which outlawed employment discrimination,<sup>232</sup> empowered workers mired in segregated workplaces to contest their circumstances in court.<sup>233</sup>

Today, because of these and other important changes, African Americans, as a group, find themselves in a far better position than that occupied by their slave ancestors. At the same time, African American citizens do not measure the extent to which they have achieved belonging by looking merely to the past. Belonging is assessed by how well Blacks fare in comparison to their White counterparts in the United States, in particular. And on this score, Blacks, especially in the area of work, have not yet reaped the benefits of full citizenship. African Americans are more likely than Whites to reside in poverty;<sup>234</sup> they earn 70 cents for every dollar earned by white workers;<sup>235</sup> they work in greater numbers in low-wage jobs;<sup>236</sup> and they are twice as likely as whites to be unemployed.<sup>237</sup>

Especially for Blacks who have not been able to escape the low-wage context, work has not delivered on its citizenship promises. The low-wage workplace is still characterized by segregation, hazardous work conditions,

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230. See Sugrue, *supra* note 214, at 145 (discussing efforts of black activists in Philadelphia).

231. 347 U.S. 483 (1954).

232. 42 U.S.C. § 2000e (2000).

233. Timothy J. Minchin, *Black Activism, the 1964 Civil Rights Act, and the Racial Integration of the Southern Textile Industry*, 65 J.S. HIST. 809, 814 (1999). Title VII continues to be a tool for challenging racially discriminatory treatment in employment. See, e.g., *Ash v. Tyson Foods, Inc.*, 546 U.S. 454 (2006). Many scholars, particularly critical race theorists, have argued that its utility in the race context has, however, been severely compromised by narrow judicial interpretations of its scope and purpose. See, e.g., Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 141–43; E. Christi Cunningham, *The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Disparate Treatment Cases*, 30 CONN. L. REV. 441, 461–96 (1998); see also Kathryn Abrams, *Title VII and the Complex Female Subject*, 92 MICH. L. REV. 2479 (1994) (discussing interpretations of Title VII in gender context).

234. MELVIN OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 12 (2004).

235. *Id.* at 7. The figure is for middle-class African Americans. Oliver and Shapiro point out that wages only tell part of the tale of economic disparity: Middle-class African Americans hold only fifteen cents of assets for every dollar held by their White counterparts. *Id.*

236. See, e.g., *supra* note 44 (discussing percentages of blacks and whites earning \$15,000 or less per year).

237. OLIVER & SHAPIRO, *supra* note 234, at 24; see also *supra* note 96 (citing employment figures from the Bureau of Labor Statistics).

and few opportunities for advancement. As a result, the path that black low-wage workers travel today still retains many of the same features that marked the road traversed by black laborers of the past. Migration has reemerged as an important weapon against exploitation and unrealized economic gains. Demographers report that, in a reverse of the Great Migration, many African Americans are now traveling from northern cities to the South in search of jobs, increasingly crossing paths with Latino immigrants.<sup>238</sup> Likewise, resistance to unfair labor practices in the form of individual action and organized labor protests continues to be an important mechanism for ensuring some measure of justice in the workplace and for preserving the dignity of black workers who, though they have yet to reap all the benefits of citizenship, rightly feel entitled to them. This explains, at least in part, why African American workers may regard the refusal of some new immigrants to challenge employer practices as a threat to the standing of Blacks in the workplace and in society more broadly.

B. The New Latino Immigrant Experience of Work as a Pathway to Citizenship

The connection between work and citizenship for new Latino migrants is not obvious. As it was for African Americans during the Great Migration, Latino migrants' decision to leave their homes is often closely tied to the need for more and better work. But the path most follow to achieve that goal is one that, initially at least, would seem to lead to the disruption of citizenship rather than to its establishment. Latino emigrants interrupt their link to their country of citizenship with their departure. Meanwhile, establishing citizenship in the United States may be legally impossible and is not necessarily the goal for many immigrants. Most migrants, like Dinora, begin their stay in the United States imagining work here as a route to greater stability and success back home. So the question remains: If work is a path to belonging for new migrants, to what do they seek to belong? In this section, we explore these questions from the perspective of today's Mexican migrants,<sup>239</sup> who make up the largest portion of this country's annual

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238. FREY, *supra* note 34, at 1. Many Blacks returning to the South are middle-class families or young college graduates, but others are low-wage laborers. *Id.* at 7–8.

239. The experiences of new migrants should not be confused with those of Mexican American communities that have resided in the United States for generations. Long-term Mexican American citizens have sometimes endured segregation and exclusion not unlike that confronted by African Americans. There have been a number of court cases involving challenges to policies segregating or discriminating against Mexican Americans. See, e.g., *Hernández v. Texas*, 347 U.S. 475, 479 (1954) (invalidating discrimination against Mexican Americans in jury selection as

arrivals.<sup>240</sup> As we demonstrate, key features of the Mexican migrant path—financial obligation, illegal status, and shifting orientation toward the home country—play out in powerful ways with regard to migrants' experience of work<sup>241</sup> in relation to citizenship understood broadly as belonging.

Starting in the 1980s, an already tenuous economic situation in Mexico worsened when the government sought to comply with the conditions placed on its massive foreign debt by devaluing its currency and decreasing spending on education, health care, and food subsidies.<sup>242</sup> The resulting financial squeeze was intensified by the impact of the North American Free Trade Agreement (NAFTA). Ratified in Mexico in 1993 on promises of economic growth,<sup>243</sup> NAFTA was followed instead by a drop in Mexican wages, a

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unconstitutional); *Westminster Sch. Dist. v. Mendez*, 161 F.2d 774, 781 (9th Cir. 1947) (invalidating as violative of equal protection efforts to segregate students of Mexican descent in public schools). For further exploration of this history, see "COLORED MEN" AND "HOMBRES AQUÍ": *HERNANDEZ V. TEXAS* AND THE EMERGENCE OF MEXICAN-AMERICAN LAWYERING (Michael A. Olivas ed., 2006) (commemorating the 50th anniversary of *Hernandez v. Texas* and chronicling the struggle to eliminate discrimination against Mexican Americans); Kevin R. Johnson, *Hernandez v. Texas: Legacies of Justice and Injustice*, 25 CHICANO-LATINO L. REV. 153, 173–75 (2005) (discussing racialization of and discrimination against Mexican Americans).

240. See *supra* note 8. Nearly 500,000 Mexican migrants come to the United States each year, the majority of whom are undocumented. Gordon Hanson, *Illegal Migration From Mexico to the United States* 7 (Ctr. for Comparative Immigration Studies, Working Paper No. 143, 2006).

We have chosen to focus on Mexico here not only because of the sheer number of migrants from that country—numbers that increased dramatically beginning in the early 1980s and accelerated through the 1990s—but because multiple sources of information allow us to offer a complex portrait of the immigrant experience. Over the past decade, social scientists in the Mexican Migration Project, <http://mmp.opr.princeton.edu> (last visited Mar. 5, 2008), and the Center for Comparative Immigration Studies at U.C. San Diego, [http://www.ccis-ucsd.org/PUBLICATIONS/working\\_papers.htm](http://www.ccis-ucsd.org/PUBLICATIONS/working_papers.htm) (last visited Mar. 5, 2008), among other efforts, have gathered and analyzed substantial data on recent Mexican immigration to the United States. Personal histories offer the perspectives of individual migrants, including those from an unusual contest launched by the Mexican government in 2006 that asked Mexicans at home and abroad to submit written accounts of their experiences as migrants to the United States. *Historia de Migrantes Mexico-Estados Unidos: Primer Concurso [México-United States Migrant Histories: First Contest]*, <http://www.conapo.gob.mx/pop/migrantes/convocatoria.htm> (last visited Mar. 5, 2008).

241. Smith, *supra* note 40, at 23–24.

242. JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 78–80 (2003); Soren Ambrose, *Social Movements and the Politics of Debt Cancellation*, 6 CHI. J. INT'L L. 267, 268–71 (2005); Carmen G. Gonzalez, *Trade Liberalization, Food Security, and the Environment: The Neoliberal Threat to Sustainable Rural Development*, 14 TRANSNAT'L L. & CONTEMP. PROBS. 419, 457–58 (2004). Mexico held loans from investor nations of over \$160 billion in the late 1990s, or more than 40 percent of that country's GDP. Diego Cevallos, *Jubilee 2000 Musters Support Against Debt*, THIRD WORLD NETWORK, Apr. 28, 1999, available at <http://www.twinside.org.sg/title/musters-cn.htm>.

243. The North American Free Trade Agreement (NAFTA) was justified on both sides of the border as a measure that would create higher-paying jobs in Mexico and slow immigration to the United States. Jeff Faux, *How NAFTA Failed Mexico: Immigration Is Not a Development Policy*, THE AMERICAN PROSPECT, June 30, 2003, at 35, available at [http://www.prospect.org/cs/articles?article=how\\_nafta\\_failed\\_mexico](http://www.prospect.org/cs/articles?article=how_nafta_failed_mexico); Louis Uchitelle, *Nafta Should Have Stopped Illegal Immigration*,

decrease in manufacturing jobs, the uprooting of hundreds of thousands of farmers, and a surge in out-migration.<sup>244</sup> Seeking to make ends meet, to earn extra income to insure against unemployment and old age, and to invest in their business, home, or children's education, more Mexicans than ever before looked northward.<sup>245</sup> What they saw—wages that are six to ten times what the average Mexican could earn at home<sup>246</sup>—was a powerful spur to migrate.

Most migrants from Mexico come illegally<sup>247</sup> because they do not satisfy the requirements for immigration to the United States or must wait a decade or

*Right?*, N.Y. TIMES, Feb. 18, 2007, at Week in Review 4. For a nuanced explanation of how NAFTA has failed to deliver these promised economic benefits to Mexico, see Raúl Delgado Wise & Humberto Márquez Covarrubias, *The Mexico-United States Migratory System: Dilemmas of Regional Integration, Development, and Emigration*, MIGRACIÓN Y DESARROLLO 38, 43, 47 (segundo semestre 2006).

244. After NAFTA, many Mexican farmers left their fields, unable to compete with the flood of highly subsidized U.S.-grown corn and other agricultural products pouring into Mexican markets. Faux, *supra* note 243, at 36; Uchitelle, *supra* note 243. *But see* SASKIA SASSEN, *GLOBALIZATION AND ITS DISCONTENTS: ESSAYS ON THE NEW MOBILITY OF PEOPLE AND MONEY* (1998) (discussing the displacement resulting from the development of large-scale commercial agriculture). Some migrated directly to the United States, while others sought work in Mexican cities or in the export-production or maquiladora plants that sprouted in Mexico's northern regions in NAFTA's wake. As they encountered urban underemployment and as maquila jobs failed to live up to their promises, many left the country in search of higher income. Uchitelle, *supra* note 243; Kathryn Kopinak, *The Relationship Between Employment in Maquiladora Industries in Mexico and Labor Migration to the United States* 4 (Ctr. for Comparative Immigration Studies, Working Paper No. 120, 2005); Wise & Covarrubias, *supra* note 243, at 42–44, 47.

