

# University of Michigan Journal of Law Reform

---

Volume 53

---

2020

## Dismantling the Master's House: Toward a Justice-Based Theory of Community Economic Development

Etienne C. Toussaint

*University of the District of Columbia David A. Clarke School of Law*

Follow this and additional works at: <https://repository.law.umich.edu/mjlr>



Part of the [Law and Philosophy Commons](#), [Law and Race Commons](#), [Social Welfare Law Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

Etienne C. Toussaint, *Dismantling the Master's House: Toward a Justice-Based Theory of Community Economic Development*, 53 U. MICH. J. L. REFORM 337 (2019).

Available at: <https://repository.law.umich.edu/mjlr/vol53/iss2/3>

<https://doi.org/10.36646/mjlr.53.2.dismantling>

This Article is brought to you for free and open access by the University of Michigan Journal of Law Reform at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in University of Michigan Journal of Law Reform by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mLaw.repository@umich.edu](mailto:mLaw.repository@umich.edu).

## DISMANTLING THE MASTER'S HOUSE: TOWARD A JUSTICE-BASED THEORY OF COMMUNITY ECONOMIC DEVELOPMENT

---

Etienne C. Toussaint\*

### ABSTRACT

*Since the end of the American Civil War, scholars have debated the efficacy of various models of community economic development, or CED. Historically, this debate has tracked one of two approaches: place-based models of CED, seeking to stimulate community development through market-driven economic growth programs, and people-based models of CED, focused on the removal of structural barriers to social and economic mobility that prevent human flourishing. More recently, scholars and policymakers have turned to a third model from the impact investing community—the social impact bond, or SIB. The SIB model of CED ostensibly finds a middle ground by leveraging funding from private impact investors to finance social welfare programs within marginalized communities. SIBs seemingly answer the call of local government law scholars of the New Regionalists movement who advocate for governmental mechanisms that facilitate regional cooperation, address equity concerns, and respect local government autonomy. However, this Article argues that the SIB model of impact investing will struggle to advance metropolitan equity due to its grounding in the politics of neoliberalism.*

*After highlighting limitations of the SIB, this Article links contemporary debates about CED theory to historical contestations within the black community about economically-oriented racial uplift strategies. Placing historical figures, such as W.E.B. Du Bois and Booker T. Washington, in conversation with more contemporary theorists of political philosophy, this Article offers an alternative conceptual framework of CED. Termed justice-based CED, this framing distinguishes a typology of social change that places democracy at the epicenter of the development debate and points toward the political principles of the solidarity economy as guideposts for law reform. The justice-based approach rests upon three core values: social solidarity, economic democracy, and solidarity economy. Taken together, this perspective reflects a vision of political morality that embodies one of America's most foundational democratic values—human moral dignity.*

---

\* Assistant Professor of Law, University of the District of Columbia David A. Clarke School of Law (B.S. Massachusetts Institute of Technology; M.S.E. The Johns Hopkins University; J.D. Harvard Law School; LL.M. The George Washington University Law School). This research was aided by the generous support of the University of the District of Columbia Summer Research Grant Fund. Early drafts of this Article were presented at the 2018 John Mercer Langston Writing Workshop and the 2018 Marquette Law School Junior Scholars 'Works-In-Progress' Forum. I thank colleagues who provided helpful comments, constructive feedback and encouragement on drafts of this Article, including Susan R. Jones, Philip Lee, Mitchell F. Crusto, David Troutt, Scott Cummings, and Devon Carbado. I thank Victoria Hermann for research assistance. Finally, I thank Ebony, Etienne, and Edward—I am, because we are. Any errors or omissions contained in this Article are my own.

## TABLE OF CONTENTS

INTRODUCTION.....	338
I. THE RISE OF NEOLIBERAL RATIONALITY.....	347
A. <i>Historical Origins</i> .....	348
B. <i>Progressive Critiques</i> .....	361
C. <i>Neoliberal Entrenchment</i> .....	365
II. DECONSTRUCTING NEOLIBERALISM’S ILLUSION OF JUSTICE.....	370
A. <i>Revisiting Justice—An Incoherency Critique</i> .....	371
B. <i>Rethinking Equality—A Universality Critique</i> .....	374
C. <i>Reframing Liberty—An Indeterminacy Critique</i> .....	377
D. <i>Reconstructing Theory—A Justice-Based Approach</i> .....	381
III. TOWARD A JUSTICE-BASED THEORY OF COMMUNITY ECONOMIC DEVELOPMENT.....	387
A. <i>Social Solidarity</i> .....	389
B. <i>Economic Democracy</i> .....	399
C. <i>Solidarity Economy</i> .....	407
CONCLUSION.....	414

*“It’s funny how money change a situation / Miscommunication lead to complication / My emancipation don’t fit your equation / I was on the humble you on every station.”—Lauryn Hill, *Lost Ones*<sup>1</sup>*

*“Democracy is flawed both economically and socially . . . justice for Black people cannot be achieved without radical changes in the structure of our society.”—Martin Luther King, Jr.<sup>2</sup>*

## INTRODUCTION

I grew up in the birthplace of hip-hop. As a young boy, the South Bronx felt like an oasis in New York City’s burgeoning metropolis; a concrete playground filled with infectious hip-hop music and inspiring graffiti art murals; a predominantly black and Hispanic family of families brimming with cultural diversity; a textured mosaic of style colored by a broad spectrum of hardworking immigrants chasing an ever-elusive American Dream. My summer days were filled with the sounds of children laughing in the street

1. LAURYN HILL, *Lost Ones*, on THE MISEDUCATION OF LAURYN HILL (1998).

2. MARTIN LUTHER KING JR., *A Testament of Hope*, in THE ESSENTIAL WRITINGS AND SPEECHES (1969).

as they danced barefoot under fire hydrant showers, while evenings featured sports broadcasters narrating the New York Yankees' latest victory through my grandfather's shortwave radio. We Bronxians shared in the riches of a "cultural collective efficacy"<sup>3</sup> that imbued us with a sense of joy and pride in our uptown community.<sup>4</sup>

However, the media routinely depicted the South Bronx with far more hackneyed metaphors; nightly news reports displayed a low-income urban neighborhood poisoned by a culture of negative attitudes, wayward values, and unlawful conduct that had resulted in a debilitating, yet persistent, state of social dysfunction—failing public education, unflagging unemployment, rampant drug use, and widespread criminal activity.<sup>5</sup> While I observed some of these social challenges firsthand, the assumptions about the character and conviction of Bronx residents, in my estimation, undermined the positive social capital that I witnessed during my adolescence.<sup>6</sup> I would soon discover that what American philosopher Cornel West refers to as a "sentimental nihilism" had not only infiltrated media culture in the Bronx, but had also shaped the perspective of local governments who sought to improve the lives of their urban residents.<sup>7</sup> I would also learn that the same jaundiced narratives of poverty, and the same stereotypical perspectives on urban culture that plagued my childhood neighborhood of the Bronx,<sup>8</sup> have manifested in other low-income communities around the country.<sup>9</sup>

---

3. See Lisa Alexander, *Hip-Hop and Housing: Revisiting Culture, Urban Space, Power, and Law*, 63 HASTINGS L. J. 803, 829–30 (2012) ("Cultural collective efficacy is a form of positive bonding social capital generated through participation in cultural endeavors, which enables some low-income, inner-city residents to mitigate the negative effects of living in a poor, racially segregated, and disinvested community.").

4. Historians of urban culture locate the birthplace of hip-hop, which comprises not only the oral tradition called rapping, but also the hip-hop elements of breakdancing, graffiti art, DJing, and beatboxing, in New York City's Bronx borough neighborhoods. See generally Jeff Chang, *CAN'T STOP WON'T STOP: A HISTORY OF THE HIP-HOP GENERATION* 67–85 (2005).

5. Hauntingly similar to present-day stories about low-income communities across America, I still vividly recall the media narrative of Amadou Diallo, a young black man who was shot forty-one times by police officers in front of his Bronx apartment building after his pager was mistaken for a gun. See Michael Cooper, *Officers in Bronx Fire 41 Shots, and an Unarmed Man Is Killed*, N.Y. TIMES (Feb. 5, 1999), <http://www.nytimes.com/1999/02/05/nyregion/officers-in-bronx-fire-41-shots-and-an-unarmed-man-is-killed.html?pagewanted=all>.

6. See generally KEEANGA-YAMAHTTA TAYLOR, *FROM #BLACKLIVESMATTER TO BLACK LIBERATION* 218 (2016) ("Historically, the insistence that Black deprivation is rooted in Black culture and in Black people has deflected attention away from the systemic roots of racism, compelling African Americans to look inward instead of making demands on the state and others.").

7. See CORNEL WEST, *DEMOCRACY MATTERS: WINNING THE FIGHT AGAINST IMPERIALISM* 36 (Reprint ed. 2005) (defining "sentimental nihilists" as those who are "willing to sidestep or even bludgeon the truth or unpleasant and unpopular facts and stories, in order to provide an emotionally satisfying show.").

8. See *infra* section I. Within this Article, I take a Hegelian view toward the term 'poverty' as a state of material lack leading to a "socially frustrated personality." E.g., C. J. Pereira Di Salvo, *Hegel's Torment: Poverty and the Rationality of the Modern State*, in HEGEL AND

Today, countless twenty-first century black and brown communities across America are facing the same socio-economic challenges that preoccupied many twentieth century development efforts.<sup>10</sup> Not only has income inequality risen in the past few decades, but wages for low-income workers have remained relatively stagnant. Further, our recent housing crisis (coupled with a resulting economic recession) has deepened the wealth gap between white and non-white households.<sup>11</sup> We are witnessing a dramatic rise in the concentration of poverty across America.<sup>12</sup> The number of Americans living in high-poverty neighborhoods has nearly doubled since the year 2000, and black Americans and Latinos, in particular, are more than twice as likely to live in poverty as non-Latino white Americans.<sup>13</sup> With costly environmental and financial disasters tugging at the seams of social cohesion, many are now calling into question conventional wisdom about prevailing economic and political institutions.<sup>14</sup> America's democratic project, it seems, is

---

CAPITALISM 101, 110 (Andrew Buchwalter ed., 2015) ("For Hegel, what is problematic is not just that the impoverished individual is dependent on the arbitrary wills of the wealthy. Rather, poverty is problematic because those who are subject to that condition are *rendered incapable of realizing their personality.*") (emphasis in original).

9. See, e.g., RICHARD ROTHSTEIN, *THE MAKING OF FERGUSON: PUBLIC POLICIES AT THE ROOT OF ITS TROUBLES 2* (2014) ("Government policies turned black neighborhoods into overcrowded slums and white families came to associate African Americans with slum conditions. White homeowners fled when African Americans moved nearby, fearing their new neighbors would bring slum conditions with them.")

10. See, e.g., Scott Cummings, *Thematic Overview: Community Development Law and Economic Justice—Why Law Matters*, 26 J. OF AFFORDABLE HOUS. AND CMTY. DEV. L. 31 (2017) ("At some level, distressingly, after all this time and work by so many committed and courageous people, we still confront the intransigent problems of class division, racial discrimination and segregation, and disregard for the plight of the most vulnerable members of our society.")

11. Trina Jones, *Occupying America: Dr. Martin Luther King, Jr., The American Dream, and the Challenge of Socio-Economic Inequality*, 57 VILLANOVA L. REV. 339, 348–49 (2012) ("From 2005 to 2009, black households lost just over half of their median net worth and Latino households lost 66%, compared with white families, who lost 16% of their net worth."); Janelle Jones, *The Racial Wealth Gap: How African Americans Have Been Short-Changed Out of the Materials to Build Wealth*, EPI.ORG (Feb. 13, 2017), <https://www.epi.org/blog/the-racial-wealth-gap-how-african-americans-have-been-shortchanged-out-of-the-materials-to-build-wealth/> ("More than one in four black households have zero or negative net worth, compared to less than one in ten white families without wealth, which explains the large differences in the racial wealth gap . . .").

12. Cf. TAYLOR, *supra* note 6, at 11 ("Over the last twenty-five years, the disparity in household wealth has tripled; today, white median wealth (as opposed to income) is \$91,405, compared to \$6,446 for African American households.")

13. MARJORIE KELLY & SARAH MCKINLEY, DEMOCRACY COLLABORATIVE, *CITIES BUILDING COMMUNITY WEALTH 10* (2015), <https://democracycollaborative.org/sites/clone.community-wealth.org/files/downloads/CitiesBuildingCommunityWealth-Web.pdf>; see generally Angus Deaton, *The U.S. Can No Longer Hide from Its Deep Poverty Problem*, N.Y. TIMES (Jan. 24, 2018), <https://www.nytimes.com/2018/01/24/opinion/poverty-united-states.html> (noting that "there are 5.3 million Americans who are absolutely poor by global standards.")

14. See Peter Utting, *Introduction to SOCIAL AND SOLIDARITY ECONOMY: BEYOND THE FRINGE?* 5–6 (2015) ("Recurring crises linked to finance, food and energy, as well as awareness of climate change, have fueled collective and solidaristic forms of coping, producing,

failing marginalized, low-income families in record numbers, and the promises of uplift evoked by the American Dream too oft have remained simply that—lofty and sweet sounding *dreams* for our nation's poorest citizens.<sup>15</sup>

My experiences in the Bronx have taught me that poverty manifests across a wide spectrum of social dimensions (e.g., legal, educational, political, psychological, etc.), beckoning a diversity of community development strategies. Generally, *community development* describes a process whereby community members, alongside civic leaders and government stakeholders, develop community-oriented strategies to address local economic, political, social, and environmental problems.<sup>16</sup> However, economists have historically emphasized economic growth policies—from demand-side strategies, such as cutting taxes and interest rates, to supply-side interventions, such as deregulation and privatization—as market-oriented solutions to ongoing social challenges.<sup>17</sup> As a result, there has been tension between proponents of community development and economic development. Yet, legal scholars have long noted the intersectionality of both approaches; arguing, for example, that the social justice mission of the Civil Rights Movement of the 1950s and 1960s<sup>18</sup>—in many ways carried on by today's movement for black lives<sup>19</sup>—is inextricably linked to the economic justice of marginalized communities.<sup>20</sup>

---

and provisioning . . . and called into question conventional wisdom about growth and industrialization models.”).

15. The continued salience of the “American Dream” represents what Frantz Fanon has called the “colonization of the mind.” More than fifty years after its original publication, Fanon's text, *Black Skin, White Masks*, conveys themes about the public perceptions of sources of individual wealth that endure today. See generally FRANTZ FANON, *BLACK SKIN, WHITE MASKS* (Grove Press 2008); see also RICH MORIN, *RISE AND SHARE OF AMERICANS SEE CONFLICT BETWEEN RICH AND POOR 3* (Pew Res. Ctr. 2012), [http://assets.pewresearch.org/wp-content/uploads/sites/3/2013/01/Rich\\_vs\\_poor-final\\_1-10-13.pdf](http://assets.pewresearch.org/wp-content/uploads/sites/3/2013/01/Rich_vs_poor-final_1-10-13.pdf) (explaining that “a 46% plurality believes that most rich people ‘are wealthy mainly because they know the right people or were born into wealthy families’ [while] . . . 43% say wealthy people became rich ‘mainly because of their own hard work, ambition or education.’”).

16. David M. Chavis & Abraham Wandersman, *Sense of Community in the Urban Environment: A Catalyst for Participation and Community Development*, *AM. J. COMMUNITY PSYCHOL.* 55, 56 (1990).

17. See generally Ronald F. Ferguson & William T. Dickens, *Introduction to URBAN PROBLEMS AND COMMUNITY DEVELOPMENT* (Ronald F. Ferguson & William T. Dickens eds., 1999) (providing a survey of the history of urban development strategies in the twentieth century aimed at improving the quality of life in low- to moderate-income neighborhoods).

18. See CTR. FOR ECON. & SOC. JUSTICE, *Defining Economic Justice and Social Justice* (last visited Nov. 7, 2011), <http://www.cesj.org/learn/definitions/defining-economic-justice-and-social-justice/> (defining social justice as the existence of institutions that “imposes on each of us a personal responsibility to collaborate with others, at whatever level of the “Common Good” in which we participate, to design and continually perfect our institutions as tools for personal and social development.”).

19. See Etienne C. Toussaint, *Incarceration to Incorporation: Economic Empowerment for Returning Citizens Through Social Impact Bonds*, 25 *J. AFFORDABLE HOUSING & COMMUNITY DEV. L.*

Accordingly, upon the heels of the Civil Rights Movement, community economic development, or CED, emerged as a favored approach by governments and lawmakers to resolve the social dimensions of intergenerational poverty through community-oriented economic development efforts.<sup>21</sup> Yet, there has been ongoing debate on the appropriate focus of CED laws and public policies designed to improve economic opportunities for vulnerable citizens.<sup>22</sup> CED has typically involved the creation of market-oriented, “place-based” government-sponsored programs that provide private investors with tax incentives to bring economic benefits (e.g., affordable housing and business enterprises) into low-income communities.<sup>23</sup> The place-based CED model embraces a “localist” approach to governance that preserves the autonomy of local governments to manage the financing and delivery of public

---

61, 62 n.3 (2016) (discussing the Black Lives Matter movement, which “seek[s] to affirm the lives of Black men and women who, on a daily basis, experience the negative impacts of institutionalized white supremacy and structural racism in America.”).

20. See Gary Chartier, *Civil Rights and Economic Democracy*, 40 WASHBURN L.J. 267, 267 (2000) (“At root, civil rights struggles have consistently touched on questions, not only social and cultural, but also economic, questions about the organization and distribution of economic power and material goods.”); Laurie Hauber, *Promoting Economic Justice Through Transactional Community-Centered Lawyering*, 27 ST. LOUIS U. PUB. L. REV. 3, 4 (2007) (“Economic justice requires striving to eliminate the imbalance of social and economic power in urban areas by providing equal access to economic opportunities.”); Susan R. Jones, *Dr. Martin Luther King, Jr.’s Legacy: An Economic Justice Imperative*, 19 WASH. U. J.L. & POL’Y 39, 44 (2005) (“It is my position that economic justice must be advanced independently and as a critical part of social justice, racial justice and human rights.”).

21. See Patience A. Crowder, *Inequality, Economic Development, and the New Regional Community*, 43 SW. L. REV. 569, 573, 577 (2014) (“As a matter of public policy, economic development programs are government-sponsored programs aimed at improving the economic vitality of a particular sector within a government’s jurisdiction.”); Audrey G. McFarlane, *Race, Space and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 295, 304–05 (1999) (“[T]he prevailing view [is] that law should be limited to ensuring equal opportunity rather than equality of outcome. . . . law is relegated to what is viewed as the unambiguously neutral, impartial, and supportive position of quietly facilitating the urban development process.”).

22. While some have called for a community orientation, others have emphasized business development, and still others have focused on the intersectional nature of economic development. For discussions of historic community-oriented lawyering efforts in the poverty law context, see generally, Susan D. Bennett, *On Long-Haul Lawyering*, 25 FORDHAM URB. L.J. 771, 784–85 (1998); Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67 (2000); Lucie E. White, *Feminist Microenterprise: Vindicating the Rights of Women in the New Global Order?*, 50 ME. L. REV. 327 (1998). For discussions of historic lawyering efforts focused on stimulating microenterprise development, see generally SUSAN R. JONES, A LEGAL GUIDE TO MICROENTERPRISE DEVELOPMENT: BATTLING POVERTY THROUGH SELF-EMPLOYMENT: A RESOURCE MANUAL FOR LAWYERS AND STAFF IN MICROENTERPRISE PROGRAMS (Am. Bar Ass’n 1998); Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195 (1997).

23. The market-based strategy stands in contraposition to “community” economic development, which refers to “social, human, and physical . . . activities at the neighborhood or community level,” empowering residents of marginalized neighborhoods to improve their livelihoods and community. See McFarlane, *supra* note 21, at 296–97.

welfare services.<sup>24</sup> Conversely, instead of focusing on the geographic boundaries of *place*, some advocates have called for a “people-based” approach to CED, urging low-income families to “move to opportunity” in wealthier neighborhoods through social mobility programs.<sup>25</sup> The people-based CED model embraces a “regionalist” approach to governance, calling for the creation of regional government structures to tackle metropolitan inequality or, at best, as many in the New Regionalist movement propose,<sup>26</sup> regional modes of informal cooperation or collaboration. Both the place-based and people-based approaches have faced criticism for their inability to meet the needs of all low-income families, and for their embedded racialized narratives about low-income neighborhoods.<sup>27</sup>

Pay-for-success financing has emerged as a new CED model that ostensibly finds a middle ground in the ongoing development debate by transcending the ‘people’ versus ‘place’ dichotomy. It seemingly offers what scholars have called a “new governance” approach to CED that engages non-traditional stakeholders in the public decision-making process.<sup>28</sup> Bolstered by a growing community of socially conscious “impact investors,”<sup>29</sup> the pay-for-success

24. See generally Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1124 (1996) (discussing the normative goals of local government law).

25. See, e.g., Sara Aronchick Solow, Note, *Racial Justice at Home: The Case for Opportunity-Housing Vouchers*, 28 YALE L. & POL'Y REV. 481, 483 (2010) (arguing that opportunity vouchers lead to better outcomes for the housing insecure by eliminating racially concentrated ghettos because they decentralize low-income tenants based on race which avoids replication of the poor housing conditions common to traditional housing place-based projects); Jens Ludwig, et al., *Neighborhood Effects on the Long-Term Well-Being of Low-Income Adults From All Five Sites of the Moving to Opportunity Experiment*, 337 SCIENCE 1505 (2012).

26. See MYRON ORFIELD, METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY, 12–13 (1997); DAVID RUSK, INSIDE/OUTSIDE GAME: WINNING STRATEGIES FOR URBAN AMERICA 153–335 (1999); Sheryll D. Cashin, *Localism, Self Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 2028 (2000) (explaining the term “new regionalism” as “any attempt to develop regional governance structures or interlocal cooperative arrangements that better distribute regional benefits and burdens.”); Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity and the New Regionalism*, 78 WASH. L. REV. 93, 100–19 (2003); David D. Troutt, *Katrina's Window: Localism, Resegregation, and Equitable Regionalism*, 55 BUFFALO L. REV. 1109, 1172 (2008) (describing new regionalist strategies as a form of “equitable regionalism,” which “recognizes that issues with distinct equity implications should be susceptible to regional cooperation because they are typically the subject of localist opposition”).

27. See generally *infra* section I.B.

28. Lester M. Salamon, *The New Governance and the Tools of Public Action: An Introduction*, 28 FORDHAM URB. L.J. 1611, 1674 (2001) (defining new governance as “the wide array of tools now being used to address public problems . . . the increased substitution of complex networks of organizations for the rigid hierarchies of old to solve public problems . . .”).

29. While the term “impact investing” is relatively new, it builds upon America’s rich tradition of corporate philanthropy, pioneered by altruistic corporate titans like Andrew Carnegie, founder of the Carnegie Steel Corporation, and Henry Ford, founder of the Ford Motor Company. Indeed, the Ford Foundation remains an influential player in the impact investing community today. See Emily Chasan, *Ford Foundation to Put \$1 Billion of Endowment in Impact Funds*, BLOOMBERG (Apr. 5, 2017), <https://www.bloomberg.com/news/articles/>



model—typified by the social impact bond, or SIB—facilitates *social infrastructure development*<sup>30</sup> that empowers marginalized individuals with resources to thrive in the communities where they live. Under the SIB, impact investors assume the financial risks of social welfare programs by taking a monetary loss if the program is unsuccessful, and only earn a return on their investment if government cost savings are achieved. Despite the SIB's growing popularity, this Article argues that the SIB will struggle to advance metropolitan equity<sup>31</sup> because it is not a distinct theory of development, but merely a new instantiation of neoliberal rationality. New Regionalists have long called for actionable frameworks to guide mechanisms of regional cooperation and collaboration that promote metropolitan equity while respecting local government autonomy.<sup>32</sup>

Responding to the call, this Article articulates an alternative conceptual framework of CED. Termed *justice-based CED*,<sup>33</sup> this

---

2017-04-05/ford-foundation-to-put-1-billion-of-endowment-in-impact-funds; see also Chelsea McGrath, *The Government's Role in Unleashing Impact Investing's Full Potential*, 44 PEPP. L. REV. 799, 802 (2017) ("Impact investing refers to 'investments made into companies, organizations, and funds with the intention to generate social and economic impact alongside a financial return.'").

30. Social infrastructure programs target challenges like prisoner recidivism or homelessness by making strategic investments into the health, housing, education, and employment of underserved populations. See GEORGIA LEVENSON KEOHANE, *Innovative Finance in Communities Across the United States, in CAPITAL AND THE COMMON GOOD: HOW INNOVATIVE FINANCE IS TACKLING THE WORLD'S MOST URGENT PROBLEMS*, 148, 156–57 (2016).

31. See David Troutt, *Inclusion Imagined: Fair Housing as Metropolitan Equity*, 65 BUFFALO L. REV. 5, 11 (2016) (defining metropolitan equity as "the idea that all parts of a region are relevant to the distribution of opportunity in any part, and that remedies for expanding mobility can and should be assessed on an equitable basis.").

32. See for example Troutt, *supra* note 26, at 1173 (noting "equitable regionalism is a principle of local government law reform by which states enact legislation to compel interlocal cooperation where equity, and often efficiency, demand it. Its goal is a more even distribution of state resources across municipal populations, the transformation of marginal areas into more integrated communities and the reduction of significant disparities in the provision of public and private services among localities").

33. The justice-based conceptual framework discussed herein builds upon the voluminous work of critical and progressive scholars who have called for "community-oriented" economic development processes. See, e.g., Peter Pitegoff, *Community Development Law, Economic Justice, and the Legal Academy*, 26 J. OF AFFORDABLE HOUS. AND CMTY DEV. L. 31 (2017) ("[N]ew approaches to local development and related lawyering, philosophies underlying these new approaches, and dramatic changes in context challenge us to reimagine the framework of community economic development."); Roger A. Clay Jr. and Susan R. Jones, *A Brief History of Community Economic Development*, 18 J. OF AFFORDABLE HOUS. & CMTY. DEV. L. 257, 257 (2009) ("It has been described as a strategy that includes a wide range of economic activities and programs for developing low-income communities such as affordable housing and small business development."); Michael R. Diamond, *Community Economic Development: A Reflection on Community, Power and the Law*, 8 J. SMALL & EMERGING BUS. L. 151, 166 (2004) ("Community economic development is more than the creation of jobs, the provision of goods and services and the accumulation of individual wealth. . . . [It is a process whereby] assets are marshaled, institutions built and power acquired and used."); WILLIAM H. SIMON, *THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS, AND THE NEW SOCIAL POLICY* 3 (Duke Univ. Press 2002) ("[T]he core definition of CED embraces (1) ef-

framing distinguishes a typology of social change premised on a theoretical deconstruction of neoliberalism's illusion of justice. By shifting conceptions of liberty from notions of non-interference to standards of non-dominance, the justice-based approach urges advocates, development practitioners, and lawmakers alike to reconsider the political philosophy that underlies predominant approaches to economic development. By prioritizing human moral dignity as fundamental to notions of justice, establishing dignity as coextensive with liberty, and elevating political equality as intrinsically valuable to liberty, justice-based CED places democracy at the epicenter of the economic development debate.

Importantly, the justice-based framing recognizes that America's development challenges are not merely social or economic; they are systemic to the very fabric of American political identity, a hoary tapestry of ideological, institutional, and epistemological realities woven together by an unwillingness to transcend neoclassical economic norms<sup>34</sup> or combat neoliberal politics.<sup>35</sup> Although emerging CED models like the SIB appear capable of overcoming the troubles of neoliberalism by leveraging capitalism's inherent profit motive to advance social good, this Article argues that the SIB's underlying commitment to the dogma of market fundamentalism<sup>36</sup>—a belief in unregulated economic activity to resolve societal inequality—reveals the larger logic of neoliberalism's entrenchment. Conversely, if governments reconsider the economic principles that lie beneath dominant approaches to CED, new strategies

---

forts to develop housing, job, or business opportunities for low-income people, (2) in which a leading role is played by nonprofit, nongovernmental organizations (3) that are accountable to residentially defined communities.”); Cummings, *supra* note 10, at 35 (“CED law is now less a body of activity or doctrine that can be empirically defined or normatively derived, and more a set of basic questions about the content and control of local struggles for change, the role and responsibility of a democratic government to promote equality and economic security for its people, and the potential of collaboration or conflict to achieve deep and sustained structural reforms.”).

34. See *infra* section II.D.

35. The term “neoliberalism” defined the 20th century resurgence of 19th century *laissez-faire* economic liberalization. See DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 2 (2005) (explaining that under neoliberal orthodoxy, “[s]tate interventions in markets (once created) must be kept to a bare minimum because, according to the theory, the state cannot possibly possess enough information to second-guess market signal (prices) and because powerful interest groups will inevitably distort and bias state interventions (particularly in democracies) for their own benefit.”); see also NOAM CHOMSKY, PROFITS OVER PEOPLE: NEOLIBERALISM AND GLOBAL ORDER 20 (1999) (explaining that the basic tenets of neoliberalism are “liberalize trade and finance, let markets set price (‘get prices right’), end inflation (‘macroeconomic stability’), privatize”).