245. Douglas Massey has argued that the dynamics described here can lead the rational Mexican actor to pursue temporary, rather than permanent, migration:

Whereas the rational actor posited by neoclassical economics takes advantage of a temporary geographic disequilibrium in labor markets to move abroad permanently to achieve higher lifetime earnings, the rational actor assumed by the new economics of labor migration seeks to cope with market [failures in insurance, futures, capital, and credit markets at home] by moving overseas temporarily to repatriate earnings in the form of regular remittances or lump-sum transfers.

Douglas S. Massey, *International Migration at the Dawn of the Twenty-First Century: The Role of the State*, 25 POPULATION & DEV. REV. 303, 305 (1999).

246. Raúl Delgado Wise & James M. Cypher, *The Strategic Role of Mexican Labor Under NAFTA: Critical Perspectives on Current Economic Integration*, 610 ANNALS AM. ACAD. POL. & SOC. SCI. 120, 139 (2007); Howard F. Chang, *The Immigration Paradox: Poverty, Distributive Justice, and Liberal Egalitarianism*, 52 DEPAUL L. REV. 759, 764 (2003). The minimum wage in Mexico averages about 42 pesos, or \$3.60, per day. Fred Rosen, *The End of the Honeymoon*, HERALD MEXICO, Jan. 28, 2007, available at <http://www.eluniversal.com.mx/miami/23179.html>.

247. Hanson, *supra* note 240, at 1 (estimating that 56 percent of Mexican immigrants in the U.S. are undocumented); see also JEFFREY S. PASSEL, PEW HISPANIC CTR., *THE SIZE AND CHARACTERISTICS OF THE UNAUTHORIZED MIGRANT POPULATION IN THE U.S.*, at i (2006), <http://pewhispanic.org/files/reports/61.pdf> (noting that Mexicans make up the majority of the country's undocumented population). At 11.5 million, the total undocumented population of the United States now exceeds the country's 10.5 million legal permanent residents (green card holders). *Id.* at 3.

more for a visa.<sup>248</sup> The human and financial costs of an unauthorized border crossing are high. As border control has intensified over the past two decades, smugglers called coyotes have begun taking migrants into increasingly isolated and dangerous terrain to avoid detection. As a result, greater numbers drown, suffocate, or die of dehydration every year.<sup>249</sup> Precisely because of its illegality, the path is also expensive. Between the smuggler's fee,<sup>250</sup> inflated prices for food and lodging along the way, and the thieves that prey on travelers, the average Mexican migrant arrives in this country thousands of dollars in debt.

Furthermore, although U.S. wages seem promisingly high to migrants still in Mexico, once they arrive in the United States economic conditions force a sober reassessment. Living here costs far more than most anticipate.

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248. The United States principally admits immigrants in four categories: family-based, employment-based, refugees or asylees, and winners of the visa lottery for countries with historically low levels of immigration. For immigrants from Latin America and the Caribbean, few of whom qualify for the visa lottery or employment visas or are considered refugees, family relationships offer the main option. For more on employment visas, see *infra* note 258 and accompanying text. An individual can only be sponsored for family-based immigration if she is the spouse, child, parent, or sibling of an adult U.S. citizen, or the spouse or unmarried child of an adult green card holder. For those who do qualify, backlogs are often staggering. The Mexican sister of a U.S. citizen, for example, is likely to have to wait approximately thirteen years to obtain a green card. See U.S. Dep't of State, VISA BULLETIN, Mar. 2007, [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_3143.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_3143.html).

249. Wayne A. Cornelius, *Death at the Border: Efficacy and Unintended Consequences of U.S. Immigration Control Policy*, 27 POPULATION AND DEV. REV. 661, 670 (2001). Notably, border policies have failed to limit Mexican immigration and have had the perverse effect of turning temporary or circular migrants into permanent (if undocumented) residents. DOUGLAS S. MASSEY, JORGE DURAND & NOLAN J. MALONE, *BEYOND SMOKE AND MIRRORS: MEXICAN IMMIGRATION IN AN ERA OF ECONOMIC INTEGRATION* 49, 83–104 (2002).

250. An estimated 90 percent of undocumented Mexican migrants now use a coyote to cross the border. Wayne A. Cornelius, *Introduction: Does Border Enforcement Deter Undocumented Immigration?*, in *IMPACTS OF BORDER ENFORCEMENT ON MEXICAN MIGRATION: THE VIEW FROM SENDING COMMUNITIES* 1, 11 (Wayne A. Cornelius & Jessa M. Lewis eds., 2007). This figure represents a significant increase in the percentage of migrants hiring coyotes (69 percent from 1978 to 1996); Hanson, *supra* note 240, at 19. The average coyote fee for Mexican migrants rose from between \$385 and \$715 during the pre-1996 period, *id.* at 17, to \$1000–\$2000 today. See, e.g., Andrew Buncombe, *The Devil's Highway: Crossing The Deadly Frontier*, INDEPENDENT (London), July 14, 2006, at 36 (detailing stories of men from Oaxaca paying \$2,000 each); Spencer H. Hsu, *Immigration by the Numbers*, WASH. POST, May 26 2006, at A19 (“From 1980 to 1992, the cost of hiring a ‘coyote,’ or smuggler, averaged \$400 per crossing. The cost rose to about \$1,200 in 1999 before leveling off.”); Meg Jones, *At the Border, a Second Front*, MILWAUKEE J. SENTINEL, Mar. 4, 2007, at A1 (“[T]he current rate is as much as \$3,000 for a Mexican . . .”). Fees are much higher for South American migrants. See, e.g., Robert E. Kessler, *Smuggle Sting Nets Four From L.I.: Fed. Officials Set Trap Using Ecuadorean Immigrants*, NEWSDAY, Dec. 17, 2003, at A2. (“Working with federal agents, an informant approached Lopez [a coyote for Ecuadorean immigrants]. According to the informant, Lopez said he had been smuggling illegal aliens into the United States since 1998 for \$10,000 each.”); Missy Ryan, *Consul Makes a Road Stop*, BOSTON GLOBE, Dec. 18, 2005, at 1 (recounting the experience of an Ecuadorian migrant who paid \$9,500 in coyote fees).

The twin burdens of debt and financial responsibility to family weigh heavily on immigrants' minds, creating a daily pressure to continue working long days and nights for whatever wages are offered.<sup>251</sup>

Decisions about work are also shaped by many migrants' undocumented status. Technically, all workers, including the undocumented, are covered by wage and hour laws and other basic workplace protections in the United States.<sup>252</sup> But many are unaware of their rights or of where they could seek help if those rights were violated. And with the specter of deportation always hovering, most undocumented workers are reluctant to take action whatever their level of knowledge about U.S. laws and resources. Indeed, they are hesitant to refuse any demand by their employers, for fear that an angry boss will fire them or turn them in to immigration authorities. Although such retaliatory action is technically forbidden by many workplace laws, since the passage of employer sanctions in 1986,<sup>253</sup> employers have been able to respond to a claim of retaliation by asserting that the undocumented employee was dismissed in an effort to comply with laws that forbid the employment of those not legally eligible to work.<sup>254</sup> In 2002, the impact of sanctions was intensified by the Supreme Court's *Hoffman Plastic Compounds, Inc. v. NLRB* decision, which denied back pay to an undocumented worker fired for his organizing activities.<sup>255</sup> The result has been a further decrease in the recourse

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251. Smith, *supra* note 18, at 23–24.

252. For an overview of the rights of undocumented workers, see Rebecca Smith et al., National Employment Law Project, *Undocumented Workers: Preserving Rights and Remedies After Hoffman Plastic Compounds v. NLRB* 6–16 (2003), <http://www.nelp.org/docUploads/wlghoff040303%2Epdf>.

253. Employer sanctions are codified in the Immigration and Nationality Act, 8 U.S.C. § 1324(a) (2000). They impose penalties against employers who fail to require proof of identity and authorization to work from each employee.

254. Sanctions are notable both for how useful they are to management as a threat against workers and as a cover for retaliatory action, and for how infrequently they have actually been enforced against employers since their passage. See *Lack of Worksite Enforcement and Employer Sanctions: Hearing Before the Subcomm. on Immigration, Border Security, and Claims of the H. Comm. of the Judiciary*, 109th Cong. 41–43 (2005) (testimony of Jennifer Gordon, Associate Professor of Law, Fordham Law School) (describing instances in which employer sanctions have been deployed by employers to undermine workers' efforts to enforce their rights); Ruben J. Garcia, *Ghost Workers in an Interconnected World: Going Beyond the Dichotomies of Domestic Immigration and Labor Laws*, 36 U. MICH. J.L. REFORM 737 (2003); Lori A. Nessel, *Undocumented Immigrants in the Workplace: The Fallacy of Labor Protection and the Need for Reform*, 36 HARV. C.R.-C.L. L. REV. 345 (2001); Smith et al., *supra* note 252, at 3–5; Michael J. Wishnie, *Emerging Issues for Undocumented Workers*, 6 U. PA. J. LAB. & EMP. L. 497 (2004). In 2004, the Immigration Control and Enforcement Bureau issued Notices of Intent to Fine under employer sanctions to a total of 3 employers, down from 417 in 1999. GOV'T ACCOUNTABILITY OFFICE, IMMIGRATION ENFORCEMENT: WEAKNESSES HINDER EMPLOYMENT VERIFICATION AND WORKSITE ENFORCEMENT EFFORTS 35 (2005).

255. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 147–51 (2002). Although limited in its holding to the NLRA, *Hoffman Plastic* sparked a series of cases by employers seeking to

available to those undocumented workers who do fight back, and a corresponding increase in their legally constructed subservience. Thus, the enforcement of immigration law in the workplace obviates the protections of labor and employment law, rendering migrants even more vulnerable to exploitation by those employers who see them as a workforce exempt from labor regulation.

Finally, for most Mexican immigrants, migrating to the United States is initially a way of building a better life in Mexico.<sup>256</sup> This stands in contrast with the classic American image of immigration as a permanent relocation. Migration begins as a stopgap measure, a way to plug financial leaks and get ahead a little bit. After a few years, however, many Mexican immigrants begin to question whether a swift return is financially possible. Women, in particular, may send for their children to reunite the family, putting down roots in their new location.<sup>257</sup> Even for single men, time and experience change many a temporary perspective, as savings prove harder to accumulate than anticipated and the migrant begins to feel more tied to his new surroundings.

We have argued for a broader understanding of citizenship as belonging, or full participation in society. What of the work of new Latino migrants in relation to citizenship in this sense?<sup>258</sup> Migrants belong in two places at

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avoid obligations to undocumented workers in other areas of workplace law, and created a great deal of concern among immigrants and their advocates. See, e.g., Smith et al., *supra* note 252, *passim* (reviewing post-*Hoffman* cases in the areas of wage, anti-discrimination, and health and safety law).

256. Some scholars have documented a much greater extent of temporary or circular migration patterns among current Mexican immigrants than in the previous era. See, e.g., Jorge Durand, Douglas J. Massey & Rene M. Zenteno, *Mexican Immigration to the United States: Continuities and Changes*, 36 *LATIN AM. RES. REV.* 107 (2001); Douglas S. Massey, *Five Myths About Immigration: Common Misconceptions Underlying U.S. Border-Enforcement Policy*, *IMMIGR. POL'Y IN FOCUS*, Aug. 2005, at 1, 4, available at <http://www.immigrationpolicy.org/images/File/infocus/IPC%20five%20myths.pdf>; Conference, *Working Borders: Linking Debates About Insourcing and Outsourcing of Capital and Labor*, 40 *TEX. INT'L L.J.* 691, 726 (2005) ("A significant number of Mexicans and Central Americans do not come to the United States to stay, but instead with a firm intention to return home with money to buy a home or a business. What sociologists call circular migration—back and forth, one or more times, to work in the United States and to return home—has become a widely recognized way of life. Circular migrants are de facto guest workers." (William Forbath, speaking)). But see Enrico A. Marcelli & Wayne A. Cornelius, *The Changing Profile of Mexican Migrants to the United States: New Evidence From California and Mexico*, *LATIN AM. RES. REV.*, 2001, No. 3, at 105, 112–13 (arguing that Mexican immigrants after 1980 are more likely to remain permanently than their predecessors).

257. See PIERRETTE HONDAGNEU-SOTELO, *GENDERED TRANSITIONS: MEXICAN EXPERIENCES OF IMMIGRATION* 40 (1994); Marcelli & Cornelius, *supra* note 256, at 112.

258. To be clear, for most new Latino immigrants, work does not create any entitlement to legal citizenship. But see *supra* note 157 (discussing of the relationship of work history to immigration relief and naturalization). In particular, very few Latin Americans are admitted to permanent residence through the operation of employment visa categories. Most Latin American immigrants do

once: In their home countries, they remain legal citizens although physically absent; in the United States, they are present, but not citizens. Confounding expectations, migrants have demonstrated that physical absence is not necessarily an impediment to the exercise of citizenship in their home countries, nor does lack of legal status in this country operate as a complete obstacle to political participation here.

For new migrants, as for African Americans, work is a path to standing in the family, community, and polity. Work has all of the dignitary value we identified earlier and promises a path to greater political and economic status. The critical difference for new migrants is that while the work is located in the United States, the place where that enhanced citizenship is realized—at least in the early years of migration—is largely in the migrant's home country. That is, work here leads to greater citizenship there.

Migrants secure their status as valued economic and political participants in their countries of origin through the money they earn in the United States. At the family level, a successful migrant's economic contributions improve the living conditions of his relatives in Mexico. More broadly, migrants exercise economic citizenship through hometown associations, which pool resources to build community centers, renovate churches, pave roads, and extend electricity and running water in the places they have left behind.<sup>259</sup> Programs such as Mexico's "3 for 1" plan (through which the Mexican federal, state, and local government each contribute a dollar to match every dollar contributed to development projects by a hometown association<sup>260</sup>) give migrants formal roles in decisionmaking over development

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not have the level of education or training required to get one of these visas or are unable to gain recognition for the qualifications they do have because of barriers such as an inability to speak English. Only 12.5 percent of Latin American and Caribbean applicants gain legal permanent residence through employment categories. See OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SECURITY, 2005 YEARBOOK OF IMMIGRATION STATISTICS 27–30, tbl. 10 (2005), available at [http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/OIS\\_2005\\_Yearbook.pdf](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/OIS_2005_Yearbook.pdf) (authors' calculations based on the sum of North American and South American totals, less Canadian admissions).

The existence of a limited number of guest worker visas offer another work-related route to temporary legal status in the United States. But—with the exception of higher-skilled H-1B workers, most of whom are not from Latin America—there is no path from guest worker to permanent residence, and participants must return home after their temporary stay expires. Guest work is thus not currently a potential route to status citizenship. Cristina M. Rodriguez, *Guest Workers and Integration: Toward a Theory of What Immigrants and Americans Owe One Another*, 2007 U. CHI. LEGAL F. 219, 260; Katherine L. Vaughns, *Reflections on Fixing the Immigration System and Exploring Failed Policy Choices*, 5 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 151, 160 (2005).

<sup>259</sup> For an overview of hometown associations, see Manuel Orozco & Rebecca Rouse, *Migrant Hometown Associations and Opportunities for Development: A Global Perspective*, MIGRATION INFO. SOURCE, Feb. 2007, <http://www.migrationinformation.org/Feature/display.cfm?id=579>.

<sup>260</sup> *Id.*



policy.<sup>261</sup> This phenomenon has begun to translate directly into political citizenship. Sending countries seeking to preserve remittance flows have initiated policies designed to deepen migrant allegiances, such as programs to facilitate voting from abroad and to permit migrants to run for office while still in the United States, by sending presidential candidates on tours of areas in the United States with high concentrations of their nationals and by reserving seats in their legislatures for representatives of “citizens in exile.”<sup>262</sup> Sometimes political power is granted through an increase in informal access and power. As migrant Carlos Villaseñor observes, based on his experience as a Mexican migrant and member of the Association of Clubs and Migrants from Michoacán in Illinois, which invests member contributions to improve conditions in Michoacán: “When we lived in Mexico, the government paid no attention to us. After we left, organized, and raised money, they now listen to us.”<sup>263</sup>

Within the United States, too, migrants’ work enhances citizenship in the sense of belonging and participation, albeit in ways diluted by migrants’ lack of formal citizenship status. Some migrants’ experiences at work—particularly in a unionized setting or one where a workers’ center is active—may draw them into political participation long before they are on the citizenship track.<sup>264</sup> As many scholars have noted, unions have

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261. For an overview of the economic programs that a range of sending countries have created to build the allegiances of their citizens abroad and keep remittance dollars flowing, see Anupam Chander, *Homeward Bound*, 81 N.Y.U. L. REV. 60 (2006).

262. There is a large and growing social science literature on immigrants’ home country political participation, largely examining mechanisms for immigrant voting in home country elections. See, e.g., Rainer Bauböck, *Towards a Political Theory of Migrant Transnationalism*, 37 INT’L MIGRATION REV. 700 (2003). For recent discussions of voting and other forms of political participation in legal scholarship, see Kim Barry, *Home and Away: The Construction of Citizenship in an Emigration Context*, 81 N.Y.U. L. REV. 11, 52–58 (2006); Chander, *supra* note 261, at 69–72; Ruth Rubio-Marín, *Transnational Politics and the Democratic Nation-State: Normative Challenges of Expatriate Voting and Nationality Retention of Immigrants*, 81 N.Y.U. L. REV. 117, 124–35 (2006); Peter Spiro, *Perfecting Political Diaspora*, 81 N.Y.U. L. REV. 207 (2006). For a historical overview of the development of political transnationalism in Mexico, see Gustavo Cano & Alexandra Délano, *The Mexican Government and Organised Mexican Immigrants in the United States: A Historical Analysis of Political Transnationalism (1848–2005)*, 33 J. ETHNIC & MIGRATION STUD. 695 (2007).

263. Quoted in Dan La Botz, *First Migrant Summit Calls for Reform of Immigration Laws*, MEXICAN LAB. NEWS & ANALYSIS May 2007. A recent documentary about an upstate New York Mexican hometown association, which highlights the way that Mexican elected officials responded to the group’s remittances by lavishing attention on the association’s hometown, previously all but ignored by the politicians, reinforces the point. THE SIXTH SECTION (P.O.V. 2003).

264. Relatively few newcomers are members of unions. Roger Waldinger & Claudia Der-Martirosian, *Immigrant Workers and American Labor: Challenge . . . or Disaster?*, in ORGANIZING IMMIGRANTS: THE CHALLENGE FOR UNIONS IN CONTEMPORARY CALIFORNIA (Ruth Milkman ed., 2000). Nonetheless, in sectors such as health care, hotels, and janitorial work, where unions like SEIU and UNITE-HERE are active, a migrant might well be hired for a

historically been “schools of democracy” for their members,<sup>265</sup> and today’s immigrants are no exception.<sup>266</sup> The more migrants participate politically through unions, worker centers, and marches, the deeper their sense of belonging becomes.<sup>267</sup> In this sense, such institutions hasten the process through which immigrants’ allegiances shift toward the receiving country over time.

Furthermore, new migrants may more easily be able to gain legitimacy as political actors when they are understood as workers (rather than, say, as recipients of public benefits or as consumers of education and health care). In her analysis of the passage of a bill in the New York State legislature through the lobbying efforts of a group of noncitizen members of the Workplace Project, Jennifer Gordon described the way that participants’ stories of their lives as workers engaged conservative legislators who on other fronts had actively supported anti-immigrant legislation.<sup>268</sup> Furthermore, immigrants and their advocates have argued that the undocumented immigrants’ work should entitle them to consideration for legal status. Many of

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unionized job or become involved in an organizing campaign. In addition, new migrants may come into contact with one of the 160 worker centers around the country whose mission is to organize and advocate for the newest and least organized workers. JANICE FINE, *WORKER CENTERS: ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM* (2006). And in cities with high levels of Latino immigration, such as Los Angeles, Latino immigrants have been in the lead of some of the most successful union organizing struggles of the past two decades. MILKMAN, *supra* note 45, chs. 3 & 4.

265. CLAYTON SINYAI, *SCHOOLS OF DEMOCRACY: A POLITICAL HISTORY OF THE LABOR MOVEMENT* (2006); Jennifer Gordon, *Transnational Labor Citizenship*, 80 S. CAL. L. REV. 503, 526–28 (2007).

266. See, e.g., GORDON, *supra* note 7, at ch. 6 (describing political participation of immigrants in a campaign to change New York State wage payment laws); Paul Johnston, *Rethinking Cross-Border Employment in Overlapping Societies: A Citizenship Movement Agenda*, in FORUM FOR TRANSNATIONAL EMPLOYMENT 66 (2001); Paul Johnston, *Transnational Citizenries: Reflections From the Field in California*, 7 CITIZENSHIP STUD. 199, 204–07 (2003) (“Note the ubiquitous appearance of unions in the Greenfield story.”); Monica W. Varsanyi, *The Paradox of Contemporary Immigrant Political Participation: Organized Labor, Undocumented Migrants, and Electoral Participation in Los Angeles*, 37 ANTIPODE 775, 783–785 (2005) (describing Los Angeles labor unions’ involvement of non-citizens not only in legislative change efforts but in elections, as participants in decisions about candidate endorsement, in campaign rallies, and in get out the vote drives).

267. For reflections on the 2006 immigrant marches and their implications for new Latino immigrants as participants in the civic and political life of the United States, see Sylvia R. Lazos, *The Immigrant Rights Marches (Las Marchas): Did the “Gigante” (Giant) Wake Up or Does It Still Sleep Tonight?*, 7 NEV. L.J. 780 (2007); Bill Ong Hing & Kevin R. Johnson, *The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement*, 42 HARV. C.R.-C.L. L. REV. (2007).

268. GORDON, *supra* note 7, at 237–80. This legitimizing effect may come at a price. Our earlier article discusses the way that such claims may exacerbate tensions between immigrants and African Americans because of their implicit—and sometimes explicit—contrast with black people in the United States. Gordon & Lenhardt, *supra* note 27. A related issue is how emphasizing the role of work in securing citizenship may have the effect of further stigmatizing those who receive public benefits. See GORDON, *supra* note 7, at 276–77.

the signs immigrants carried in the massive 2006 marches, whose central demand was amnesty, alluded to this claim directly: “We Come to Work,” “Immigrants Work Hard.”<sup>269</sup> Advocates refer often to immigrants’ hard-working quality in arguing for legalization.<sup>270</sup> In such statements, work is a trope that functions morally and pragmatically as a foot in the door to legal status and eventual citizenship, a way to cleanse the taint of illegal entry and to establish desert for membership.