36. See West, *supra* note 7, at 4–5 (explaining that market fundamentalism renders “money-driven, poll-obsessed elected officials deferential to corporate goals of profit, often at the cost of the common good” while placing “a premium on the activities of buying and selling, consuming and taking, promoting and advertising, and devalues community, compassionate charity, and improvements of the general quality of life.”).

for development will emerge. The justice-based framing points toward the “social and solidarity” economy (SSE or the solidarity economy)<sup>37</sup> as an alternative approach to economic life that is participatory, inclusive, and, perhaps most important, grounded in a concern for economic democracy.<sup>38</sup> SSE need not replace America’s capitalist system. Rather, SSE serves as an epistemological challenge to the capitalist paradigm that shapes our development perspective, pushing policymakers to reconsider the philosophical principles and fundamental moral values that drive economic transformation, thereby targeting the sickness of poverty at the root.

Part I of this Article begins with a brief review of the history of CED in America, tracing a narrative from the early workings of localist strategies like Urban Renewal to more recent regionalist strategies like Housing Choice Vouchers, and finally ending with current blended innovations like the pay-for-success SIB model. These CED models have been equally propelled by a neoclassical political economy and a neoliberal political ideology that reveals an historical unwillingness to incorporate non-market goods (e.g., social capital, culture, decision-making power) into mainstream theories of economic growth. Part I concludes with a discussion of the limitations of these CED models, revealing their role in the rise of neoliberal rationality.

Next, Part II seeks to steer the ongoing CED debate into new waters by erecting *justice* as its central mast. Shifting from a historic focus on people versus place, it begins by asking the reader to rethink the concept of justice, recognizing that diverse perspectives on liberty drive varied opinions on the demands of justice on our political economy, rendering the dominant framing as subjective. Then, it frames *political equality* as a foundational component of democracy, revealing how democratizing the ownership of wealth furthers the social justice work of the civil rights movement. Part II concludes by exploring the guiding tenets of the solidarity econo-

---

37. See Utting, *supra* note 14, at 1 (SSE refers to “forms of economic activity that prioritize social and often environmental objectives, and involve producers, workers, consumers and citizens acting collectively and in solidarity . . . [not only] enterprises such as cooperatives, mutual associations, grant-dependent and service-delivery non-governmental organizations (NGOs), and community and other forms of volunteering and giving, but also myriad types of self-help groups organizing to produce goods and services, fair trade networks and other forms of solidarity purchasing, consumer groups involved in collective provisioning, associations of ‘informal economy’ workers, new forms of profit-making social enterprises and social entrepreneurs, and NGOs that are having to shift from a dependence on donations and grants to sustaining themselves via income-generating activities.”); see *infra* section III.C.

38. See Chartier, *supra* note 20, at 267 (defining “economic democracy” as a combination of “egalitarian self-government” and “economic justice”) (emphasis omitted).

my, which it argues can fuel CED initiatives seeking to transgress the limitations of neoliberalism for poverty alleviation.

Finally, Part III articulates a new justice-based conceptual framing of CED to guide emerging development strategies toward achieving the regional equity goals of the New Regionalist movement. This framing rests upon three foundational pillars—(1) *social solidarity*: fostering political equality among members of a community to overcome the political construction and racial dimensions of state-sponsored privilege; (2) *economic democracy*: democratizing the ownership of wealth-generating property to promote long-term metropolitan equity; and (3) *solidarity economy*: crafting empowerment-centered and community-owned institutions to address the structural dimensions of systemic poverty. Taken together, justice-based CED provides guideposts to steer emerging CED programs toward building a world without poverty by promoting an inclusive, participatory, and empowerment-driven economy. Even more, it reflects a vision of political morality that embodies one of America's most foundational democratic values—human moral dignity.

### I. THE RISE OF NEOLIBERAL RATIONALITY

Diverse perspectives on the role of government in economic life, narratives of the relationship between citizens and their community, and wide-ranging beliefs about the interplay between economic growth and community development have shaped the history of community economic development in America. These perspectives, narratives, and beliefs are informed by problematic assumptions about race and class that obscure or, at times, elide the transformative potential of CED. Take, for example, my hometown of the South Bronx. Several factors converged to make the Bronx an economically and racially marginalized community. First, like other urban areas across America, the Bronx experienced the “white flight” of white middle-class residents to opportunity-rich suburbs. Second, frustrated by new rent control policies, landlords abandoned housing developments across the city. Third, the massive construction of interstate highways financed by federal subsidies plunged a primarily working-class community into steady decay.<sup>39</sup> These factors, among other social forces, transformed the Bronx during the twentieth century.

---

39. See generally Omar Freilla, *Burying Robert Moses's Legacy in New York City*, in HIGHWAY ROBBERY: TRANSPORTATION RACISM & NEW ROUTES TO EQUITY 77–78 (2004).

By the 1970s, the Bronx would be described as “burning,” a community riddled with abandoned apartment buildings, persistent crime, and rising homicide rates.<sup>40</sup> Stunted economic development and limited educational opportunities characterized an overwhelming number of neighborhoods across the borough.<sup>41</sup> Moreover, public health declined due to the devastating impact of the crack cocaine epidemic.<sup>42</sup> By the 1990s and early 2000s, the Bronx witnessed both a pervasive gang culture and the persistence of concentrated poverty.<sup>43</sup> Stereotypical and racialized narratives of the Bronx blame low-income residents for these dynamic changes. However, conventional narratives of poverty obscure a complex history replete with instances of state-sponsored racial segregation and massive resistance to integration that together created a geography of economic inequality.<sup>44</sup> Worse still, this story is evident in cities across America, the byproduct of a textured history of CED experimentation that has undermined the collective voice and individual dignity of the poor. Today, CED policies in America reveal an entrenchment of neoliberal values that undermine poverty alleviation.

#### A. Historical Origins

Throughout American history, political leaders, legal scholars, and public policy advocates have been divided on the appropriate focus of laws and public policies designed to address poverty in marginalized communities. After the emancipation of enslaved Africans in 1865,<sup>45</sup> creating a nation of nominally free citizens living in racially segregated communities with unequal access to social mobility, some political leaders began advocating for a welfare state political system, whereby the government would take a proactive role in protecting the social and economic well-being of her

---

40. See Winnie Hu, *Fighting the Image of the ‘Burning’ Borough*, N.Y. TIMES, June 3, 2013, at A13.

41. Cf. *id.*

42. See Gene Mustain, *When the Crack Scourge Swept New York City*, DAILY NEWS (Aug. 14, 2017), <https://www.nydailynews.com/new-york/crack-scourge-swept-new-york-city-article-1.813844>.

43. See generally Edwin J. Torres, *Bronx Cheer: The New York Borough that Once Symbolized Urban Decline Is Safer and More Stable—But Most Bronxites’ Lives Are Still Precarious*, THE AM. PROSPECT (Oct. 12, 2015), <http://prospect.org/article/how-bronx-came-back-didnt-bring-everyone-along>.

44. See Edward C. Burks, *Bronx Rate of Poverty Is Highest*, N.Y. TIMES, Nov. 4, 1972, at 37 (“Of every 100 Bronx families, 15 were living below the poverty level in 1970.”).

45. U. S. CONST. amend. XIII.

citizens.<sup>46</sup> Alternatively, others argued for a more conservative, 'libertarian' approach to governance, whereby state power would be minimized and individual rights would reign supreme.<sup>47</sup> Proponents of the latter libertarian political order encouraged a 'laissez-faire' style of capitalism that relied upon the private market to correct economic failures and on individual action to address social inequality.<sup>48</sup>

This dichotomy manifests in the historic dialogue between Booker T. Washington and W.E.B. Du Bois during the early 1900s regarding the best strategies to aid formerly enslaved Africans in resisting Jim Crow racial subordination and attaining social and economic equality.<sup>49</sup> Booker T. Washington advocated an "economic nationalist" approach to social empowerment that prioritized economic self-sufficiency for black Americans through property and business ownership.<sup>50</sup> Washington believed that black Americans needed to first establish a thriving black economic infrastructure to serve as the foundation for political demands.<sup>51</sup> Conversely, W.E.B. Du Bois rose to national prominence as a civil rights leader in the movement for racial equality under the law, a political movement that he believed would be quickened by the leadership of the black intellectual elite, or the "Talented Tenth."<sup>52</sup> For Du Bois, the self-help approach of Washington expressed an

---

46. From the Civil War period until the end of Reconstruction in 1877, a group of American politicians known as the Radical Republicans and led by John C. Fremont, Charles Sumner, and Thaddeus Stevens—to name a few—pioneered efforts to establish civil rights for formerly enslaved Africans or African descendants, including the 1866 Civil Rights Act, the 1867 Anti-Peonage Act, the 1868 Eight Hour Act, and the Fourteenth Amendment. Such political efforts seen by some as a justifiable form of state-sponsored "reparations" for the nation's widespread endorsement of chattel slavery for the 200 years prior. *See generally* HEATHER COX RICHARDSON, *THE DEATH OF RECONSTRUCTION: RACE, LABOR, AND POLITICS IN THE POST-CIVIL WAR NORTH, 1865–1901* (2004).

47. Libertarianism emphasizes individual autonomy and freedom of choice, while calling for the restriction or dissolution of social institutions. The political philosophy melded with the white supremacist views of the Redeemers, as well as the conservative and pro-business southern wing of the Bourbon Democrats who staunchly opposed the public welfare programs of the Reconstruction era. *Cf.* JOHN C. RODRIGUE, *RECONSTRUCTION IN THE CANE FIELDS: FROM SLAVERY TO FREE LABOR IN LOUISIANA'S SUGAR PARISHES, 1862–1880, 168* (2001).

48. *See generally* Harvey, *supra* note 35, at 7 ("The assumption that individual freedoms are guaranteed by freedom of the market and of trade is a cardinal feature of neoliberal thinking, and it has long dominated the US stance towards the rest of the world.")

49. *See* W.E.B. Du Bois, *Of Mr. Booker T Washington and Others*, in *THE SOULS OF BLACK FOLK* 62–72 (David W. Blight & Robert Gooding-Williams, eds., Bedford/St. Martin's Press, 1997) (1903); Lateef Mtima, *African-American Economic Empowerment Strategies for the New Millennium—Revisiting the Washington-DuBois Dialectic*, 42 *HOW. L.J.* 391, 394–99 (1999).

50. Scott Cummings, *Community Economic Development as Progressive Politics: Towards a Grassroots Movement for Economic Justice*, 54 *STAN. L. REV.* 399, 410–11 (2001).

51. *See id.* at 410.

52. *See* W. E. B. Du Bois, *The Talented Tenth*, in *THE NEGRO PROBLEM* (James Pott & Co., 1903).

attitude of “acquiescent submission”—a voluntary surrendering of self-respect that diminished the dignity of black Americans.<sup>53</sup> Instead, Du Bois urged a “militant, self-respecting self-assertion directed against racial prejudice and racial injustice,” a moral stance later embraced by civil rights activist Dr. Martin Luther King, Jr.<sup>54</sup>

Washington and Du Bois differed on their ideological beliefs about black socio-economic empowerment. Washington favored a market-oriented approach (albeit, a segregated market where black businesses faced the threat of racial terrorism) that deemphasized political engagement, and Du Bois advanced a political strategy that prioritized the removal of systemic barriers to social and economic mobility.<sup>55</sup> Notwithstanding, both men agreed that economic justice for black communities was a necessary component of black liberation.<sup>56</sup> Thus, they shared a fundamental belief in the value of black business ownership and the power of collective community engagement in the democratic process. In their view, CED demanded a liberated economic market where notions of race and class did not constrain human flourishing. Indeed, Du Bois proposed the organization of black-owned cooperatives during the later years of his life, drawing him closer to the ideology of Washington, and connecting him, in some ways, to the emigrationist politics of leaders like Marcus Garvey.<sup>57</sup>

Despite the thoughtful engagement of early public intellectuals like Washington and Du Bois, economic development was largely viewed by political leaders as a byproduct of economic growth policies. As a result, early economic development programs spearheaded by the federal government adopted a place-based, localist approach to poverty alleviation that experimented with various

---

53. Robert Gooding-Williams, *The Du Bois-Washington Debate and the Idea of Dignity*, in *TO SHAPE A NEW WORLD: ESSAYS ON THE POLITICAL PHILOSOPHY OF MARTIN LUTHER KING, JR.* 21 (Tommie Shelby & Brandon M. Terry eds., 2018) [hereinafter *TO SHAPE A NEW WORLD*].

54. See *id.* This position also reflects a viewpoint espoused by early abolitionist Frederick Douglass. See Williams L. Andrews, *FREDERICK DOUGLASS, MY BONDAGE AND MY FREEDOM* (University of Illinois Press, 1987) (1855) (“A man without force is without the essential dignity of humanity. Human nature is so constituted that it cannot honor a helpless man, although it can pity him; and even this it cannot do long, if the signs of power do not arise.”).

55. See John Albert Foster-Bey, Jr., “Don’t Want Nobody to Give Me Nothing”: An Assessment of Black Community Self-Help 8–9 (Apr. 19, 2012) (unpublished Ph.D. thesis, Geo. U.) (on file with Geo. U.), [https://repository.library.georgetown.edu/bitstream/handle/10822/557677/FosterBey\\_georgetown\\_0076D\\_11846.pdf?sequence=1&isAllowed=y](https://repository.library.georgetown.edu/bitstream/handle/10822/557677/FosterBey_georgetown_0076D_11846.pdf?sequence=1&isAllowed=y).

56. See HAROLD MCDUGALL, *BLACK BALTIMORE: A NEW THEORY OF COMMUNITY* 12–14 (1993).

57. Marcus Garvey advocated black independence from a primarily white-owned economic market through the establishment of Black-owned business cooperatives. Cummings, *supra* note 50, at 411–12.

economic growth strategies.<sup>58</sup> As early as the 1920s and 1930s, the federal government began sponsoring “slum” clearance programs in cities across the country.<sup>59</sup> By the 1940s and 1950s, these programs became known as “Urban Renewal,”<sup>60</sup> directing public subsidies into the pockets of private developers to encourage the creation of affordable housing for low-income residents and business development for blighted urban neighborhoods.<sup>61</sup> These strategies were supported by local governments because residential and commercial infrastructure projects promised measurable risk profiles and quantifiable financial returns, creating safe investments that, over time, could attract more capital from private investors.<sup>62</sup> The place-based CED model meshed with localist perspectives on local government law that “normalize[d] and entrench[e]d citi-

---

58. Economic development programs have historically focused on mobilizing human and financial capital to attract business investment and development in targeted urban communities. See Crowder, *supra* note 21, at 572–73. While legal scholars and historians of urban development often locate the origins of economic development in the early 1900s, and the origins of “community” economic development in the Civil Rights Movement of the 1950s–1970s, the development of government programs to address social inequality has earlier roots. In 1865, President Abraham Lincoln established the Freedman’s Bureau, an agency of the United States Department of War to “direct such issues of provisions, clothing, and fuel, as he may deem needful for the immediate and temporary shelter and supply of destitute and suffering refugees and freedmen and their wives and children.” See An Act to Establish a Bureau for the Relief of Freedmen and Refugees, ch. 90, 13 Stat. 507 (1865). Unfortunately, due to the rise of Ku Klux Klan terrorism and political opposition to public welfare assistance for formerly enslaved Africans, the agency was removed. See *Veto of the Freedmen’s Bureau Bill*, NAT’L PARK SERV., <https://www.nps.gov/anjo/learn/historyculture/freedmens-bureau.htm> (last updated Apr. 14, 2015) (noting the veto of President Andrew Johnson, who felt that the Freedmen’s Bureau was “‘class legislation’ for a particular segment of society that: a. Would keep the ex-slaves from being self-sustaining, and b. Had not been done for struggling whites (like he had been as an ex-apprentice).”)