The forms of participation we describe are still too limited in impact and in scope to undergird a broad assertion that work is the foundation for a fully realized form of migrant citizenship. After all, in the words of skeptic Jonathan Fox, “acting like a citizen is not the same as being a citizen.”<sup>271</sup> And as we have seen, migrant work is at least as much a rallying cry for those who would curtail immigration as it is a building block in the movement towards acceptance of immigrants as genuine members of the community. Nonetheless, on balance, even for undocumented immigrants, work facilitates incorporation into the polity over time and thus serves as a pathway to citizenship.

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269. See Erin Allday et al., *Immigrants, Labor Walk on Common Ground: Reform Issues Attract Members of Both Groups to Bay Area Rallies*, S.F. CHRON., Sept. 6, 2006, at A1 (“Some of the Oakland marchers carried signs that ‘We are labor.’”); Michael Mayo, *Commentary: “No Human Is Illegal” . . . “We’re Hard Workers,”* SUN-SENTINEL (Fort Lauderdale, Fla.), Apr. 10, 2006, at 1B (“Thousands rallied in Miami on Sunday to support a humane approach. They held up homemade signs that read, ‘No human is illegal’ and ‘We’re hard workers, not criminals.’”); Erin O’Donnell, *Latinos Nix Violence*, HARV. MAG., Sept.–Oct. 2006, at 15 (displaying a photograph of a participant at a Chicago immigrants’ rally holding a sign reading “We are Workers Not Criminals!”); Encarnacion Pyle, *Area Latinos Celebrate Their Contributions*, COLUMBUS DISPATCH, May 2, 2006, at 1A (“‘I am not a criminal. I am a computer programmer,’ said Jesus Anguiano, 51, who held a sign with those same words.”).

Here, too, the claims immigrants make can come at a cost to African Americans. See Rene P. Ciria-Cruz, *Activists Must Avoid Cultural Tripwires Over Immigration*, NEW AM. MEDIA, June 1, 2006, [http://news.newamericanmedia.org/news/view\\_article.html?article\\_id=c18d2713fa49471adc89cdb7cb0fb3b8](http://news.newamericanmedia.org/news/view_article.html?article_id=c18d2713fa49471adc89cdb7cb0fb3b8) (“Protest signs such as ‘We came here to work hard’ or ‘We’re not criminals’ or ‘We’re not on welfare’ may be perceived as invoking negative black stereotypes as a way to distinguish Latinos. Unchecked, such statements will only deepen the divide between the communities.”).

270. A mainstream advocacy group, the National Immigration Forum opens its position paper on immigration reform with the observation that “[t]he presence of large numbers of unauthorized immigrants in the nation’s workforce is indisputable; their hard work is widely recognized to be an asset to the United States.” National Immigration Forum, Introduction, [http://www.cirnnow.org/content/en/legislation\\_cir\\_backgrounder.htm](http://www.cirnnow.org/content/en/legislation_cir_backgrounder.htm) (last visited Feb. 10, 2008). The Forum states on its website that one of its principle goals is to “legalize the status of hard working immigrants caught in legal limbo.” National Immigration Forum: Inside the Forum, <http://www.immigrationforum.org/DesktopDefault.aspx?tabid=29> (last visited Apr. 6, 2008).

271. Jonathan Fox, *Unpacking “Transnational Citizenship,”* 8 ANN. REV. POL. SCI. 171, 176 (2005).

## V. THE LENS APPLIED

### A. Two Different Yardsticks for the Citizenship Value of Work

In mapping the paths discussed in the previous section, we have emphasized that the route migrants like Dinora travel to work in the United States looks quite different than the road trod by African Americans like Irving. When these groups meet in the U.S. workplace, it is not surprising that there is often conflict. Simply put, new Latino immigrants and African Americans use different yardsticks to measure the citizenship value of their work.

For new immigrants, the yardstick is global and, at least initially, short-term. From migrants' home country point of reference, low-wage work can lead to belonging in ways that it cannot when the worker is based exclusively in the United States. When a woman like Dinora does low-wage work here, through her own sacrifices she is likely to be able to provide meaningful financial support and some tangible advancement (in the form of higher education levels, an increase in property ownership, investment in business, and so on) to her family back in Mexico. In turn, the value of her remittances increases her own status as a political actor in Mexico, as well as that of her family and her village.<sup>272</sup> These are citizenship payoffs from work in the United States, even though they are delivered in another country.

The fact that home country standing is—at least in the early years—the most important yardstick by which to measure work experience has a direct impact on how migrants view work. A transnational perspective provides them with an outside point of reference that can make even abusive working conditions seem more tolerable, in part because they are perceived as a temporary sacrifice for a valuable payoff. This focus may increase migrants' willingness to work under what African Americans and other native workers consider degrading conditions. The combination of this perspective, the legally structured subordination of migrants in the workplace, and the financial burdens that migrants carry renders many new Latino immigrants reluctant to turn down jobs or to complain about work conditions.<sup>273</sup> Taken together, these factors boost the value of low-wage work for migrants and cushion the impact of the degraded status associated with such work in the United States.<sup>274</sup>

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272. See *supra* notes 259–261 and accompanying text.

273. See discussion *supra* Part IV.B.

274. Despite these circumstances, immigrants (particularly Latino and Latina immigrants) have been at the forefront of many of the most prominent labor organizing struggles and victories

African Americans doing low-wage work today use a very different yardstick to measure the citizenship value of their work, one that is exclusively domestic<sup>275</sup> and long term.<sup>276</sup> In contrast to migrants, African Americans in low-wage jobs cannot assess the monetary and dignitary payoff of their work in another country's currency. Native black workers must spend the dollars they make within the U.S. economy, and the social worth of their labor is assessed only by U.S. standards. By these measures, low-wage work has failed and continues to fail to deliver on citizenship for African Americans. As noted in the previous section, black workers in the United States suffer much higher rates of unemployment and earn lower wages than any other group of workers.<sup>277</sup> For them, low-wage work serves neither as a ladder out of working poverty nor as a fundamental source of respect and belonging in society.<sup>278</sup> The jobs in which the majority of working African Americans toil represent, instead, a denial of the economic

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of the past two decades. For two recent examples in the South, see FINK, *supra* note 67, *passim*, (describing an extended labor organizing campaign among Guatemalan immigrant workers at a poultry plant in Morganton, North Carolina); Kim Cobb, *As Factory Jobs Leave and Latino Immigrants Arrive in Morristown, Tenn., the Leader of a Dying Labor Union Sees Hope in A Slaughterhouse*, HOUSTON CHRON., Oct. 24, 2006, at A1 (describing the Latino-immigrant-led organizing victory at chicken processor Koch Foods). In urban areas with large Latino populations and active labor movements, Latino leadership in labor organizing efforts is all the more evident. MILKMAN, *supra* note 45, chs. 3 & 4. For the argument that new immigrants are not themselves "unorganizable," but rather labor in jobs that are structured in ways that make them difficult to organize, see Ruth Milkman, *Organizing the Unorganizable*, BOSTON REV., Sept.–Oct. 2006, available at <http://www.bostonreview.net/BR31.5/milkman.php>. To reiterate, we do not see the lens we offer as a deterministic predictor of behavior, but as a descriptive and interpretive tool.

275. Our reference to a domestic yardstick is not intended to imply that African Americans lack interest in or awareness of international issues. We simply mean that the typical black worker must pay U.S. prices for the goods and services she buys for herself and her family and will reap whatever citizenship rewards work has to offer her within the United States—as opposed to immigrants, who may be able to get more value out of the low wages they earn within the economies of their home countries.

276. Important work remains to be done on the parallels and divergences between the position occupied by African American migrants during the Great Migration and the position occupied by new Latino migrants today. One key difference, of course, is that black migrants were legal citizens, while the new migrants are not. But the two groups were used by employers in similar ways and may have seen their opportunity to gain a foothold in the labor market similarly as well. These parallels reinforce the idea that the social positions we describe for African American and new Latino immigrant low-wage workers today are not inherent in the group, but in the structural context as distorted by racism and employer manipulation.

277. See discussion *supra* notes 235–237 and accompanying text.

278. See, e.g., STEVEN C. PITTS, CTR. FOR LABOR RESEARCH AND EDUC., *BLACK WORKERS IN THE BAY AREA: EMPLOYMENT TRENDS AND JOB QUALITY: 1970–2000*, at 2 (2006) (arguing that "there is a two-dimensional crisis of work in the Black community," "the crisis of unemployment" and "the crisis of low-wage jobs").

enfranchisement that the black community has so long sought.<sup>279</sup> In addition, given the lack of mobility that low-skilled black workers have experienced in the United States, they can reasonably anticipate that they will be in low-wage jobs for most, if not all, of their working lives. The impossibility, for many low-wage African American workers, of getting ahead no matter what they do represents a fundamental rupture of the link between work and citizenship. That yet another group of migrants has arrived in the United States and seems poised to jump ahead of African Americans in the struggle to get a foothold in American society only underscores this reality.<sup>280</sup>

Many African American workers' reaction to workplace demands reflects the recognition that they are likely to remain in low-wage jobs over the long term and that acquiescence in an employer's unreasonable and often unlawful demands is unlikely to bring any rewards. Because low-wage work, for them, represents a denial of economic opportunity rather than a potential ladder out of oppressive conditions, and because they must preserve the physical capacity to continue to labor in such jobs through old age, they seek to exercise some control over the terms and pace of the work in which they engage. From the perspective of African Americans in the workplace, if the fight over dignity, respect, and citizenship through work is to be won, it must be fought every day, with the same spirit of resistance that informed past struggles.

The very different stances many African Americans and new Latino immigrants have with respect to work and citizenship—African Americans' desire to control work pace and conditions in order to ensure a modicum of dignity and respect within the United States, and immigrants' incentive to do whatever the boss asks in order to achieve greater economic and social status outside this country—sets up a clash when they meet in the workplace; one that is intensified by racial segregation and an inability to communicate with each other.<sup>281</sup> As Barbara Ellen Smith has argued, so long as the groups

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279. *Id.*; STEVEN C. PITTS, CTR. FOR LABOR RESEARCH AND EDUC., *JOB QUALITY AND BLACK WORKERS: AN EXAMINATION OF THE SAN FRANCISCO BAY AREA, LOS ANGELES, CHICAGO AND NEW YORK* 6 (2007); *see also* sources cited *supra* notes 235–238.

280. For an insightful reflection on this phenomenon in the context of the 2006 immigrant marches, see Erin Aubry Kaplan, *What Was Lost in the Crowd*, L.A. TIMES, May 3, 2006, at B13 (“[Black employment has never been as noble or as resonant a cause as that of the immigrant worker. It is an orphaned cause still looking for something or someone to take it up. Blacks who’ve more than earned their ‘Americanness’ are still trying to make that point today. . . . Blacks are even losing their historic and symbolic role as a mirror of the nation’s conscience; another group now holds a mirror that is less damning and easier for the nation to gaze into.”).