59. See, e.g., ROBERT B. FAIRBANKS, *THE WAR ON SLUMS IN THE SOUTHWEST: PUBLIC HOUSING AND SLUM CLEARANCE IN TEXAS, ARIZONA, AND NEW MEXICO, 1935–1965* (2014); McFarlane *supra* note 21, at 317.

60. See McFarlane, *supra* note 21, at 332 (“[U]rban renewal certainly allowed cities to transform their economies in the light of the disappearance of manufacturing jobs, [but] a great many of the newly created jobs benefitted primarily suburban commuters. . . . [Urban Renewal] often eliminated poor and working class neighborhoods and replaced them with high-rise, luxury structures for the more affluent while concentrating public housing sites within black neighborhoods.”).

61. Many contend that these policies did not wrestle with the most important drivers of urban poverty. Indeed, many scholars now agree that low-income neighborhoods were the product of racial isolation policies coupled with intentional government neglect. See Susan Bennett, *The Possibility of a Beloved Place: Residents and Placemaking in Public Housing Communities*, 19 SAINT LOUIS U. PUB. L. REV. 259, 262 (2000), [hereinafter *Beloved Place*] (“By architectural and political design, public housing complexes began their history in racial and geographical isolation, an isolation intensified over the years by demographic shifts, labor and housing market forces, and vicissitudes of federal housing policy. Atrocious management and withdrawal of federal financial support for maintenance made of many complexes notorious hellholes that replicated the worst features of the early twentieth century slums that they were built to replace.”).

62. See generally Keohane, *supra* note 30, at 156–57.



zens' private, market-based, racial, and economic preferences."<sup>63</sup> Such preferences often resulted in a "deficiency-oriented" perspective of low-income urban neighborhoods, reinforcing negative opinions of urban culture and racial stereotypes stemming from an ideology of white supremacy.<sup>64</sup> In many cities across America, including my hometown of the Bronx, large sections of low-income minority neighborhoods were demolished and replaced with parks, office buildings, and highways that connected the newly improved areas to low-poverty, predominantly white suburbs.<sup>65</sup> As Sheryll Cashin explains, this method of development resulted in a "tyranny of the favored quarter"<sup>66</sup>—the birth of suburban rings that reaped the benefits of economic development while externalizing the costs and burdens to inner city slums.<sup>67</sup>

Our modern, multidimensional conception of *community* economic development largely emerged during the Civil Rights Movement of the 1950s to 1970s. Building upon the legacy of W.E.B. Du Bois, pioneering civil rights leaders like Dr. Martin Luther King, Jr. helped to launch a people-based, grassroots political action movement to end racial oppression and attain economic justice for black Americans.<sup>68</sup> Notwithstanding Dr. King's visible commitment to political activism, the economic nationalism of Booker T. Washington remained an important strategy of the civil rights movement, principally because its leaders recognized that dismantling Jim Crow laws would not immediately address the material needs of low-income black communities, much less yield a sense of human moral dignity.<sup>69</sup> Indeed, in 1968, shortly before his assassination, Dr. King launched the Poor People's Campaign as a hallmark of the Southern Christian Leadership Conference's economic justice strategy, demanding an economic "Bill of Rights" that sought to integrate the ownership of wealth through progres-

---

63. See Lisa T. Alexander, *The Promise and Perils of "New Regionalist" Approaches to Sustainable Communities*, 38 *FORDHAM URB. L.J.* 629, 639 (2011), [hereinafter *New Regionalist Approaches*].

64. See *Beloved Place*, *supra* note 61, at 270–71 (arguing that the "[p]opular conception that community cannot grow in public housing has been reinforced by best-selling 'hero stories' that present decaying communities "without even the possibility of redemption.").

65. See McFarlane, *supra* note 21, at 318 ("This approach to revitalization entailed replacing low-income neighborhoods, which were often black, with highways, sterile housing developments, and municipal office complexes, an approach which became known as "Negro removal.").

66. See Cashin, *supra* note 26, at 2003.

67. See *id.* at 2003–04.

68. See generally THOMAS F. JACKSON, *FROM CIVIL RIGHTS TO HUMAN RIGHTS: MARTIN LUTHER KING JR. AND THE STRUGGLE FOR ECONOMIC JUSTICE* (2006).

69. See *Progressive Politics*, *supra* note 50, at 414; see also Tommie Shelby, *Prisons of the Forgotten: Ghettos and Economic Justice*, in *TO SHAPE A NEW WORLD*, *supra* note 53, at 189. ("King argued that ghetto social problems are rooted in economic disadvantage, particularly in unemployment, low wages, and restriction to menial labor.").

sive political reform.<sup>70</sup> King believed that the civil rights movement was not only a call for the recognition of black American dignity through equal civil rights, but also a demand for black liberation through economic justice.<sup>71</sup> Other prominent civil rights leaders, such as el-Hajj Malik el-Shabazz (formerly Malcolm X), believed the equal inclusion of black Americans into the social and economic fabric of American life was not only essential to their human moral dignity, but was a matter of fundamental human rights.<sup>72</sup>

As civil rights organizations began orienting their grassroots political activism toward economic justice for racially segregated and socially oppressed low-income black communities, the federal government simultaneously began developing people-based policy frameworks targeting the concentration of poverty in public housing developments. Inspired by President John F. Kennedy's New Frontier domestic programs, President Lyndon B. Johnson launched the "Great Society" programs as part of his "War on Poverty" to eliminate poverty and racial injustice through an expansion of the welfare state.<sup>73</sup> President Johnson codified the Community Action Program (CAP) under the Economic Opportunity Act of 1964 (EOA), which created the Office of Economic Opportunity (OEO).<sup>74</sup> The OEO coordinated various work experience and study programs, including Job Corps and Volunteers in Service to America, and various community action agencies, including Head Start.<sup>75</sup> However, CAP's emphasis on creating community action agencies (CAAs) that relied upon the "maximum feasible participation" of poor citizens threatened the existing power structure of

---

70. See generally GERALD MCKNIGHT, *THE LAST CRUSADE: MARTIN LUTHER KING, JR., THE FBI, AND THE POOR PEOPLE'S CAMPAIGN* (1998); GORDON KEITH MANTLER, *POWER TO THE POOR: BLACK-BROWN COALITION AND THE FIGHT FOR ECONOMIC JUSTICE, 1960-1974* (2013).

71. See MARTIN LUTHER KING, JR., *WHY WE CAN'T WAIT 10* (Signet Classics 2000) (1964) ("Equality meant dignity and dignity demanded a job that was secure and a paycheck that lasted throughout the week.").

72. See MALCOLM X & ALEX HALEY, *THE AUTOBIOGRAPHY OF MALCOLM X* 275 (Ballantine Books 1965) ("Respect as *human beings!* That's what America's black masses want. . . . They want not to be walled up in slums, in the ghettos, like animals. They want to live in an open, free society where they can walk with their heads up, like men, and women!").

73. See TAYLOR, *supra* note 6, at 42 ("Johnson's Great Society programs included job training, housing, food stamps, and other forms of assistance that inadvertently helped to define Black inequality as primarily an economic question.").

74. The Community Action Program aimed to increase local control over CED initiatives and antipoverty programs. Community action agencies, administered in part by community residents, were delegated authority to implement programs in the areas of health, job training, housing, social services, and economic development. See Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508 (1964) (repealed 1981).

75. See generally Martha J. Bailey & Nicolas J. Duquette, *How Johnson Fought the War on Poverty: The Economics and Politics of Funding at the Office of Economic Opportunity*, 74 J. OF ECON. HIST. 351 (2014).

local government leaders.<sup>76</sup> Facing political pressure to preserve the status quo, in 1966 President Johnson created the Model Cities program, a government-led comprehensive anti-poverty framework designed to address social inequities across urban communities.<sup>77</sup> In 1967, Congress passed the Quie Amendment to the EOA, which stipulated that one-third of CAAs must comprise elected officials, while another third must comprise private sector representatives, reducing the representation of marginalized, low-income residents to one-third.<sup>78</sup> This modified management structure both silenced the poor and stripped them of their “censorial power.”<sup>79</sup> Also in 1967, Congress passed the Green Amendment to the EOA, which enabled governments to begin withdrawing funding from existing independent CAAs and prioritize city-controlled CAAs or public agencies.<sup>80</sup> Unsurprisingly, the Model Cities program encountered challenges with funding and struggled to redefine Urban Renewal.<sup>81</sup> CAAs were eventually replaced by community development corporations (CDCs), non-profit entities committed to serving marginalized communities.<sup>82</sup> Since their creation, CDCs have been instrumental in implementing community development programs in neighborhoods across America. Yet, they remain relatively few and far between.<sup>83</sup> Notwithstanding efforts by the federal government to spur community development through Urban Renewal and the Great Society programs, the federal government ultimately faced criticism for instituting a largely anti-participatory, top-down development process that failed to democratically engage low-

---

76. Milton Kotler, *The Politics of Community Development*, 36 L. & CONTEMP. PROBS. 3, 3 (1971).

77. See McFarlane, *supra* note 21, at 318–19 (explaining that the neighborhood-based Model Cities programs were developed partially in response to the Civil Rights Act of 1965 and sought to coordinate the many governmental anti-poverty programs while giving community members a more active role in their design and implementation.).

78. See Economic Opportunity Act Amendments of 1967, Pub. L. No. 90-222, § 211, 81 Stat. 693 (1967).

79. As James Madison explained in a letter to James Monroe, “[T]he censorial power is in the people over the Government, and not in the Government over the people.” Letter from James Madison, Member of the U.S. House of Representatives from Virginia, to James Monroe, U.S. Minister to France (Dec. 4, 1794), [https://www.loc.gov/resource/mjm.05\\_0799\\_0804/?sp=2&st=text](https://www.loc.gov/resource/mjm.05_0799_0804/?sp=2&st=text).

80. See Kotler, *supra* note 76, at 3.

81. See McFarlane, *supra* note 21, at 319.

82. The 1966 Special Impact Program amendment to the Economic Opportunity Act of 1964 established the allocation of federal funding to support CDCs. See Cummings, *supra* note 50, at 415.

83. See Alexander von Hoffman, *The Past, Present, and Future of Community Development*, SHELTERFORCE (Jul. 17, 2013), [https://shelterforce.org/2013/07/17/the\\_past\\_present\\_and\\_future\\_of\\_community\\_development/](https://shelterforce.org/2013/07/17/the_past_present_and_future_of_community_development/) (“CDCs during the 1980s and 1990s sparked revivals in inner-city neighborhoods from coast to coast. In the Roxbury and Dorchester neighborhoods of Boston, on the West Side of Chicago, in South Central Los Angeles, savvy CDC directors helped fill in the unsightly and dangerous vacant lots and buildings on their streets.”).

income community members or provide equal access to economic opportunities.<sup>84</sup> After Richard Nixon became president in 1969, his administration transferred many of the OEO's programs to other federal departments before eventually defunding the OEO's CAP division.<sup>85</sup> In 1975, President Gerald Ford closed the OEO completely and replaced it with the Community Service Administration (CSA).<sup>86</sup>

The 1960s and 1970s also saw the rise of regionalism—the belief that neighboring local governments should work together to combat the regional dimensions of inequality and racial segregation.<sup>87</sup> Indeed, the U.S. Federal-Aid Highway Act of 1962 mandated the formation of metropolitan governing bodies to facilitate transportation planning for interstate highway construction.<sup>88</sup> Further, the Housing and Urban Development Act of 1965 encouraged the creation of elected regional councils of government and metropolitan planning organizations to help address the regional dimensions of poverty.<sup>89</sup> However, the end of the civil rights era, coupled with staunch resistance from many white citizens who championed their local autonomy to exclude people of color from their neighborhoods, saw the federal government shift much of the responsibility for administering redevelopment programs to the state and local

---

84. Famed writer and public intellectual, James Baldwin, described the phenomenon of Urban Renewal by stating,

A boy last week, he was sixteen, in San Francisco, told me on television — thank God we got him to talk — maybe somebody thought to listen. He said, “I’ve got no country. I’ve got no flag.” Now, he’s only 16 years old, and I couldn’t say, “you do.” I don’t have any evidence to prove that he does. They were tearing down his house, because San Francisco is engaging — as most Northern cities now are engaged — in something called urban renewal, which means moving the Negroes out. It means Negro removal, that is what it means. The federal government is an accomplice to this fact.

*A Conversation with James Baldwin, Perspectives: Negro and the American Promise* (WGBH television broadcast Jun. 10, 1963), <https://www.youtube.com/watch?v=T8Abhj17kYU>. See also, e.g., Scott Cummings, *Between Markets and Politics: A Response to Porter's Competitive Advantage Thesis*, 82 OR. L. REV. 901, 912 (2003) (“Urban Renewal became associated with clearing away “slums” adjacent to downtown business areas, resulting in massive displacement and resegregation in other urban neighborhoods. Public housing built for these displaced residents was frequently located by design in racially and economically segregated neighborhoods.”); Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL’Y REV. 1, 47 (2003).

85. Robert Hornstein et al., *The Politics of Equal Justice*, 11 AM. U. J. GENDER SOC. POL’Y & L. 1089, 1094–95 (2002).

86. See Federal-Aid Highway Act of 1962, Pub. L. No. 87-866, 76 Stat. 1145 (1962).

87. See Briffault, *supra* note 24, at 1133–41 (explaining how local government actions in suburban localities can, in the aggregate, impose burdens on the central city).