281. *See* Gordon & Lenhardt, *supra* note 27, at 41–42.

continue to be positioned in opposition to each other, and so long as each group's history and perspective remain opaque to the other, such conflict will recur<sup>282</sup>—and, we would add, it will have a particular intensity because citizenship itself is at stake.

B. Workers as Agents in Constructing Work-Related Citizenship: Conflict

We should not be misunderstood to be making the deterministic claim that history and structural circumstances alone account for the actions and interactions of African Americans and new Latino immigrants at work. Both African Americans and Latinos exercise a great deal of agency in the low-wage context.<sup>283</sup> In spite of their relative powerlessness in the economic structures in which they labor, Latinos and African Americans are deliberate actors in the labor market and in the market for citizenship.

Devon Carbado and Mitu Gulati have written eloquently about agency and the extent to which outsiders work their identities to fit in and get ahead in the elite contexts of the law firm and law faculty.<sup>284</sup> Because of the negative stereotypes associated with their identities, these outsiders, Carbado and Gulati argue, are “engaged in a continual process of negotiating and performing identity,”<sup>285</sup> one that requires them to determine whether to honor their “sense of self” or to signal compliance with “institutional values” in a way that maximizes opportunities for advancement on the job.<sup>286</sup> We maintain that there is a related dynamic underway at the bottom of the job ladder, where workers may perceive themselves as having few real choices. Both African American and Latino immigrant low-wage workers engage in identity work designed to respond in some way to the negative stereotypes and stigma associated with their particular groups. While, as we suggest below, these identity-based strategies may grow directly out of a particular group's history and unique path to the workplace, they can also intensify the conflict between African Americans and Latino immigrants on the job.

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282. Smith, *supra* note 18, at 19–20.

283. Devon Carbado & Mitu Gulati, *Working Identities*, 85 CORNELL L. REV. 1259, 1265 & n.11 (2000) (“[T]he subjects of inequality are not simply acted upon, but manifest a partial agency.” (quoting Kathryn Abrams, *Afterword: Critical Strategy and the Judicial Evasion of Difference*, 85 CORNELL L. REV. 1426, 1428 (2000))).

284. *Id.* Although Carbado and Gulati focus on the identity work required of outsiders in the professional workplace, they note that all people do some form of identity work on the job. The question of how low-wage work differs from the white-collar context with regard to the identity work it demands is largely uncharted territory.

285. *Id.* at 1264.

286. *Id.*

Some Latino migrants, recent research suggests, are not unconscious of the comparative advantage that a reputation for subservience and hard work brings in the market for labor.<sup>287</sup> As a result, migrants facing few options for meaningful advancement may choose to work their identity in a way that would refute negative stereotypes and “exploit . . . positive stereotype[s].”<sup>288</sup> The remarks of a Latino construction worker in Memphis are illustrative: “When we arrive, we work as fast as we can so we can be recognized. This is what bothers the American Blacks, because in a certain way, we are competing . . . .”<sup>289</sup> As Barbara Ellen Smith concludes, “[o]ut-performing American workers of whatever race was a pragmatic strategy for maximizing the likelihood of retention and referral by employers, as well as a cultural position that countered any disparagement attached to ‘immigrant,’ ‘illegal alien’ or ‘Mexican.’”<sup>290</sup> This strategy feeds directly into the economic competition and set of employer racial preferences that we discuss in Section II. To the extent that new Latino immigrants can maintain employers’ view of them as more hardworking, compliant, and reliable than native-born workers, especially African Americans, they advance their position on the path to belonging. This is both because they can push competitors to the side and because their own sense of the dignity and value of their contributions is enhanced.

In the case of African Americans, the resistance strategies we have emphasized as critical to the path they have taken to the workplace are themselves a form of identity play, a clear choice to exercise their agency in ways that, if successful, could encourage an employer to treat them in ways that acknowledge their status as formal citizens, not to mention human beings. But the responses we describe are by no means universal. Latinos may engage in acts of resistance.<sup>291</sup> Likewise, African American workers

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287. Smith, *supra* note 18, at 14–16; Marrow, *supra* note 1, at 5–6.

288. Carbado & Gulati, *supra* note 283, at 1264. In contrast, some workers might act in ways that confirm negative stereotypes when such behavior serves to fulfill other interests or needs. See Kelley, *supra* note 65, at 94 (suggesting that Blacks engaged in behavior that confirmed negative stereotypes regarding laziness and initiative as a way of controlling the pace of work). For work on negative stereotypes concerning Latinos, see Cynthia Kwei Yung Lee, *Race and Self-Defense: Toward a Normative Conception of Reasonableness*, 81 MINN. L. REV. 367, 441–52 (1996), and Ediberto Román, *Who Exactly Is Living La Vida Loca?: The Legal and Political Consequences of Latino-Latina Ethnic and Racial Stereotypes in Film and Other Media*, 4 J. GENDER RACE & JUST. 37, 46–48 (2000).

289. Smith, *supra* note 18, at 15.

290. *Id.* at 14.

291. See *supra* note 274. Many new immigrants come to the United States with their own strategies for resistance, refusing to serve as passive recipients of abuse. In that sense, they resemble many people in oppressive situations who nonetheless find ways to exercise their agency. See JAMES C. SCOTT, *DOMINATION AND THE ARTS OF RESISTANCE: HIDDEN TRANSCRIPTS* (1990); Austin, *supra* note 124, at 25–29; Carbado & Gulati, *supra* note 283, at 1265.



may feel compelled to work their identity in ways that are designed to make themselves more appealing to employers who prefer new immigrants in hiring. Silence in the face of oppressive tactics, eagerness to take on even the most demeaning of tasks, and efforts to appear agreeable are all strategies that would disprove negative stereotypes about African American low-wage workers and encourage a potential employer to disregard his or her preference for immigrants.<sup>292</sup>

Workers may also exercise agency in the labor market through strategies that are decidedly racial or nativist, as well as economic. For some Latino immigrants, this is to say that only part of the message they seek to send is “we are compliant workers;” the other part is “we are not Black.”<sup>293</sup> Such distancing from African Americans is, in part, a reflection of new Latino migrants’ prejudices. In their study of Latino immigrants in Durham, North Carolina, for example, Paula McClain and her fellow researchers found that Latino immigrants “hold negative stereotypical views of blacks” and “feel they have more in common with whites than with blacks.”<sup>294</sup>

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292. For more on stereotypes of African Americans, see Sherri Burr, *Television and Societal Effects: An Analysis of Media Images of African-Americans in Historical Context*, 4 J. GENDER RACE & JUST. 159–74 (2001), Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258, 1262–64 (1992), and Lenhardt, *supra* note 186, at 858–60. A number of legal scholars have addressed the effects of racial stereotypes in the employment context. See, e.g., Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161 (1995).

293. At different points in history, Latinos have made this claim explicitly. In trying to combat discrimination against them in housing, public accommodations, and schools during the 1940s and 1950s, many “Mexican community members argued that discrimination against Mexicans in the United States is illegal because Mexicans are white, and unlike blacks, no state statutes permitted discrimination against whites.” Richard Delgado, *Linking Arms: Recent Books on Interracial Coalition as an Avenue of Social Reform*, 88 CORNELL L. REV. 855, 881 (2003) (book review). Asian Americans have, at times, employed a similar strategy to avoid discriminatory treatment. Taunya Lovell Banks, *Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building*, 5 ASIAN L.J. 7, 13 (1998); see also *Gong Lum v. Rice*, 275 U.S. 78 (1927) (showing a Chinese American father seeking to prevent his child’s assignment to segregated black public school by arguing that Asians were more like Whites than Blacks).

294. McClain et al., *supra* note 33, at 581. Scholars such as Tanya Hernández have argued that Latino immigrants to the United States bring an entrenched sense of racial hierarchy with them from their home countries. Tanya K. Hernández, *Latino Inter-Ethnic Employment Discrimination and the “Diversity” Defense*, 42 HARV. C.R.-C.L. L. REV. 259, 267–71 (2007); Tanya K. Hernández, *Roots of Anger: Longtime Prejudices, Not Economic Rivalry, Fuel Latino-Black Tensions*, L.A. TIMES, Jan. 7, 2007, at M1; see also Taunya Lovell Banks, *Toward a Global Critical Feminist Vision: Domestic Work and the Nanny Tax Debate*, 3 J. GENDER RACE & JUST. 1, 31 (1999) (providing an example of a racialized hierarchy between non-English speaking Latinas and other minority groups); Enid Trucios-Haynes, *Why “Race Matters:” LatCrit Theory and Latina/o Racial Identity*, 12 LA RAZA L.J. 1, 25–26 (2000–2001) (explaining the manner in which Latinos identify themselves in a racial hierarchy). Along these lines, social scientists Robert Sampson and Stephen Raudenbush have considered the effect of race and racial attitudes on perceptions of disorder in an urban

By distancing themselves from and contrasting themselves with black workers, however, immigrants do more than express their racial attitudes; they seek to ally themselves with Whites, thereby moving closer to a claim on citizenship.<sup>295</sup> Like other immigrants before them,<sup>296</sup> Latino immigrants understand that positioning oneself and one's group as "not Black" is an essential component of a strategy to achieve citizenship-as-belonging.<sup>297</sup> As

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neighborhood. Among other things, they found that "the percentage [of] black [residents] in a block group is linked more closely to perceived disorder for Latinos than for other ethnic groups." Robert J. Sampson & Stephen W. Raudenbush, *Seeing Disorder: Neighborhood Stigma and the Social Construction of "Broken Windows"*, 67 SOC. PSYCHOL. Q. 319, 336 (2004). They attribute this finding to the likelihood that Latino immigrants received negative messages about African Americans immediately upon arriving in this country. *Id.*

Prior to the 1990s, most research on racial attitudes studied the perceptions of Whites vis-à-vis African Americans and vice versa, with limited scholarship on white-Latino or white-Asian attitudes. Studies of African American, Asian, and Latino views of each other were nearly nonexistent. See John J. Betancur, *Framing the Discussion of African American-Latino Relations: A Review and Analysis*, in NEITHER ENEMIES NOR FRIENDS: LATINOS, BLACKS, AFRO-LATINOS 159, 162 (Anani Dzidzienyo & Suzanne Oboler eds., 2005); McClain et al., *supra* note 33, at 575. This gap is consistent with the Critical Race Theory critique of the black-white binary as the predominant—though inaccurate—frame for the analysis of race relations in the United States. See, e.g., Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CAL. L. REV. 1213 (1997).

For more recent social science research focusing on Latino/African American relationships, see, e.g., TATCHO MINDIOLA, YOLANDA FLORES NIEMANN & NESTOR RODRIGUEZ, *BLACK-BROWN RELATIONS AND STEREOTYPES* (2002); Eric Oliver & Janelle Wong, *Inter-Group Prejudice in Multiethnic Settings*, 47 AM. J. POL. SCI. 567 (2003) (finding that the degree of negative racial stereotyping by one group of another rises with the first group's racial isolation in a neighborhood).

295. See Robert S. Chang & Neil Gotanda, *The Race Question in LatCrit Theory and Asian American Jurisprudence*, 7 NEV. L.J. 1012, 1017–27 (2007); see also Claire Jean Kim, *The Racial Triangulation of Asian Americans*, in ASIAN AMERICANS AND POLITICS: PERSPECTIVES, EXPERIENCES, PROSPECTS 39, 42 (Gordon H. Chang ed., 2001), cited in Chang and Gotanda, *supra*, at 1024.