88. See Federal-Aid Highway Act of 1962, Pub. L. 87-866, 76 Stat. 1145.

89. See *New Regionalist Approaches*, *supra* note 63, at 642.

levels.<sup>90</sup> The idea of regional governance eventually began to lose steam, and, during the 1970s, the U.S. Supreme Court began sanctioning exclusionary zoning powers in many suburban communities.<sup>91</sup> In 1974, the Model Cities Program was terminated by President Gerald Ford and replaced by the Community Development Block Grant (CDBG) Program.<sup>92</sup> CDBG allocates discretionary funding to states and municipalities through the Department of Housing and Urban Development to facilitate community revitalization programs.<sup>93</sup> The emergence of the CDBG Program, followed by the Urban Development Action Grants Program instituted under President Jimmy Carter,<sup>94</sup> reflected the shifting of decision-making authority down to the local level. By the 1980s, President Ronald Reagan would dismantle many of the federal requirements for regional review bodies altogether.<sup>95</sup> Further, he would repeal the EOA of 1964 and abolish the Community Service Administration, transitioning its funding to Community Service Block Grants administered by the U.S. Department of Health and Human Services.

Despite political reluctance to embrace regional government, in the rich tradition of W.E.B. Du Bois and earlier civil rights leaders, social justice advocates and community organizers, such as Saul Alinsky,<sup>96</sup> continued to use grassroots political activism to advance a broad-based and redistributive economic development agenda.<sup>97</sup> Building upon a history of community-based activism in the black community, Alinsky sought to create “cross-racial alliances for economic justice” that shifted the development conversation beyond the boundaries of local neighborhoods.<sup>98</sup> In 1967, George Wiley formed the National Welfare Rights Organization (NWRO) to urge

---

90. See Crowder, *supra* note 21, at 574 (explaining this shift was “based on the premise that state and local government should have a better awareness of their local assets and economic development needs”); see generally MINDY THOMPSON FULLILOVE, *ROOT SHOCK: HOW TEARING UP CITY NEIGHBORHOODS HURTS AMERICA, AND WHAT WE CAN DO ABOUT IT, ONE WORLD/BALLANTINE* (2005); DOUGLAS S. MASSEY AND NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993).

91. See Troutt, *supra* note 26, at 1147–48.

92. See *Community Development Block Grant Program — CDBG*, HUD, [https://www.hud.gov/program\\_offices/comm\\_planning/communitydevelopment/programs](https://www.hud.gov/program_offices/comm_planning/communitydevelopment/programs) (last visited Oct. 28, 2019).

93. See Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 101, 88 Stat. 633, (codified as 42 U.S.C. § 5301 (2001)).

94. See Housing and Community Development Act of 1977, Pub. L. No. 95-128, § 119, 91, Stat. 1125 (codified as amended at 42 U.S.C. § 5318 (2001)).

95. See Briffault, *supra* note 24, at 1148.

96. Through the Industrial Areas Foundation, Saul Alinsky worked to “build local power, cultivate indigenous leadership, and mobilize the poor.” Cummings, *supra* note 50, at 417.

97. See *id.* at 417–18.

98. See *id.* at 418 & n.77.

the federal government to reform the economic system and expand welfare benefits for millions of low-income Americans.<sup>99</sup> Seeking a broader reform agenda, Wiley eventually left NWRO to form the Movement for Economic Justice, a multiracial grassroots coalition of welfare recipients, the working poor, and the middle class, all organized around various economic justice issues.<sup>100</sup> Similarly, in 1970 Wade Rathke, formerly of NWRO, founded the Association of Community Organizations for Reform Now (ACORN) as a multiracial and multiclass organization dedicated toward a suite of economic justice issues affecting poor and working class populations.<sup>101</sup>

Although the civil rights era exposed the broad impact of systemic racial discrimination and the regional dimensions of inequality, as detailed in the 1968 Kerner Commission report,<sup>102</sup> a post-civil rights political framework of “colorblindness” provided the theoretical foundation for conservative politicians to begin rolling back the welfare state and its focus on economic justice.<sup>103</sup> Decades of racially-motivated disinvestment and under-resourcing had contributed to the abysmal living conditions in many low-income black communities. Yet, a politics of colorblindness shrouded institutional racism and reduced the economic crisis of the early 1970s as simply the natural consequence of moral decay, urban criminality, and a toxic culture of poverty.<sup>104</sup>

---

99. See *id.* at 418. For example, through targeted advocacy, NWRO was able to defeat President Richard Nixon’s Family Assistance Plan, which sought to replace Aid to Families with Dependent Children (AFDC). See Clay & Jones, *supra* note 33, at 262.

100. See Cummings, *supra* note 50, at 420.

101. Some of these issues included “special needs welfare programs, tax reform, generic drug pricing, ‘lifeline’ electric rates, and property taxes.” *Id.* at 420–21. By the 1970s, ACORN entered local electoral politics to advocate a poor people’s agenda that included issues such as the elimination of the state income tax for low-income individuals. See *id.* at 420.

102. See KERNER COMM’N, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1967), <http://www.eisenhowerfoundation.org/docs/kerner.pdf>; see also TAYLOR, *supra* note 6, at 52 (“The 1968 Kerner Commission report’s detailed descriptions of racial discrimination by public and private institutions had established a basis upon which African Americans could stake a claim to federal aid.”).

103. See Ian F. Haney Lopez, “A Nation of Minorities”: Race, Ethnicity, and Reactionary Colorblindness, 59 STAN. L. REV. 985 (2007) (tracing the evolution of colorblindness in America).

104. See Oscar Lewis, *Culture of Poverty*, in ON UNDERSTANDING POVERTY: PERSPECTIVES FROM THE SOCIAL SCIENCES 199 (Daniel P. Moynihan ed., 1969) (“The subculture [of the poor] develops mechanisms that tend to perpetuate it, especially because of what happens to the worldview, aspirations, and character of the children who grow up in it.”); TAYLOR, *supra* note 6, at 53, 71 (quoting George Romney, President Richard Nixon’s first secretary of the Department of Housing and Urban Development, as stating, “Housing by itself cannot solve the problems of people . . . who may be suffering from bad habits, lawlessness, laziness, unemployment, inadequate education, low working skills, ill health, poor motivation and a negative self-image.”); WILLIAM DARTY JR., ET AL., WHAT WE GET WRONG ABOUT CLOSING THE RACIAL WEALTH GAP (2018), <https://insightcced.org/wp-content/uploads/2018/07/Where-We-Went-Wrong-COMLETE-REPORT-July-2018.pdf> (“This belief was magnified by

The emergence of a “neoconservative” political agenda<sup>105</sup> during the administration of President Ronald Reagan led to a transition from the people-based, regional political activism advanced by groups such as NWRO and ACORN toward predominately place-based, localist, and neoliberal public welfare programs.<sup>106</sup> Under President Reagan’s fiscally conservative political program of supply-side “trickle-down” economics, the government strengthened its market-based approach to economic development.<sup>107</sup> Unfortunately, market-based programs like the Low Income Housing Tax Credit (LIHTC),<sup>108</sup> a mainstay in affordable housing development, have shown limited evidence of reducing poverty in low-income neighborhoods. In fact, some studies suggest that the LIHTC has increased poverty concentration and furthered racial segregation.<sup>109</sup>

The neoliberal political project continued under the administration of President Bill Clinton. Its ‘free market’ political program of economic liberalization—focused on reducing taxes for the wealthy, increasing international trade, deregulating global financial and capital markets, privatizing public enterprises, reforming the welfare system<sup>110</sup> and cutting spending on entitlement pro-

---

Ronald Reagan’s use of the ‘welfare queen’ trope during his campaign, and, recently, via internet financial gurus pushing images of black American spending money on Jordan brand Nike shoes, rather than household needs.”).

105. The term “neoconservative” was popularized during the 1960s and early 1970s by those who rejected the countercultural politics of the New Left, such as President Lyndon B. Johnson’s Great Society programs, and the pacifist approach to foreign policy, such as the Vietnam War protests. Cf. Jonah Goldberg, *The Neoconservative Invention*, NAT’L REV. (May 20, 2003), <https://www.nationalreview.com/2003/05/neoconservative-invention-jonah-goldberg/>.

106. See Cummings, *supra* note 50, at 421–22.

107. See *id.* at 423–24.

108. Under the Tax Reform Act of 1986, the federal government created the Low Income Housing Tax Credit program (“LIHTC”), which provides tax credits to encourage private developers to build affordable rental housing for low-income Americans. Since its creation, the federal program has helped to finance housing for more than 2.4 million affordable rental-housing units. See 26 U.S.C. § 42 (2012); see also David Philip Cohen, *Improving the Supply of Affordable Housing: The Role of The Low-Income Housing Tax Credit*, 6 J.L. & POL’Y 537 (1998).

109. See *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2514 (2015) (prompted by a lawsuit claiming that the Texas Department of Housing and Community Affairs was funding LIHTC developments in predominantly minority, high-poverty neighborhoods). *But see* Ingrid G. Ellen et. al., *Poverty Concentration and the Low Income Housing Tax Credit: Effects of Siting and Tenant Composition*, 34 J. HOUS. ECON. 49, 58 (2016) (noting that there is little evidence that LIHTC concentrates poverty, and some evidence that LIHTC reduces poverty rates).

110. Under the Clinton Administration, reform meant a bill that abolished the Aid to Families with Dependent Children (AFDC) program and replaced it with Temporary Assistance to Needy Families (TANF). TANF imposes mandatory work requirements and strict term limits on welfare recipients. See Cummings, *supra* note 50, at 425–26.

grams<sup>111</sup>—aimed to create market conditions for businesses to help resolve the issues facing low-income communities through private investments. Initiatives such as the HOPE VI program<sup>112</sup> and the Empowerment Zone and Enterprise Cities Demonstration program<sup>113</sup> sought to expand business activity in distressed, low-income communities by offering tax benefits to employers in pre-defined zones. In 1994, the Clinton administration instituted the Community Development Financial Institutions (CDFI) Fund under the United States Department of the Treasury. The CDFI Fund has promoted commercial real estate development and small business development in many low-income communities since its inception. Yet, the wealth gap has persisted.<sup>114</sup> In the year 2000, President Clinton created the New Market Tax Credit Program<sup>115</sup> to incentivize the private sector to invest in businesses located in low-income communities and help revitalize economic activity. Despite these praiseworthy efforts to catalyze community development by leveraging private sector capital, scholars argue that these programs have largely failed to improve social and economic conditions for low-income black communities across America.<sup>116</sup>

Both the administrations of President George W. Bush and President Barack Obama continued the steady march of neoliberalism with market-based initiatives like the Choice Neighborhoods pro-

---

111. See Sheldon Danzinger, *Welfare Reform Policy from Nixon to Clinton: What Role for Social Science?*, in *SOCIAL SCIENCE AND POLICY-MAKING: A SEARCH FOR RELEVANCE IN THE TWENTIETH CENTURY* 137, 147-150 (David Lee Featherman ed., 2001).

112. Under the HOPE VI program (enacted under the Housing Act of 1937, Pub. L. No. 75-412, § 24, 50 Stat. 888, 899, amended by Quality Housing and Work Responsibility Act of 1998, 42 USC § 1437v) and later the Choice Neighborhoods grant program, the federal government provided public subsidies to private developers to redevelop struggling public housing developments into new high-quality mixed-income developments. See *Choice Neighborhoods*, HUD, <https://www.hud.gov/cn>.

113. In 1993, Congress created the Empowerment Zone and Enterprise Cities Demonstration Program, which was designed to create jobs and stimulate business investments in economically distressed urban communities through a combination of grant and tax credits. See McFarlane, *supra* note 21, at 296-97. The zones were designed to be areas of democratic governance and participatory community decision-making. See *id.*

114. See Clay & Jones, *supra* note 33, at 264.

115. Established as part of the Community Renewal Tax Relief Act of 2000, the New Markets Tax Credit Program sought to incentivize commercial and mixed-use real estate investments in distressed, low-income communities through a federal tax credit. Administered by the US Treasury Department's Community Development Financial Institution Fund and allocated by local Community Development Entities (CDEs) across America, the NMTC awarded \$1 billion in allocation to CDEs during the first year of the program, enabling investors to reduce their federal tax liability by \$390 million (39% of the amount invested into CDEs) over a seven-year period. Cf. Janet Thompson Jackson, *Can Free Enterprise Cure Urban Ills? Lost Opportunities for Business Development in Urban, Low-Income Communities Through the New Markets Tax Credit Program*, 37 U. MEMPHIS L. REV. 659, 662-63, 693-94 (2007).

116. See *id.* at 700-04 (arguing that NMTC would be more effective if benefits were allocated to businesses owned by community members).



gram (the next generation of the HOPE VI public housing program).<sup>117</sup> In 2010, the Obama administration took noteworthy steps to revive the legacy of regional development through the Sustainable Communities Regional Planning Grant Program.<sup>118</sup> However, as Lisa Alexander reveals, the program may struggle to achieve equitable development due to flaws in its design.<sup>119</sup> More recently, President Donald Trump's tax reforms mark not only the continued entrenchment of neoliberal politics at the expense of the welfare state, but also signal a return to the 'trickle-down' economic strategy that defined the Reagan era. Such a move could threaten regional approaches to CED once again.<sup>120</sup> Indeed, in the Tax Cuts and Jobs Act of 2017, the Trump administration established the Opportunity Zones incentive, a bipartisan effort to spur long-term private sector investments in low-income communities nationwide.<sup>121</sup> Although labeled by political leaders as a promising solution to the increased poverty concentration and hypergentrification that has overwhelmed many cities since the early 2000s,<sup>122</sup> history forewarns that the neoliberal and market-oriented Opportunity Zones program merely promises more of the same.<sup>123</sup>

It would be hasty to conclude that the various market-based economic development programs described above have not benefited marginalized communities throughout America's history. Building affordable housing and encouraging the creation of sustainable businesses are both key elements of bringing goods, services, and jobs to low-income communities.<sup>124</sup> Further, it would be

---

117. CARL GRODACH & RENIA EHRENFEUCHT, *URBAN REVITALIZATION: REMAKING CITIES IN A CHANGING WORLD* (2016).

118. See Alexander, *supra* note 63, at 631.

119. See *id.* at 660–73.

120. See Peter S. Goodman & Patricia Cohen, *It Started as a Tax Cut, Now It Could Change American Life*, N.Y. TIMES (Nov. 29, 2017), <https://www.nytimes.com/2017/11/29/business/repUBLICAN-tax-cut.html> (noting President Trump's recent tax legislation "could constrain the ability of states and local governments to levy their own taxes, pressuring them to limit spending on health care, education, public transportation and social services.").

121. See Investing in Opportunity Act, 26 U.S.C. § 1400Z-1 (2018).

122. See, e.g., Laura Bliss, *The New York That Belonged to the City*, CITYLAB (Aug. 17, 2017), <https://www.citylab.com/life/2017/08/vanishing-new-york-gentrification/537126/> ("Where immigrants, minorities, radicals, queers, runaways, and everyday workers once built an island of tolerance, grit, and creative verve . . . tourists, college bros, and the superrich now occupy a bland-ified fortress of consumption."); Tanvi Misra, *From Gentrification to Decline: How Neighborhoods Really Change*, CITYLAB (Apr. 10, 2019), [https://www.citylab.com/equity/2019/04/gentrified-cities-neighborhood-change-displacement-poverty-data/586840/?fbclid=IwAR3BX1\\_DN3rZZkc47ZnH13bzKWiS9ha0L6cqYcdVQ0t1zlxKS\\_yrfU4cAJM](https://www.citylab.com/equity/2019/04/gentrified-cities-neighborhood-change-displacement-poverty-data/586840/?fbclid=IwAR3BX1_DN3rZZkc47ZnH13bzKWiS9ha0L6cqYcdVQ0t1zlxKS_yrfU4cAJM) ("But across U.S. metros, gentrification may not be the dominant type of urban change. Instead, it's the concentration of poverty—particularly in the suburbs—that's the type of transformation most Americans have been experiencing.").

123. Timothy Weaver, *The Problem with Opportunity Zones*, CITYLAB (May 16, 2018), <https://www.citylab.com/equity/2018/05/the-problem-with-opportunity-zones/560510/>.

124. The diversity of opinion on the costs and benefits of various economic development programs reflect a larger conversation about the role of the private market in addressing

rash to suggest that each of the presidential administrations discussed above have equally advanced a neoliberal political agenda with the intent of benefiting the wealthy at the expense of the poor.<sup>125</sup> Certainly, politics plays an ongoing role in the nature and shape of America's political economy, and most would concede that our highest elected officials lead with the best of intentions. Instead, this Article argues that the market fundamentalism guiding the varied place-based and people-based CED models through American history—commonly linking poverty alleviation to the economic benefit of private investors—has not only undermined the public welfare role of the government,<sup>126</sup> but has facilitated a hegemonic shift toward a neoliberal rationality in community development.

### B. *Progressive Critiques*

There have been various critiques of place-based and people-based models of CED. Scholars from the law and economics movement have argued that localist, place-based lawmaking is economically inefficient, generating high transaction costs and producing negative “spillover effects” to unsubsidized stakeholders in neighboring localities.<sup>127</sup> These scholars maintain that place-based CED policies have historically failed to empower residents of marginalized communities and conclude that their social benefits do

---

poverty in America. Michael Porter, in a 1995 Harvard Business Review article entitled, “The Competitive Advantage of the Inner City,” urged a move away from social welfare programs toward a development agenda that created opportunities for the private market to bring needed goods, services, and jobs to low-income neighborhoods. This market-based approach called for minimizing the influence of government oversight and overbearing community demands. Michael E. Porter, *The Competitive Advantage of the Inner City*, 73 HARV. BUS. J. 55 (1995). However, as Scott Cummings argues, while Porter’s competitive advantage thesis may help grow urban economies, “Porter’s approach suffers from two weaknesses: the failure to connect his market-based model to the political realities of urban development and the lack of attention paid to distributive consequences.” See Cummings, *supra* note 84, at 902.

125. Indeed, there have been important nuances in political strategy, dynamic narratives of policy negotiation, praiseworthy efforts toward bipartisan proposals, and even instances of progressive legislation passed by each of the previous political administrations, a discussion beyond the scope of this Article, but one that merits noting nonetheless.

126. See Etienne C. Toussaint, *The New Gospel of Wealth: On Social Impact Bonds and the Privatization of Public Good*, 56 HOUS. L. REV. 153, 219 (2018); see also Crowder, *supra* note 21, at 574 (“[W]hat used to be a largely public function still has its roots in the public sphere but is now influenced by a private profit motive. . . . upending the original intent of economic development.”).

127. See Robert C. Ellickson, *The False Promise of the Mixed-Income Housing Project*, 57 UCLA L. REV. 983, 996-1002 (2012) (arguing that mixed-income housing projects, while superior to the traditional public housing model, are inferior to the provision of portable housing vouchers to needy tenants).

not outweigh their economic costs.<sup>128</sup> These assertions become readily visible when one considers the common attributes of place-based CED programs.<sup>129</sup>

Under the place-based model of CED, the conception of place is limited, focused less on the latent *social* infrastructure of marginalized communities and more on the untapped investment potential of *built* infrastructure for corporate stakeholders. Guided by a pro-business approach to economic development, the notion of ownership is also limited, focused primarily on generating assets to be owned by the financial elite, with little attention devoted toward carving out opportunities for community ownership, or honoring existing non-market ties to community. As a result, the return on capital investment from place-based CED programs have often flowed *out* of marginalized communities rather than into the pockets of community residents. This limited, neoliberal approach to CED is exacerbated by a limited focus on inclusion. Since many of the institutional development organizations, social service providers, and investment banks (often publicly traded firms) are owned by a small segment of society, community members and community-based organizations play a limited role in the development process.

By not reserving a 'seat at the table' for community members due to a limited commitment to collaboration, place-based CED projects suffer from limited transparency and inadequate democratic engagement. Decision-making is traditionally led by government and private stakeholders. As a result, place-based programs often limit attention to job creation and housing development. Moreover, they often fail to wrestle with entrenched barriers to social and economic empowerment grounded in historic racial segregation policies, state-sponsored racial injustice, and an unrelenting political commitment to global capitalism. This has birthed CED programs and political institutions designed to benefit the wealthy through marginal improvements in the lives of the poor, and with little change to the status quo of wealth inequality in America.<sup>130</sup>

Scholars have also criticized place-based CED models on social grounds, contending that they perpetuate the segregation of low-

---

128. See *id.* at 985, 1010.

129. See generally KELLY & MCKINLEY, *supra* note 13, at 1.

130. See Cummings, *supra* note 84, at 913 ("The issue identified by scholars has been that oftentimes subsidies are used to attract development that not only does little for low-income communities, but has dubious overall effects on city-wide prosperity."); see also McFarlane, *supra* note 21, at 333 ("Poor inner-city neighborhoods have not benefitted from the economic development going on around them because economic development promotes capital accumulation and mobility that intentionally bypasses poor neighborhoods.").

income communities of color from predominantly white, low-poverty and “opportunity-rich” suburban neighborhoods.<sup>131</sup> Sociologist William Julius Wilson was instrumental in advancing this view in the late 1980s, arguing that the structural challenges facing distressed, predominantly black urban communities had resulted in a “culture of urban dysfunction,” perpetuating the cycle of poverty.<sup>132</sup> According to Wilson, urban revitalization strategies must focus on dismantling dysfunctional urban neighborhoods and helping low-income residents move to communities with greater opportunities.<sup>133</sup> The research of sociologists Douglas S. Massey and Nancy A. Denton in the 1990s, captured in the acclaimed book *American Apartheid*, also proffered social critiques of place-based lawmaking, noting the persistence of racial segregation facilitated by place-based CED programs, and instead calling for race-conscious development policies that both prioritized integration and invested into the lives of marginalized individuals.<sup>134</sup> These criticisms of the place-based CED model led to a series of lawsuits against housing agencies across the country for their failure to affirmatively further fair housing, as mandated by the Fair Housing Act,<sup>135</sup> through their administration of the Low-Income Housing Tax Credit (LIHTC) program.<sup>136</sup>

Seeking to address the racial integration challenges of place-based lawmaking, development practitioners began advocating a “people-based” CED strategy.<sup>137</sup> Advocates of people-based CED programs recognize the numerous political and cultural challenges associated with locating affordable housing in low-poverty, predominantly white neighborhoods (e.g., racism).<sup>138</sup> Consequently, these advocates suggest providing low-income residents with the tools and resources necessary to move directly into opportunity-rich suburbs themselves in an effort to bypass local politics. Predi-

---

131. See, e.g. Cashin, *supra* note 26, at 1991–93.

132. See WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* 60–62 (Reprint ed. 1990); see also *Beloved Place*, *supra* note 61, at 271 (“Coverage in mass print, visual, and other media pushed the negative archetypal symbols of public housing—the high rises, the garbage, the gangs—into prominence.”).

133. *Id.* at 157–59.

134. See generally Massey & Denton, *supra* note 90.

135. Fair Housing Act of 1968, 90 P.L. 284, 82 Stat. 73.

136. See Housing and Community Development Act of 1977, Pub. L. No. 95-128, § 119, 91, Stat. 1125 (1977) (codified as amended at 42 U.S.C. § 5318 (2001)). A more robust discussion of the social critique of place-based economic development programs, including the successes and failures of the LIHTC program, is beyond the scope of this Article. However, the Author intends to explore this line of inquiry in future scholarship.

137. See generally Randall Crane and Michael Manville, *People or Place? Revisiting the Who Versus the Where of Urban Development*, LINCOLN INST. LAND POL’Y (Jul. 2008) [http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/7620/1403\\_719\\_LLA080702.pdf?sequence=1&isAllowed=y](http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/7620/1403_719_LLA080702.pdf?sequence=1&isAllowed=y).

138. See *id.* at 3–4.

cated on the success of the Gautreaux Assisted Housing Program and the U.S. Department of Housing and Urban Development's federal mobility program called "Moving to Opportunity for Fair Housing,"<sup>139</sup> qualified applicants are provided with housing vouchers that enable them to afford a "better" life in a better-resourced, but more expensive, neighborhood. Ironically, in recent years, shifting urban demographics and changing investment patterns have altered the traditional urban-suburban divide.<sup>140</sup> Many formerly blighted urban neighborhoods are changing dramatically, while many formerly low-poverty suburbs are on the decline.<sup>141</sup> As a result, housing mobility programs seeking to move low-income residents to "opportunity" may become, in some cases, a vehicle for urban centers to drive away low-income residents and pave the way for luxury housing for wealthier families and young professionals.<sup>142</sup>

These critiques fail to recognize the hegemonic nature of neoliberalism as a political rationality—a "discursive logic that legitimates exercises of power" by structuring the very language of policy debates and defining the limits of government.<sup>143</sup> Neoliberalism not only influences the role government plays in supporting the market and using law as a tool to promote "rational" economic behavior, it shapes common sense assumptions about the capacity of government to enact a substantive vision of collective well-being.<sup>144</sup> More than merely ubiquitous, some argue that neoliberalism has become an invisible form of power inseparable from the rule of law.<sup>145</sup>

---

139. See generally Greg J. Duncan & Anita Zuberi, *Mobility Lessons from Gautreaux and Moving to Opportunity*, 1 N.W.J. L. & SOC. POL'Y 110 (2006). For the consent decree that outlined the parameters of the Gautreaux demonstration, see *Gautreaux v. Landrieu*, 523 F. Supp. 665, 672–82 (N.D. Ill. 1981).

140. See Alexander, *supra* note 3, at 815, 820–21 ("Aware of trends that will make inner-cities more valuable sites in the future, global private equity funds, real estate investment trusts, and other large international developers are increasingly being attracted to previously disinvested inner-city areas before they substantially gentrify."); see generally SHERYLL CASHIN, *THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* (New York: Public Affairs, 2004).

141. See Bethany Y. Li, *Now Is the Time!: Challenging Resegregation and Displacement in the Age of Hypergentrification*, 85 FORDHAM L. REV. 1189 (2016).

142. See Alexander, *supra* note 3, at 820–21 (discussing the long-term gentrifying and displacing effect of projects that fail to include safeguards for existing low-income residents.).

143. Corinne Blalock, *Neoliberalism and the Crisis of Legal Theory*, 77 L. & CONTEMP. PROBS. 71, 84 n.74 (2014).

144. *Id.* at 85.

145. *Id.* at 85–86. But see Owen M. Fiss, *The Autonomy of Law*, 26 YALE J. INT'L L. 517, 519 (2001) ("[L]aw is an autonomous institution that serves a rich panoply of values, a good number of which, such as political freedom, individual conscience, and substantive equality, are unrelated to the efficient operation of the market or to economic growth. Law may be a

This Article contends that place-based and people-based CED models have failed to meaningfully consider the distributive justice implications of neoliberal development strategies. By focusing on the expansion of investment opportunities for private stakeholders in distressed neighborhoods, place-based strategies have perpetuated wealth inequality while undermining the economic empowerment of the poor. Similarly, while people-based strategies appear preferable because they empower individuals with the resources necessary for self-care, they undermine the inherent social capital of distressed, low-income neighborhoods. Advocates of people-based CED programs implicitly perpetuate a racialized, yet unconscious bias that concludes—when it comes to low-income minority neighborhoods—there is nothing of value worth sticking around for. Though well-meaning, by encouraging low-income residents to “move to opportunity” in low-poverty suburbs, these advocates discount the existing social and cultural capital of black low-income neighborhoods where non-market economic assets typically go unaccounted in the development process. Further, people-based programs simultaneously privilege the supposed inherent value of opportunity-rich and predominantly white low-poverty neighborhoods, discounting the threat of racism and social isolation for marginalized citizens of color. Much like the media images that painted a monochromatic portrait of my hometown of the Bronx, these policies reinforce the cancerous assumptions of racial inequality that remain malignant in the body of America.<sup>146</sup>

### C. *Neoliberal Entrenchment*

Noting the limitations of localism in addressing metropolitan equity,<sup>147</sup> yet observing the history of unsuccessful attempts to create and enforce regional forms of consolidated government,<sup>148</sup>

---

precondition to the market, but once law emerges, it takes on a life of its own as an autonomous sphere of human activity.”).

146. See *Beloved Place*, *supra* note 61, at 273–74 (“Some assumptions are supported by data: that people who live in public housing are very poor; and that in some communities they are disproportionately minorities. Other assumptions – that residents in public housing do not work, that most of them receive income from public assistance, and that they consist overwhelmingly of female-headed households with many children – are not.”).

147. See Matthew J. Parlow, *Equitable Fiscal Regionalism*, 85 *TEMPLE L. REV.* 49, 60 (2012) (noting “the localist system has helped create a great wealth and resource disparity between the central city and many of its suburbs. This is due, in part, to the ability of affluent suburbs to capture wealth and regional benefits by imposing externalities onto the central city and other parts of the metropolitan region.”); see also Cashin, *supra* note 26, at 1988.

148. See generally Christopher Johnson Acuff, *Beyond the City-Country Divide: Race, Referenda, and Representation in Consolidated Governments* (Aug. 2017) (unpublished Ph.D. dissertation, University of Tennessee, Knoxville), <https://trace.tennessee.edu/>

scholars in the fields of local government law, housing law, and community development law have turned to “new regionalism” as a pathway forward.<sup>149</sup> Lisa Alexander explains, “[n]ew regionalists support the creation of limited-purpose metropolitan governments, interlocal cooperative agreements, or other more informal and voluntary regional collaborations.”<sup>150</sup> These regional collaborations are voluntary, and in many ways, represent what scholars have called “new governance” or “democratic experimentalism.”<sup>151</sup> The new governance movement emphasizes “a shift away from the monopoly of traditional politico-legal institutions, and implies either the involvement of actors other than classically governmental actors, or indeed the absence of any traditional framework of government.”<sup>152</sup> This retreat from formal regulation encourages the participation of non-traditional stakeholders in the public decision-making process.<sup>153</sup> From a normative standpoint, new governance theory strives to respond to the demands of progressive scholars who call for social problems to be resolved in a participatory, fair, and economically just way.<sup>154</sup> Still, scholars have raised concerns about the ability of new governance approaches to both socially and economically empower marginalized stakeholders while addressing the root causes of poverty.<sup>155</sup>

These concerns manifest in an emerging CED model that perhaps stems from the new governance movement itself—the pay for success model. As the private market has taken an increasingly greater interest in public welfare service delivery, a community of socially conscious “impact invest[ors]”<sup>156</sup> has started to invest in an innovation called the social impact bond, or SIB. The SIB seeming-

---

cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=5877&context=utk\_graddiss (providing a quantitative exploration of city-county consolidation campaigns on minority representation, revealing race, ethnicity, and socioeconomic status as critical factors in voting patterns).