296. Work has played a pivotal role in this dynamic throughout the history of immigrant-African American relations. See Herbert Hill, *Race and Ethnicity in Organized Labor: The Historical Sources of Resistance to Affirmative Action*, 12 J. INTERGROUP REL. 5, 7 (1984) (discussing the last "Great Wave" of immigration, roughly from 1860 to 1920, and arguing that "for immigrant workers the Americanization process was directly linked to the workplace" and the exclusion of black workers); see also DAVID R. ROEDIGER, *THE WAGES OF WHITENESS* (1991); DAVID R. ROEDIGER, *WORKING TOWARD WHITENESS* (2005). As Bruce Nelson has eloquently written:

[T]o the Irish becoming "white" meant creating social and psychological distance between themselves and African Americans and, as a first priority, severing the occupational and residential ties that linked the two groups in the popular imagination. Frederick Douglass warned that in taking jobs away from blacks the Irish would "assume our degradation." But Irish longshoremen developed a compelling answer. To avoid the "taint of blackness," and the heavy psychological burden of "slaving like a nigger," they would drive blacks from the labor market altogether and, in the process, redefine the jobs they appropriated as "white."

NELSON, *supra* note 74, at 20–21.

297. Frank Wu maintains that Asian Americans have also internalized the extent to which "blacks b[ear] the ignominy of their skin color." FRANK H. WU, *YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE* 304 (2001) (discussing the extent to which Asian American

author Toni Morrison has explained, “the move into mainstream America always means buying into the notion of American blacks at the real aliens. Whatever the ethnicity or nationality of the immigrant, his nemesis is understood to be African American.”<sup>298</sup>

Black workers, in turn, may practice their own forms of racial triangulation,<sup>299</sup> positioning themselves as “citizens just like white workers” and emphasizing that noncitizen immigrants are the outsiders. While prominent African American leaders have consistently voiced support for legislative enactments that would aid Latino immigrants, such support has not been uniform in the black community.<sup>300</sup> For example, many African Americans supported California’s Proposition 187, which denied public benefits and services to undocumented Latino immigrants.<sup>301</sup> In addition, some Blacks have voted for ballot measures against bilingualism<sup>302</sup> and participated in “job first” campaigns that urge employment of legal citizens before newcomers through organizations such as the Choose Black America group that emerged in Washington, D.C. in the wake of immigration reform efforts.<sup>303</sup> The clear message sent by many African Americans is that, by virtue of 150 years of formal citizenship undermined by discrimination, “we are next in line” for decent jobs and the citizenship benefits they deliver.<sup>304</sup>

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immigrants have realized that “blacks . . . even if they were Americans . . . could vie with aliens to be the least liked”).

298. Toni Morrison, *On the Backs of Blacks*, in *ARGUING IMMIGRATION: THE DEBATE OVER THE CHANGING FACE OF AMERICA* 97–100 (Nicholaus Mills et al. eds., 1994).

299. Racial triangulation of this sort is not limited to the relationship between African Americans, Latinos, and native Whites. Naomi Mezey notes that an early form of triangulation involving African Americans, Whites, and Chinese immigrants can be found in Justice Harlan’s much-quoted dissent in *Plessy v. Ferguson*, 163 U.S. 537 (1896), which “makes a plea for black inclusion at the expense of the Chinese.” Naomi Mezey, *Erasure and Recognition: The Census, Race and the National Imagination*, 97 *NW. U. L. REV.* 1701, 1737 (2003).

300. See Earl Ofari Hutchinson, *Commentary: Why Blacks March Against Illegal Immigration—And Why They Shouldn’t*, *NEW AM. MEDIA*, June 21, 2007, [http://news.newamericamedia.org/news/view\\_article.html?article\\_id=bedb04d502d6a7af148fd569fa2247fb](http://news.newamericamedia.org/news/view_article.html?article_id=bedb04d502d6a7af148fd569fa2247fb).

301. See Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California’s Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 *WASH. L. REV.* 629, 641 n.57, 659 n.144 (1995); see also Hutchinson, *supra* note 300. The Pew Research Center for the People and the Press reports that while African Americans generally have positive attitudes about new immigrants, Blacks in areas where the influx of immigrants has been especially high generally voice strong opposition to immigration and concern about the economic and cultural effects of new migrants on the country. Doherty, *supra* note 22 (noting, *inter alia*, that although along many dimensions African Americans nationally are considerably more sympathetic to immigrants than whites, Blacks in the Raleigh-Durham area expressed deep reservations about immigration).

302. See Hutchinson, *supra* note 300.

303. Earl Ofari Hutchinson discussed this organization in recent commentary on black attitudes toward immigration reform. See *id.*

304. To counter the predominant narrative of a Black/immigrant divide, some African American leaders and advocacy groups have recently sought to open a constructive dialogue on

In employing these racial strategies, African Americans and Latino immigrants, who both occupy the bottom rungs of the American racial and social ladder,<sup>305</sup> seek to establish their group's superior claim for elevated social status and belonging and to portray themselves as possessing a truly American identity, one that might spare them from the worst of the treatment to which racial minorities have been subjected.<sup>306</sup> As Devon Carbado has explained, the process of taking on an American identity has long been, and remains, one of "racial naturalization," "the sense in which the experience of racism...socializes people to become, and understand themselves as, American via their experiences with race."<sup>307</sup> This is the case both for African Americans, for whom exclusion and racial subordination are quintessential American experiences, and for new Latino immigrants, who, as people of color, both experience racism and become Americanized by practicing it.<sup>308</sup>

It bears noting that the strategies just described, for both Blacks and Latinos, have complex implications. For African Americans, the long-term success of a strategy of emphasizing legal citizenship as a point of commonality with Whites seems unlikely to yield substantial gains in a society where, as a group, Blacks are still denied the substantive benefits of American citizenship most Whites take for granted. Latino migrants face a comparable problem. However they conceive of themselves,<sup>309</sup> and however they attempt to associate themselves with Whites as a part of a strategy of racial triangulation, most Latinos will not be perceived as white by mainstream society, and thus their claims to belonging are unlikely to be

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immigration within the black community, with the goal of developing a coordinated response to anti-immigrant sentiment. The Center for New Community's Which Way Forward Initiative is a prominent example. CENTER FOR NEW COMMUNITY, WHICH WAY FORWARD SUMMARY: AFRICAN AMERICANS, IMMIGRATION, AND RACE (2007) (on file with the authors).

305. Athena Mutua has suggested that African Americans and Latinos alternate occupying the lowest rung of the social ladder. See Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177, 1202–05 (1999).

306. For a discussion of the bottom of the ladder and its implications for racial minorities, see Devon Carbado, *Race to the Bottom*, 49 UCLA L. REV. 1283 (2002); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

307. Devon W. Carbado, *Racial Naturalization*, 57 AM. Q. 633, 646 (2005).

308. *Id.* at 652–53. But cf. Tanya Katerí Hernández, *Latino Inter-Ethnic Employment Discrimination and the "Diversity" Defense*, 42 HARV. C.R.-C.L. L. REV. 259, 267–73 (describing extent to which Latino immigrants bring racist attitudes with them to the United States).

309. See generally Hernández, *supra* note 308, at 274 (discussing preference for categorization as white among Latinos, including new immigrants). The question whether Latinos should be regarded as white or as people of color is one that has garnered much attention. See, e.g., Colloquy, *Our Next Race Question: The Uneasiness Between Blacks and Latinos*, HARPER'S MAG., April 1996, 55, 59–60 (noting scholars Cornell West and Jorge Klor de Alva and writer Earl Shorris who question whether Latinos should be regarded as brown people of color or cultural minorities in the U.S.).

fully accepted.<sup>310</sup> Indeed, as previously discussed, jobs that become identified today as “immigrant work” or “Mexican work” are degraded in the eyes of both white and black native-born workers.<sup>311</sup> In sum, racial stigma and bias undermine the effectiveness of race and economic-based strategies to advance the position of both African American and Latino immigrant low-wage workers.

### C. Workers as Agents in Constructing Work-Related Citizenship: Solidarity

Thus far, we have focused exclusively on the tensions evident in the relationship between African American and Latino immigrant workers, trying to paint a more accurate picture than has been offered to date by media accounts and legal scholarship. To help illustrate how the conflict plays out in the low-wage workplace, we asked you to imagine two poultry workers, Irving and Dinora, an African American and a Mexican immigrant who have different conceptions of their work and its potential for delivering on the promises of citizenship.

Having described the obstacles to collaboration through the lens of citizenship, we turn now to the possibility of cooperation and solidarity

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310. Many immigrant groups have succeeded in distancing themselves from African Americans, only to discover that they have been assigned a perpetual outsider status by mainstream society. As Neil Gotanda, Keith Aoki, Leti Volpp and Natsu Taylor Saito have argued, however long they and their families have lived in the United States, Asian Americans have been racialized and are seen as foreign, not fully a part of the polity. Keith Aoki, *'Foreign-ness' & Asian American Identities: Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes*, 4 UCLA ASIAN PAC. AM. L.J. 1 (1996); Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law*, 76 OR. L. REV. 261, 296–97 (1997); Volpp, *supra* note 102, at 82–83.

Others have argued that parallel assumptions of foreignness apply to other ethnic communities of color, including Latinos and (particularly post-9/11) to people who are Muslim and/or appear to be of Middle Eastern or South Asian descent. Enid Trucios-Haynes, *Latinos/as in the Mix: Applying Gotanda's Models of Racial Classification and Racial Stratification*, 4 ASIAN L.J. 39 (1997); Neil Gotanda, *Race, Citizenship, and the Search for Political Community Among "We the People"*, 76 OR. L. REV. 233, 252 (1997); Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2002); see also Muneer Ahmad, *Homeland Insecurities: Racial Violence the Day After 9/11*, 20 SOC. TEXT 72 (2002). Conservative critics such as Samuel Huntington have taken this assumption of foreignness to its logical conclusion in scare-mongering about Latino immigration's devastating cultural impact on American society. SAMUEL HUNTINGTON, *WHO ARE WE? THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY* (2004).

311. This effect is substantially different than that which characterized the white immigrant assumption of job categories from Blacks. Indeed, white immigrants contended that the status of the work was elevated by its association with whites and that the payment and treatment they received should be similarly improved. See NELSON, *supra* note 74; ROEDIGER, *THE WAGES OF WHITENESS*, *supra* note 296; ROEDIGER, *WORKING TOWARD WHITENESS*, *supra* note 296.

between these two workers and ask you to imagine a slightly different scenario. In this version of the story, Irving finds Latino immigrants who will stand with him in trying to get management to improve conditions at the poultry plant. Dinora is among those workers. Because of her undocumented status, she had been hesitant to engage in any activity that would draw attention. But she has slowly started to realize that she has important things in common with Irving and other African Americans; though they come from different worlds, there are ways in which their interests are closely aligned.

1. Emerging Examples of Solidarity Between African American and Latino Immigrant Low-Wage Workers

If media accounts are to be believed, the new version of Irving and Dinora's narrative is not a real possibility. The popular understanding is that the relationship between African Americans and new Latino immigrants is characterized solely by conflict. But while the new research discussed in Part I confirms that tensions do exist between these groups, it also establishes that cooperation and solidarity are not merely the stuff of narrative. Indeed, evidence of solidarity is found in the same workplaces in the new South where researchers have documented tensions between African Americans and new Latino immigrants.

For example, Barbara Ellen Smith and Angela Stuesse, whose interviews revealed that Blacks and Latinos were often severely critical of one another, also found meaningful levels of cooperation and commonality across racial lines, with workers recognizing shared experiences of economic exploitation, racism,<sup>312</sup> and/or bad working conditions.<sup>313</sup> One African American man in Smith's survey said of his Latino co-workers, "They are trying to make a living like I am."<sup>314</sup> Another remarked, "Just like anybody else, they need to work. . . . Who am I to say they shouldn't be over here?"<sup>315</sup> Workers in Stuesse's study offered similar views. Latino workers, although initially largely negative in their views of Blacks, "recognized on further reflection that African Americans also were affected by low wages, repetitive motion injuries and other dangerous working conditions."<sup>316</sup> Likewise, a number of African American workers identified with the difficulties faced by new

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312. Smith, *supra* note 40, at 62.

313. *Id.* at 81.

314. *Id.*

315. *Id.*

316. Grabowski, *supra* note 37, at 56.

arrivals, as suggested by one older woman's remark: "They's where we was at fifty years ago before we even knew our rights."<sup>317</sup>

Jamie Winders and Helen Marrow also saw evidence of collaboration and solidarity among Latino immigrants and Blacks. Winders reported not only that little conflict existed among the Nashville hotel workers she studied, but that there was "a fairly consistent downplaying of the importance of demographic changes on daily workplace activities."<sup>318</sup> She also found a particularly high rate of positive feelings across racial and ethnic lines in jobs within a hotel that required active collaboration on work tasks.<sup>319</sup> Marrow's study of North Carolina poultry workers consistently "report[ed] positive relations among workers of different racial and ethnic backgrounds as well as a lack of racial discrimination."<sup>320</sup> Marrow surmises that the creation and enforcement of antidiscrimination policies by management at the plant may have contributed to this cooperative environment. But equally significant, if not more important, she suggests, was simple contact between the workers of different racial and ethnic backgrounds, such as attempts by black workers to learn Spanish and efforts by Latino immigrants to reach out to native born coworkers. As a Mexican American woman observed of both black workers and Latino immigrants at the plant, "even at first if they do come in here and . . . are a little bit biased against another culture, once you work with them every day, all day long, they're the only person you see, right next to you day in, day out. I mean, it's hard not to become friends with someone . . . I feel that that right there will bridge a lot of gaps."<sup>321</sup>

Finally, our own research in this area has uncovered numerous examples of cooperation and collaboration between Latino and African American workers. In a recent paper, we documented "spontaneous" protest actions undertaken by workers, such as the 1996 walkout by Latino immigrants at a Delaware poultry plant that led to enhanced relations with black workers and union members.<sup>322</sup> We also identified a number of solidarity-building initiatives undertaken by community-based organizations in the new South.<sup>323</sup>

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317. Stuesse, *supra* note 7, at 21.

318. Winders, *supra* note 22, at 348. Indeed, Winders found that "many native-born workers—both black and white—seemed either not to notice or to give much weight to the changing faces of their co-workers." *Id.* at 351.

319. *Id.* at 349–50.

320. *Id.* at 8.

321. *Id.* at 11.

322. See Gordon & Lenhardt, *supra* note 27, at 27–28. Our sense is that such walkouts are, in fact, rarely spontaneous. *Id.* Rather, they frequently occur in contexts in which unions had been active or workers were already organized or organizing. *Id.* at 28.

323. *Id.* at 27–37.

For example, the North Carolina African American/Latino Alliance, founded by Black Workers for Justice and the Farm Labor Organizing Committee,<sup>324</sup> sponsored a Black-Brown Freedom School designed to help Blacks and Latino immigrants better understand their shared histories and experiences in the global workplace,<sup>325</sup> among other initiatives. The Carolina Alliance for Fair Employment—a formerly primarily African American organization—launched a Hispanic Outreach Project in 2000. Lastly, we highlighted a range of workplace-centered solidarity efforts by unions.<sup>326</sup> These include an ongoing campaign by the United Food and Commercial Workers to organize the African American and Latino immigrant workforce of the Smithfield Packing Plant in Tar Heel, North Carolina.<sup>327</sup> In these and other examples, we demonstrate that solidarity between Blacks and Latino immigrants is emerging despite the divisions between the two groups.

## 2. What Supports the Emergence of Solidarity in the Low-Wage Work Context?

These concrete examples of solidarity-building just discussed make clear that common ground does exist between African American and Latino immigrant workers. But what permits solidarity to develop in the low-wage context? Our sense is that the law has done little to foster cooperation between low-wage workers like Irving and Dinora and instead reinforces the conflict dynamic. For example, Title VII jurisprudence, in addition to failing to address the racially segregated work niches discussed in Part II,<sup>328</sup> has, as Noah Zatz noted in a 2002 article, left workers “who break ranks to engage in intergroup solidarity” without employment protection.<sup>329</sup> Similarly, the National Labor Relations Act, which was intended to facilitate collective action, has been interpreted in ways that, as Elizabeth Iglesias has argued,

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324. See Elizabeth Martinez, *Black & Brown Workers Alliance Born in North Carolina: Five Organizers Speak*, Z MAG., Mar. 2000, <http://www.zmag.org/zmag/viewArticle/13401>.

325. Telephone Interview by R.A. Lenhardt with Ajamu Dillahunt, Founding Member, Black Workers for Justice, and Former Local President, American Postal Workers Union (Oct. 4, 2007).

326. Gordon & Lenhardt, *supra* note 27, at 32–39.

327. See *id.* at 33–36; see also Steven Greenhouse, *Hundreds, All Nonunion, Walk Out at Pork Plant*, N.Y. TIMES, Nov. 17, 2006, at A22; Katrina vanden Heuvel, *Smithfield Walkout Challenges Agribiz Giant*, NATION, Nov. 20, 2006, <http://www.thenation.com/doc/20061204/kvh>; Press Release, Smithfield Justice Campaign, Smithfield Workers Win Negotiated Agreement With Company on Unnecessary Firings (Nov. 18, 2006), available at [http://www.smithfieldjustice.com/Documents/Press\\_Room/Press\\_Releases/PDFs/Smithfield\\_Workers\\_Win.pdf](http://www.smithfieldjustice.com/Documents/Press_Room/Press_Releases/PDFs/Smithfield_Workers_Win.pdf).

328. See *supra* Part II.A.

329. Noah D. Zatz, *Beyond the Zero-Sum Game: Toward Title VII Protection for Intergroup Solidarity*, 77 IND. L.J. 63, 69 (2002). Zatz’s principal focus is on acts of solidarity by white men with people of color, *id.* at 67, but his idea has applications in the Latino-African American context as well.



interfere with people of color's assertions of group interests and inhibit the expression of solidarity across racial barriers.<sup>330</sup>

Employer sanctions, whose negative impact on immigrants' willingness to assert their rights we described earlier, have also proven to be a barrier to cross-racial worker solidarity.<sup>331</sup> Furthermore, while undocumented workers have always been subject to deportation, the U.S. government has recently begun aggressively enforcing immigration law through raids and new programs that pressure employers to fire workers whose paperwork is not in order.<sup>332</sup> The result has been an intensified climate of fear for immigrants in the workforce. Thus, the law provides employers with tools to derail the efforts of native-born workers and legally-present immigrants to join with undocumented workers to improve working conditions. In short, current law renders it difficult for undocumented workers to assert their rights, offers limited tools for addressing workplace segregation, and grants minimal support to workers who act in solidarity across racial lines.

If not law, what makes it possible for workers with different experiences of work and its citizenship value to come together in the workplace? Elsewhere, we give the issue of labor solidarity between African American and new Latino immigrants, and the conditions that foster its development, a full treatment.<sup>333</sup> Our findings there bear particular relevance for the question of whether low-wage work settings—with their high turnover and harsh working conditions—can ever function as a site for the production and exercise of citizenship.<sup>334</sup>

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330. Elizabeth M. Iglesias, *Structures of Subordination: Women of Color at the Intersection of Title VII and the NLRA*, 28 HARV. C.R.-C.L. L. REV. 395 (1993) (arguing that the interaction between Title VII and the National Labor Relations Act (NLRA) operates to limit the ability of women of color to gain redress for workplace harms and to create change both in their workplaces and in their unions); Elizabeth M. Iglesias, *Institutionalizing Economic Justice: A LatCrit Perspective on the Imperatives of Linking the Reconstruction of 'Community' to the Transformation of Legal Structures That Institutionalize the Depoliticization and Fragmentation of Labor/Community Solidarity*, 2 U. PA. J. LAB. & EMP. L. 773, 797–804 (1999–2000) (arguing that the interaction between Title VII and the NLRA interfere with the ability of communities of color to demand accountability from unions and with the emergence of genuine union-community collaboration).

On a more positive note, Michael Duff has recently argued that the NLRA can be construed to offer some protection to the immigrants who participated in the mass marches of 2006. Michael C. Duff, *Days Without Immigrants: Analysis and Implications of the Treatment of Immigration Rallies Under the National Labor Relations Act*, 85 DENV. U. L. REV. 93 (2007).

331. See *supra* notes 253–255 and accompanying text.

332. See, e.g., James C. McKinley, Jr., *Mexican President Assails U.S. Measures on Migrants*, N.Y. TIMES, Sept. 3, 2007, at A4 (“The Bush administration has stepped up raids on factories and farms suspected of hiring illegal workers, imposing heavy fines and deporting a record number of illegal immigrants in 2006.”); Editorial, *Stop the Raids*, N.Y. TIMES, Oct. 4, 2007, at A28.

333. See Gordon & Lenhardt, *supra* note 27.

334. See *supra* notes 126–131 and accompanying text.

As this Article has suggested, the answer requires close attention to the particular structure of the industry or worksite. Where individuals labor in isolation, workers are subject to intensive pressure and supervision, or the employer structures the workplace in a way that divides groups against each other, it may be nearly impossible for workers to build relationships across racial and ethnic lines or to engage in the sorts of deliberation and decisionmaking that Estlund describes as citizenship-producing.<sup>335</sup> The barriers are even higher when the workers speak different languages. These findings reinforce the conclusions of social scientists that mere contact among diverse groups of people does not automatically result in greater trust across racial difference.<sup>336</sup> Even in these contexts, however, with sustained institutional support by unions, churches, and community organizations, low-wage African American and new Latino immigrant workers have demonstrated an ability to stand together.<sup>337</sup>

In contrast, social scientists have found that in settings that promote “interdependence, common goals, [and] equal status,” and in which there is “encouragement by authorities” to work together, frequent encounters are likely to reduce prejudice.<sup>338</sup> Where African Americans and new immigrants work side by side in jobs that are somewhat insulated from direct competition, and where the tasks require some degree of teamwork, contact may enhance collaboration across racial and ethnic lines.<sup>339</sup> This effect is enhanced where employers encourage integration and enforce antidiscrimination norms.<sup>340</sup> In such contexts, work may become a forum where African Americans and new Latino immigrants meet, bond, and begin the process of building solidarity.<sup>341</sup>

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335. Jamie Winders argues that racial diversity in a workplace and even in a category of jobs within a workplace does not necessarily “translate into a racially or ethnically *interactive* workforce.” Winders, *supra* note 22, at 349 (emphasis added).