149. See Cashin, *supra* note 26, at 227–28.

150. See *New Regionalist Approaches*, *supra* note 63, at 643.

151. See, e.g., *Introduction to NEW GOVERNANCE, LAW AND CONSTITUTIONALISM*, IN LAW AND NEW GOVERNANCE IN THE EU AND THE US 2 (Gráinne de Búrca & Joanne Scott eds., 2006); Michael Wilkinson, *Three Conceptions of Law: Towards a Jurisprudence of Democratic Experimentalism*, 2010 WIS. L. REV. 673; Katherine R. Kruse, *Instituting Innocence Reform: Wisconsin’s New Governance Experiment*, 2006 WIS. L. REV. 645, 649; Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267 (1998).

152. DE BÚRCA & SCOTT, *supra* note 151, at 2.

153. See, e.g., Lisa T. Alexander, *Stakeholder Participation in New Governance: Lessons from Chicago’s Public Housing Reform Experiment*, 16 GEO. J. ON POVERTY L. & POL’Y 117, 127 (2009).

154. See *New Regionalist Approaches*, *supra* note 63, at 634.

155. See, e.g., Wendy A. Bach, *Governance, Accountability, and the New Poverty Agenda*, 2010 WIS. L. REV. 239, 241.

156. See McGrath, *supra* note 29, at 803 (“Impact investing refers to ‘investments made into companies, organizations, and funds with the intention to generate social and economic impact alongside a financial return.’”) (quoting *What You Need to Know About Impact Investing*, GLOBAL IMPACT INVESTING NETWORK, <https://thegiin.org/impact-investing>).

ly finds a middle ground in the ongoing CED debate by targeting social infrastructure programs that empower low-income families with tools to better their lives in the places where they live. Emerging in the U.S. in 2012,<sup>157</sup> the SIB establishes mission-driven partnerships between the public, philanthropic, and private sectors.<sup>158</sup> Private investors commit strategic investments toward social welfare programs with pre-determined timelines and pre-established performance benchmarks.<sup>159</sup> An intermediary organization coordinates the operation of the SIB and plays a central role in selecting social service providers who facilitate SIB programs.<sup>160</sup> At the completion of a SIB program, if the social service providers have successfully met pre-established performance benchmarks after being assessed by an independent evaluator, the government stakeholder repays the impact investors their original investment, along with a return on their investment based upon social outcomes.<sup>161</sup> If the SIB program is deemed unsuccessful, the impact investors are not repaid.<sup>162</sup>

By aligning private sector capital with underfunded social welfare programs, SIBs offer the prospect of both financial and social returns for private investors, while helping to address important social challenges. Reminiscent of the themes of the new governance movement, the SIB replaces classical governmental regulation with collaborative processes that imbue non-traditional stakeholders with decision-making power. Both scholars and practitioners have taken note of the SIB's promise.<sup>163</sup> Despite debate over the benefits and drawbacks of the model,<sup>164</sup> the social finance tool is

---

157. For a more robust discussion of the SIB, see generally Toussaint, *supra* note 126.

158. See EMILY GUSTAFSSON-WRIGHT ET AL., BROOKINGS INST., THE POTENTIAL AND LIMITATIONS OF IMPACT BONDS: LESSONS FROM THE FIRST FIVE YEARS OF EXPERIENCE WORLDWIDE, 1–2 (2015), <https://www.brookings.edu/wp-content/uploads/2016/07/Impact-Bondsweb.pdf>.

159. See McGrath, *supra* note 29, at 810–11.

160. See MCKINSEY & CO., FROM POTENTIAL TO ACTION: BRINGING SOCIAL IMPACT BONDS TO THE U.S. 15–16 (2012), <https://www.mckinsey.com/industries/social-sector/our-insights/from-potential-to-action-bringing-social-impact-bonds-to-the-us> (follow “From potential action: Bringing social impact bonds to the US” hyperlink).

161. See *id.* at 9, 14.

162. *Id.* at 15.

163. See generally V. KASTURI RANGAN ET AL., HARV. BUS. SCH., THE PROMISE OF IMPACT INVESTING (2011), <http://www.filantropia.org.co/archivo/attachments/article/198/Impact%20Investing.pdf>.

164. See, e.g., Toussaint, *supra* note 126, at 162 (discussing some of the benefits of the SIB model, including: “(A) the expansion of investment capital for social innovation; (B) the transfer of investment risk from the public sector to the private sector; and (C) the prioritization of evidence-based preventative social welfare programs,” and also some of the associated challenges, including: “(A) the transaction complexity of SIB deals . . . (B) the execution risks that arise during the implementation of complex SIB deals . . . and (C) the political risk associated with SIBs”); Deborah Burand, *Globalizing Social Finance: How Social Impact Bonds and Social Impact Performance Guarantees Can Scale Development*, 9 N.Y.U. J.L. &



increasingly being used by governments across the globe to address an array of social issues, including prisoner recidivism, early childhood development, homelessness, and services for disadvantaged and at-risk youth.<sup>165</sup>

Perhaps most significantly, the SIB model provides a platform for governments to finance preventative, forward-looking social welfare programs that reduce public expenditures in the long run.<sup>166</sup> Despite evidence that preventative programs yield long-term social impacts,<sup>167</sup> governments often lack the public resources or political will to invest in the future,<sup>168</sup> especially for hot-button political issues like criminal justice or poverty alleviation that are tinged with stereotype-laden questions of race and class. As a result, the emergence of a CED model that facilitates preventative, forward-looking social welfare programs via democratic experimentalism seems a step in the right direction.

Nevertheless, while the SIB model seems to integrate some of the best features of localist and regionalist approaches to CED, key challenges have plagued its development and may hinder its broader adoption by communities across America.<sup>169</sup> As Lisa Alexander reveals, new governance methods often struggle to disentangle the power dilemmas that emerge when traditionally marginalized groups are placed in collaboration with “more economically and socially empowered groups.”<sup>170</sup> In particular, Alexander highlights three common power dilemmas: (1) the prob-

---

BUS. 447 (2013); Susan R. Jones, *Is Social Innovation Financing Through Social Impact Bonds the Last Hope for Community Economic Development Programs During the Trump Administration?*, 26 J. AFFORDABLE HOUSING 351, 357 (2017).

165. See JENNIFER GIOVANNITTI & JOSHUA OGBURN, FEDERAL RESERVE BANK OF RICHMOND, GROWING THE PIPELINE OF PAY-FOR-SUCCESS PROJECTS (2018), [https://payforsuccess.org/sites/default/files/resource-files/Community%20Practice%20Paper\\_2.2018.pdf](https://payforsuccess.org/sites/default/files/resource-files/Community%20Practice%20Paper_2.2018.pdf) (highlighting “20 PFS projects in the United States (100 across the globe) that are considered launched, meaning the feasibility and structuring processes are complete, and investors have agreed to the formal structure and terms.”).

166. Government spending is often targeted toward “crisis-driven services” that stand to yield results within one fiscal year. See Rebecca Leventhal, *Effecting Progress: Using Social Impact Bonds to Finance Social Services*, 9 N.Y.U. J.L. & BUS. 511, 523 (2013); see also Toussaint, *supra* note 19, at 78 (“Government-sponsored social service programs are historically remedial in nature, targeting social problems as they arise or after they have materialized in communities.”).

167. For example, vaccinations have long been proven a far more cost-effective public health intervention than treating diseases after an outbreak or pandemic. See Keohane, *supra* note 30, at 162; see also Benjamin R. Cox, *Financing Homelessness Prevention Programs with Social Impact Bonds*, 31 REV. BANKING & FIN. L. 959, 968 (2012) (“The SIB structure redirects money from safety-net programs to more effective early-intervention programs.”).

168. See also Utting, *supra* note 14, at 6 (“Ongoing constraints associated with market forces, neoliberal ideology and conditionality have restricted social spending by governments, thereby opening up the space for non-state actors to engage in social service provisioning and proximity services.”) (quotations omitted).

169. See Toussaint, *supra* note 126, at 187.

170. See *New Regionalist Approaches*, *supra* note 63, at 644–45.

lem of demographic representation, where the representatives of marginalized groups, despite sharing similar demographic characteristics, harbor competing allegiances that amount to a false representation; (2) the problem of representative opportunism, where well-meaning, demographically or ideologically aligned representatives act opportunistically to achieve their own private interests at the expense of the broader marginalized group; and (3) the problem of representative acquiescence, where representatives articulate their needs, often unconsciously, in language and terms that reflect dominant narratives and cultural beliefs, ultimately benefiting the more dominant groups in the collaboration.<sup>171</sup> These power dilemmas reveal that even when marginalized groups gain a proverbial seat at the table, other forces may operate to weaken their representation, or silence their voices altogether, resulting in solutions that do not benefit their long-term interests or address the deep roots of their oppression.

In the well-trodden tradition of American development, the SIB is built upon a market-based model that fails to resolve these power dilemmas, often demoting community members and community-based organizations to footnotes, statistical charts, and graphs.<sup>172</sup> Although non-profit organizations may claim to represent the interests of marginalized groups, they remain vulnerable to private interests tied to future funding and can be swayed by toxic narratives that overshadow the populations they serve.<sup>173</sup> Although short-term metrics may be achieved to guarantee future funding, meaningful democratic engagement may be overlooked and long-term economic justice undermined. The insistence on a service-oriented, donor-donoree development model may perpetuate a sense of dependency among program participants that “defines a status of subserviency and evokes fear, resentment and resignation on the part of the donee.”<sup>174</sup> These flaws in the design of the SIB not only represent a waning of the primary role of government in the advancement of public good<sup>175</sup> but, more generally, are symptomatic of neoliberalism’s invisible dominance. Further, they point

---

171. *Id.*

172. See Toussaint, *supra* note 126, at 208; see also McFarlane, *supra* note 21, at 301 (“The development discourse, therefore, embodies a top-down, ethnocentric, and technocratic approach, which treat[s] people and cultures as abstract concepts, statistical figures to be moved up and down in the charts of progress.”) (quotations omitted).

173. See Edgar Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1327 (1964) (“The continuous need for new sources of funds and for renewal of existing grants can result in actual service activities remaining sharply curtailed for an extended period while field staff gather data and write up project and research proposals.”); see also Toussaint, *supra* note 126, at 156–57.

174. Cahn, *supra* note 172, at 1322.

175. See Toussaint, *supra* note 126, at 154.

toward the need for a ‘reconstructed’ CED model that can overcome the deficiencies of our capitalist economic system.<sup>176</sup>

## II. DECONSTRUCTING NEOLIBERALISM’S ILLUSION OF JUSTICE

Amidst the political tension, civic distrust, and ongoing social inequities that characterizes the Trump era,<sup>177</sup> scholars are increasingly demanding *justice* for the oppressed within our political economy. The perspectives on the root of the problems are varied, and the proposed solutions are diverse. However, discussions within the legal academy that probe the theoretical implications of *justice* upon the rule of law remain inconclusive.<sup>178</sup>

Many political philosophers understand the term *justice* to be an ideal of democracy;<sup>179</sup> an ethical obligation imposed upon citizens of a democratic government because it promotes the flourishing of human beings and the actualization of human moral dignity, thereby facilitating the best approximation of democracy itself.<sup>180</sup> However, there has long been debate on the mode of democracy that best actualizes justice. From a political standpoint, the historic debate between those in support of classical liberalism and those in favor of the socialist welfare state has resulted in the ongoing reform of America’s liberal democracy. Yet, due to the dominant order of capitalism, and both the accumulation of wealth and the monopolization of capital amassed by a bourgeois class, liberal democracy in America has historically triggered a conflict of moral values—*equality* versus *liberty*.<sup>181</sup> Growing social and economic inequality reveals the limits of liberalism’s theoretical ground, suggest-

---

176. See *id.* at 220–21.

177. See generally James Goldgeier, *How to Understand the Trump Era: The Deep Roots of Populism, Racism, and Unchecked Presidential Power*, Foreign Affairs, Oct. 31, 2018 (conveying some of the challenges of the Trump Administration).

178. While several scholars have explored the meaning of justice in relation to legal theory, a dominant legal theory of justice has yet to emerge in the legal academy. Compare RONALD DWORKIN, TAKING RIGHTS SERIOUSLY (1978), with Richard Posner, *The Ethical and Political Basis of the Efficiency Norm in Common Law Adjudication*, 8 Hofstra L. Rev. 487 (1980), and ROBIN WEST, TEACHING LAW: JUSTICE, POLITICS, AND THE DEMANDS OF PROFESSIONALISM (2014), and Troutt, *supra* note 31 (proposing a novel legal theory of structural inequality that taps into the multidimensional interplay of space, race, economic segregation, and institutions).

179. For a more robust analysis of the philosophical study of justice, see generally GUTTORM FLØISTAD, PHILOSOPHY OF JUSTICE (2014).

180. See D. R. Bhandari, *Plato’s Concept of Justice: An Analysis*, J.N.V.U. (last visited Nov. 18, 2019), <https://www.bu.edu/wcp/Papers/Anci/AnciBhan.htm>.

181. Equality brings with it a “moral” character, “something men aim at or by reference to which they guide their conduct.” JOHN REES, EQUALITY 11 (1971). Meanwhile, liberty’s meaning is ambiguous and complicated. See Jeremy Waldron, *Theoretical Foundations of Liberalism*, 37 Phil. Q. 127, 130 (1987) (“The debate over the proper conception of liberty has been bitter and sometimes deadly.”).

ing—notwithstanding democratic constraints and the loose framework of a welfare state—compromise is needed to deter growing social unrest and conflict between members of the proletariat and the ruling class.<sup>182</sup>

In his famous work, *A Theory of Justice*, American moral and political philosopher John Rawls attempted to reconcile the tension between equality and liberty by articulating a conception of “justice as fairness.”<sup>183</sup> A full critique of Rawls’ conception of justice as an ideological framework to reconcile the competing values of equality and liberty is beyond the scope of this Article.<sup>184</sup> Further, this Article does not engage larger philosophical debates about the meaning of *equality* and *liberty*.<sup>185</sup> Instead, this section limits discussion to three points of contention with Rawls’ theory of justice that reveal an illusion of justice perpetuated by the hegemony of neoliberal rationality in America.