336. Robert Putnam has recently found that communities with high levels of diversity exhibit low levels of interpersonal trust. Robert D. Putnam, *E Pluribus Unum: Diversity and Community in the Twenty-First Century*, 30 SCANDINAVIAN POL. STUD. 137 (2007); John Lloyd, *Harvard Study Paints Bleak Picture of Ethnic Diversity*, FIN. TIMES (London), Oct. 8, 2006, at 1. Some scholars have found that increased cross-racial contact leads to increased competition and prejudice. Others have found “both increased animosity and reduced prejudice.” McClain et al., *supra* note 33, at 575 (internal citations omitted).

337. *Conflict and Solidarity*, *supra* note 27, at 41–49.

338. McClain et al., *supra* note 294, at 574.

339. Winders elaborates this theory in *Nashville’s New Sonido*, *supra* note 22, at 349–50. We discuss the job qualities and conditions that appear to enhance the potential for collaboration and offer additional examples in Gordon & Lenhardt, *supra* note 27, at 37, 41.

340. Gordon & Lenhardt, *supra* note 27, at 39–41.

341. Winders, *supra* note 22, at 349–50; Marrow, *supra* note 1, at 12–15.

Our second key finding is that collaborations between African Americans and new Latino immigrants and acts of resistance to employer policies are most likely to develop when both groups perceive a common interest in undertaking at least a piece of their journey on the path between work and citizenship together.<sup>342</sup> We note, for example, the important role played by new education programs and trainings by community groups and unions designed to facilitate systematic conversations about race and immigration and to identify the common concerns and histories of African American and new Latino immigrant low-wage workers. Such efforts give each group insight into the other's experience and history with work in the United States, an essential first step in the process of identifying shared ground.<sup>343</sup>

In this regard, it is essential to recognize that the social, economic, and political interests of Blacks and new Latino immigrants are dynamic. Our theory predicts that African Americans and new Latino immigrants will increasingly perceive common interests in improving their working conditions as migrants' time in the United States grows. Relatively few people continue circular migration at length; over time, most settle here with their families.<sup>344</sup> As more family members join the initial migrant on this side of the border, and as they put down roots that may lead to permanent settlement here, migrants increasingly measure the value of their work in terms

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342. NICOLÁS C. VACA, *THE PRESUMED ALLIANCE: THE UNSPOKEN CONFLICT BETWEEN LATINOS AND BLACKS AND WHAT IT MEANS FOR AMERICA* 48–49 (2004) (discussing the “presumed alliance” between Blacks and Latinos and the “shared-interest” theory of coalition formation); see also Kevin R. Johnson, *The Struggle for Civil Rights: The Need for and Impediments to Political Coalitions Among and Within Minority Groups*, 63 *LA. L. REV.* 759, 776–78 (2003) (discussing need to identify common ground between racial minorities in fight for civil rights); Kevin R. Johnson & Bill Ong Hing, *The Immigrant Marches of 2006 and the Prospects for a New Civil Rights Movement*, 42 *HARV. C.R.-C.L. L. REV.* 99, 134–37 (2007). Critical race theorist Derrick Bell has advanced the interest convergence theory in analyzing the relationship between Whites and Blacks in the United States. In considering *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954), Bell argued that Whites will only permit civil rights gains of the sort secured through that decision when they deem it to be within their group interests. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 *HARV. L. REV.* 518, 523–28 (1980). The basic contours of that theory are applicable here. See Richard Delgado, *Locating Latinos in the Field of Civil Rights: Assessing the Neoliberal Case for Radical Exclusion*, 83 *TEX. L. REV.* 489, 520–22 (2004) (noting that “interest convergence has entered the lexicon of all critical scholars as a powerful explanatory tool”).

343. *Conflict and Solidarity*, *supra* note 27, at 41–44.

344. See Douglas S. Massey, *The Settlement Process Among Mexican Migrants to the United States*, 51 *AM. SOC. REV.* 670, 670 (1986); Jeffrey S. Passel, *Undocumented Migration*, 487 *ANNALS AM. ACAD. POL. & SOC. SCI.* 181, 184 (1986). *But see* Durand, Massey, & Zenteno, *supra* note 256, at 122 (documenting an increase in return migration among Mexicans in the 1990s). Marcelli & Cornelius dispute this assertion, *supra* note 256, at 112–13.

similar to those used by African American workers; they may also gain the legal status that facilitates assertion of their rights.<sup>345</sup>

Reinforcing our claim, sociologists have documented that acts of labor solidarity become more likely as new immigrants begin to see themselves as long-term settlers in the United States, rather than as temporary sojourners.<sup>346</sup> Observers in the new South have already begun to note this phenomenon at work.<sup>347</sup> As migrants become more focused on work as a route to standing and citizenship-as-belonging in the United States, not just in their home countries, it seems likely that their interests and their expectations for the citizenship payoff of their work will begin to converge with those of African Americans.

#### CONCLUSION

The goal of this Article was to complicate the standard account of the relationship between African American and Latino immigrant low-wage workers. It offered a theory of work and citizenship more nuanced in its application to these groups and the particular paths they have traveled to the American workplace, thus better explaining the intensity of the conflict between them. As a result of their different paths to the low-wage workplace, African Americans and new immigrants begin with very different views of the relationship between citizenship and work. These differences can intensify the sense of conflict and competition between the groups. Understanding the divergences offers insight into the contexts that make solidarity and improvement in both intergroup relations and the quality of work possible.

While this Article has provided a more complete picture of the dynamic between African American and Latino immigrant workers, the work-citizenship story can and should be complicated further. For example, this Article discussed the role of law in the creation and perpetuation of the conflict that infects the relationship between these groups. What legal interventions could be developed to further its resolution? What new policies or changes in labor, employment, and immigration law could help to create workplace environments more conducive to cooperation between African American and Latino low-wage workers?

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345. African Americans' perceptions of their interests change too, of course, and it is as both groups' interests shift that new opportunities for collaboration are revealed. See Gordon & Lenhardt, *supra* note 27, at 44–45.

346. Waldinger & Der-Martirosian, *supra* note 264.

347. Grabowski, *supra* note 37, at 59.

We are also interested in exploring the nature of the relationship between African Americans and Latinos in other contexts. A range of informal pathways for achieving and fully exercising citizenship, such as education, assimilation, and political participation (which encompasses more than just voting), must also be examined.<sup>348</sup> How successfully a group navigates these multiple pathways will often determine how quickly and completely its members become accepted in the broader community.

Significantly, the context-based analysis employed in this Article also opens avenues of inquiry beyond the relationship between African Americans and Latino immigrants. We think our analysis would also reveal important similarities and differences in the paths that African Americans and other new immigrant groups, including those from Africa, the Caribbean, and parts of Asia, are traveling to belonging in the United States, whether in the area of work or with respect to one of the other informal pathways mentioned above.<sup>349</sup>

Further, we are aware that the particular theory of citizenship-as-belonging that we advance raises substantive questions about issues that bear directly on our project, but which we were unable to explore in this Article. The gendered nature of work, immigration, and citizenship is one rich field for further inquiry. Gendered migration patterns—for example, the tendency of women migrants to settle permanently more rapidly than men, who tend to migrate between countries for a longer period of time<sup>350</sup>—mean that migrant women may have a different view of the citizenship meaning of their work than their male counterparts. Both migrant and African American women are more likely to do unpaid work than men.<sup>351</sup> Does our theory, which

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348. See Gordon & Lenhardt, *supra* note 104, at 2513.

349. For an exploration of the interactions and experiences of African Americans and black Caribbean immigrants, see MARY WATERS, *BLACK IDENTITIES: WEST INDIAN IMMIGRANT DREAMS AND AMERICAN REALITIES* (1999). See also Reual Rogers, *Afro-Caribbean Immigrants, African Americans, and the Politics of Group Identity*, in *BLACK AND MULTIRACIAL POLITICS IN AMERICA 15* (Yvette M. Alex-Assensoh & Lawrence J. Hanks eds., 2000). For a discussion of the interactions and experiences of African immigrants and African Americans, see Alkwasi B. Assensoh, *Conflict or Cooperation? Africans and African-Americans in Multiracial America*, in *BLACK AND MULTIRACIAL POLITICS IN AMERICA, supra*, at 113.

350. On settlement patterns, see sources cited *supra* note 344,. On the interaction between law and women's migration, see Joan Fitzpatrick & Katrina R. Kelly, *Gendered Aspects of Migration: Law and the Female Migrant*, 22 *HASTINGS INT'L & COMP. L. REV.* 47 (1998).

351. See Katharine Silbaugh, *Turning Labor Into Love: Housework and the Law*, 91 *NW. U. L. REV.* 1, 8 (1996) (noting that “[w]omen do much more unpaid work than men, even in two-wage families”). Feminist legal scholars have long argued that housework performed by women is worthy of remuneration. See, e.g., Reva B. Siegel, *Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850–1880*, 103 *YALE L. J.* 1073, 1075 (1994) (describing the nineteenth-century feminist movement's contention that “wives were entitled to property rights in

emphasizes the importance of paid work as a path to citizenship, perpetuate the invisibility of contributions made by women? The gender differentiation evident in the kinds of jobs that women within African American and new Latino immigrant communities perform also deserves greater attention if, as is our intention, our theory of citizenship is to address workers' experiences at a high level of particularity.<sup>352</sup>

Finally, we recognize that the theory of citizenship we have employed in exploring the relationship between African American and Latino immigrants in the workplace opens the door to certain normative arguments about citizenship-as-belonging and the access that members of these groups have to it. In this Article, we sought to better understand the dynamic between Blacks and Latinos in the context of work and to discuss its implications for efforts to build solidarity. Having done that, we are also acutely aware of the normative significance of the insights our analysis generated into each groups' sense of their own entitlement to first-class citizenship and exercises of agency in the workplace. Both African Americans and new immigrants regard belonging in the broader community as a right that they should not be denied. Despite the challenges they face as low-wage workers, they have demonstrated that they can choose to act in ways that reject the mainstream conceptions of their degraded citizenship. In an arena fraught with conflict, we see these tentative steps as an inspiration and an impetus to further efforts to demand the full substantive benefits of citizenship for new Latino immigrants and African Americans alike.

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their household labor"); Silbaugh, *supra*, at 4 (arguing, *inter alia*, that "a wide range of legal doctrines treat women's home work as if it were not value-producing labor"); Nancy C. Staudt, *Taxing Housework*, 84 GEO. L.J. 1571, 1573-74 (1996) (arguing that "rather than maintaining the invisibility of housework, feminists should encourage society to value the productive and political nature of women's labor both in the home and the market"); Noah D. Zatz, *What Welfare Requires From Work*, 54 UCLA L. REV. 373, 384, 458-59 (2006) (discussing treatment of housework and the utility of a focus on paid work).

352. See Katz et al., *supra* note 158, at 77 (arguing that persistent inequality among African Americans cannot be fully understood without some attention to gender and its effect on economic opportunity).