#### A. *Revisiting Justice—An Incoherency Critique*

For Rawls, justice requires “fairness” because inequality “cannot possibly be justified by an appeal to the notions of merit or desert.”<sup>186</sup> To identify the fair social arrangement, Rawls conceives of a theoretical “original position” whereby each person is assumed to be rational, self-interested, and guided by a personal conception of his or her own “good.”<sup>187</sup> Rawls presupposes “mutual indifference” in the original position, or a “veil of ignorance” that represents, in his view, a state of equality of opportunity because human decision-making is not influenced by knowledge of personal information.<sup>188</sup> Further, this original position exists in a society marred by conflicts

182. See Young-Soon Bae, *Balancing Equality and Liberty in Rawls’ Theory of Justice* 3 (Aug. 2002) (unpublished Master’s Thesis, University of Tennessee) (on file with the University of Tennessee, Knoxville TRACE network).

183. JOHN RAWLS, *A THEORY OF JUSTICE* 111 (1971) [hereinafter *A Theory of Justice*].

184. *But see, e.g.*, Gerald Doppelt, *Rawls’ System of Justice: A Critique from the Left*, 15 *NOÛS* 259 (1981); David Gauthier, *Justice and National Endowment: Toward a Critique of Rawls’ Ideological Framework*, in *DEVELOPMENT AND MAIN OUTLINES OF RAWLS’S THEORY OF JUSTICE* 205–28 (Henry S. Richardson ed., 1999); Alan H. Goldman, *Response to Rawls from the Political Right*, in *JOHN RAWLS’ THEORY OF SOCIAL JUSTICE* 435–62 (H. Gene Blocker & Elizabeth H. Smith eds., 1980).

185. *But see, e.g.*, JOHN CHARVET, *A CRITIQUE OF FREEDOM AND EQUALITY* (1981); ERIK VON KUEHNELT-LEDDIHN, *LIBERTY OR EQUALITY: THE CHALLENGE OF OUR TIME* (2012).

186. See *A THEORY OF JUSTICE*, *supra* note 183, at 7.

187. See Bae, *supra* note 182, at 13.

188. In the original position, individuals “have no information about their place in society (class position, social status), their natural assets (intelligence, strength), their own conception of the good (plans, values), their particular psychological attributes (attitudes toward risk, optimism), or about the particular aspects of their own society (its political or economic system, history and so on).” Bae, *supra* note 182, at 14.

of interest and limited resources, necessitating the soothing balm of justice.<sup>189</sup> In such situations, “the parties would therefore find it rational to opt for a system of equal distribution of all social primary goods except where the inequalities lead to the maximization of the long-term expectation of the worst off group in society.”<sup>190</sup>

This conclusion reveals the core principles of Rawls’ theory of justice: (1) the liberty principle<sup>191</sup> and (2) the equality principle,<sup>192</sup> often referred to as the “difference principle.” Under the liberty principle, the basic liberties—relating to private matters, and critical to each person’s ability to freely pursue chosen ends<sup>193</sup>—can only be restricted for the sake of a greater system of basic liberties for society at large.<sup>194</sup> Under the difference principle—based on a presumption that it is impossible to distribute social and economic goods equally, and the notion that some inequality may be necessary to advance the collective good—society only seeks to minimize inequality.<sup>195</sup> So long as opportunity is available to all who are “able and willing to strive for them, [the equality principle] will lead to a just distribution.”<sup>196</sup> In response to concerns about differences in natural endowment, Rawls concludes that such contingencies are “morally arbitrary” and cannot be avoided nor merited.<sup>197</sup> Thus, the difference principle serves as a guide to redistribute the benefits of morally arbitrary endowments. When such benefits are redistributed under a veil of ignorance, they will maximize benefits for the least well-off and benefit the larger community.<sup>198</sup>

---

189. See Bae, *supra* note 182, at 15.

190. VINIT HAKSAR, EQUALITY, LIBERTY AND PERFECTIONISM 164 (1979).

191. See JOHN RAWLS, POLITICAL LIBERALISM 271 (1993) [hereinafter POLITICAL LIBERALISM] (“Each person has an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for all. [ ] Social and economic inequalities are permissible provided that they are i) to the greatest expected benefit of the least advantaged; and ii) attached to positions and offices open to all under conditions of fair equality of opportunity.”).

192. See A THEORY OF JUSTICE, *supra* note 183, at 302 (“Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.”).

193. According to Rawls, the basic liberties include political liberty, liberty of conscience and freedom of thought, freedom of person, the right to personal property and the freedom from unlawful arrest and seizure of that property. See A THEORY OF JUSTICE, *supra* note 183, at 53.

194. See A THEORY OF JUSTICE, *supra* note 183, at 203, 229.

195. See Bae, *supra* note 182, at 23.

196. See A THEORY OF JUSTICE, *supra* note 183, at 66.

197. *Id.* at 311–12.

198. See Bae, *supra* note 182, at 29; see also A THEORY OF JUSTICE, *supra* note 183, at 176 (asserting that the principles “not only . . . protect [individuals’] basic rights but . . . insure . . . against the worst eventualities.”).

Rawls further argues that the liberty principle should take precedent over the equality principle.<sup>199</sup> He reasons, “[t]he basis for self-esteem in a just society is not one’s income share but the publicly affirmed distribution of fundamental rights and liberties.” Rawls contends that while liberty is a value embedded within a government’s constitutional process because “it is more urgent to settle the essentials dealing with the basic freedoms,”<sup>200</sup> economic matters are to be resolved at the legislative stage, presumably because they take more time to resolve. However, these conclusions prove incoherent when confronted by modern poverty.

History reveals that “those who control the means of production have an inordinate influence in the [constitutional process],”<sup>201</sup> challenging the presumption that a powerful ruling class will uphold the difference principle through legislation. Such conclusions confound Rawls’ theory and reveal the limits of his balancing approach to matters of economic inequality, principally because the self-interested decision-making of the ruling class can be justified by the priority ordering of liberty before equality. The privileging of liberty assumes that equality is only possible within the social and political constraints imposed by a sovereign authority that preserves freedom. Evoking a Hobbesian conception of human nature as fundamentally evil and self-interested, Rawls suggests that we *need* law and order before we can work toward equality. But this ordering lacks any objective foundation, and the hierarchy could be inverted. Equality could just as easily presuppose liberty if we believe that humans are capable—evoking a Lockean belief in the fundamental goodness of human nature—of living harmoniously and respecting the dignity of their neighbor.

In truth, liberty and equality are mutually independent, incapable of being objectively ranked and calling into question Rawls’ assertion that “either a private-property economy or a socialist regime can satisfy this conception of justice.”<sup>202</sup> Further, the incoherency of Rawls’ ordering reveals his assumption of capitalism as the dominant economic paradigm.<sup>203</sup> Within a capitalist regime, unless the ruling class voluntarily transfers economic benefits to the working class, it is difficult to eradicate economic

---

199. See A THEORY OF JUSTICE, *supra* note 183, at 61 (stating, “departure from institutions of equal liberty required by the first principle cannot be justified by, or compensated for, [ ] greater social and economic advantage.”).

200. POLITICAL LIBERALISM, *supra* note 191, at 230.

201. Barry Clark & Herbert Gintis, *Rawlsian Justice and Economic Systems*, 7 PHIL. & PUB. AFF. 302, 312 (1978).

202. A THEORY OF JUSTICE, *supra* note 183, at 309.

203. See Bae, *supra* note 182, at 40.

inequality, especially when one's liberty to pursue economic activity takes precedent over social and economic inequality.<sup>204</sup>

### B. *Rethinking Equality—A Universality Critique*

Even if Rawls' privileging of liberty over equality is not incoherent, it is difficult to claim as universally valid. At best, his ordering should be viewed as historically contingent, a phenomenon subject to change and conditioned on the willingness of communities to reconstruct the moral values and political principles that govern human interaction. John Rawls' conception of justice presupposes a political order where law is necessary to constrain human nature, but participation in democracy is not necessary for one to achieve justice. Indeed, Rawls argued that the value of democracy, or political participation, was purely *instrumental*,<sup>205</sup> it merely provided a mechanism for individuals to secure collective liberty—the right to freedom of thought, expression, and association. As a result, Rawls believed that political participation should not be imposed upon all but instead should be taken up by the interested few.<sup>206</sup> However, this view is not widespread. Other political philosophers throughout history, such as Jürgen Habermas, have argued that political participation is *intrinsically* valuable, a necessary component to human flourishing.<sup>207</sup>

In the early 19<sup>th</sup> century, the Swiss-French political activist Benjamin Constant articulated these divergent views as the battle between the liberties of the ancients and the liberties of the moderns.<sup>208</sup> According to Constant, the “ancients” prioritized political rights because they viewed them as necessary to human flourishing, whereas the “moderns”—who were influenced by the industrial revolution and capitalism's promise of social mobility based

---

204. *Id.* at 41.

205. See generally James W. Nickel, *Rethinking Rawls's Theory of Liberty and Rights*, 69 CHL-KENT L. REV. 763 (1994) (explaining that Rawls viewed liberties as instrumentalities to preserve other liberties, and alternatively, to preserve the structures and processes of the whole governmental structure).

206. Chantal Mouffe, *Democratic Citizenship and the Political Community*, in COMMUNITY AT LOOSE ENDS 70, 71–75 (Theory Collective Miami ed., 1991).

207. Jürgen Habermas, BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY 270 (Mass. Inst. Of Tech. ed., William Rehg trans., 1996) (“Governmental authority derives from the power produced communicatively in the civic practice of self-determination, and it finds its legitimation in the fact that it protects this practice by institutionalizing public liberty.”).

208. See generally BENJAMIN CONSTANT, THE LIBERTY OF ANCIENTS COMPARED WITH THAT OF MODERNS (1819), <https://oll.libertyfund.org/titles/constant-the-liberty-of-ancients-compared-with-that-of-moderns-1819> (articulating a distinction between two competing conceptions of liberty, referred to as the liberties of the ancients and the liberties of the moderns).

upon entrepreneurial effort—prioritized private property rights and the individual right to freedom of thought, expression, association, and contract.<sup>209</sup> Moderns believed that the interference of the state was not a necessary piece to the puzzle of experiencing the “good” life. Political theorist Isaiah Berlin later renamed the liberties of the ancients as “positive liberties”—a positive right to participate in government—and the liberties of the moderns as “negative liberties”—the right to be free from interference as one pursues human flourishing.<sup>210</sup>

Professor Danielle Allen contends that John Rawls’ privileging of liberty over equality reveals a prioritization of the negative liberties, or *private autonomy*, over the positive liberties, or *public autonomy*.<sup>211</sup> In other words, Rawls believed that living the just life did not require one to participate in government if government ensured the basic liberties necessary for actualizing self-esteem. It is here that Professor Allen departs from the Rawlsian notion of justice, recognizing its conditionality. John Rawls’ theory was premised on the existence of a ‘neutral’ state whereby public decision-making mirrors the cultural interests and general conception of *good* of all members of a polity.<sup>212</sup> However, under conditions of diversity where citizens enjoy a wide range of cultural interests and conceptions of the good, it may be difficult for public decision-making to not impose upon the liberty of disempowered community members.<sup>213</sup> The legacy of Jim Crow in America highlights how some can interpret the law as promoting liberty, while it actually facilitates and creates inequality for an oppressed population. The notion that liberty presupposes equality is contingent on whose liberty is being upheld. As a result, the preservation of negative liberties—freedom from interference with one’s thoughts, expres-

209. See generally BENJAMIN CONSTANT, *PRINCIPLES OF POLITICS APPLICABLE TO ALL GOVERNMENTS* (Etienne Hoffman ed., Dennis O’ Keeffe trans., 1815), <https://oll.libertyfund.org/titles/constant-principles-of-politics-applicable-to-all-governments>.

210. See ISAIAH BERLIN AND THE POLITICS OF FREEDOM: ‘TWO CONCEPTS OF LIBERTY’ 50 YEARS LATER, 73–114 (Bruce Baum & Robert Nichols eds., 2013); see also *Rawls Rules: Three Post-War Liberals Strove to Establish the Meaning of Freedom*, *ECONOMIST: SCHOOLS BRIEF* (Aug. 30, 2018), <https://www.economist.com/schools-brief/2018/08/30/three-post-war-liberals-strove-to-establish-the-meaning-of-freedom>.

211. Danielle Allen, *Political Equality and Empowering Economies—Toward a New Political Economy* (Jan. 9, 2018), in *Political Equality as Justice* (unpublished manuscript), [http://henryfarrell.net/wp/wp-content/uploads/2017/04/Allen\\_equality.pdf](http://henryfarrell.net/wp/wp-content/uploads/2017/04/Allen_equality.pdf).

212. *Id.*

213. Edward C. Lyons, *Reason’s Freedom and the Dialectic of Ordered Liberty*, 55 *CLEV. ST. L. REV.* 157, 189 (2007) (quoting ROBERT AUDI & NICHOLAS WOLTERSTORFF, *RELIGION IN THE PUBLIC SQUARE: THE PLACE OF RELIGIOUS CONVICTIONS IN POLITICAL DEBATE* 16–17 (1997)) (“A liberal state exists in good part to accommodate a variety of people irrespective of their special preference for one kind of life over another; it thus allows coercion only where necessary to preserve civic order and not simply on the basis of majority preference.”).



sions, and associations—may require that the positive liberties, or the exercise of public autonomy through political participation, be viewed as necessary to human flourishing.<sup>214</sup> In short, under certain conditions, governments may need to prioritize equality to facilitate liberty and achieve justice.

Recognizing diverse orientations of the *individual* and notions of “self-perfection” along the spectrum of sociopolitical life also supports the universality critique.<sup>215</sup> Whereas some political theorists, such as John Rawls, view the notion of *perfectionism* as establishing the liberty of the individual, and the arrangement of political institutions as maximizing general human achievement toward “a fixed teleological principle,”<sup>216</sup> others attach individual moral agency to the process of self-perfection, with citizens “calling each other to the better angels of their natures.”<sup>217</sup> Those in the latter camp, evoking what American philosopher Stanley Cavell described as an Emersonian sensibility,<sup>218</sup> view perfectionism not as “some fixed hierarchy of ends,” but instead as “an individual ethical injunction to strive to be better . . . striving towards a higher ‘unattained yet attainable self.’”<sup>219</sup> The notion of a steady, yet sinuous, quest to improve not only the self, but society at large, calls for a recognition of democracy as more than a collection of static, formalistic, and neutral institutions and processes; democracy must be seen as a process of self-transformation, with citizens remaining vigilant to the ever-present need to reinvent the self and identify new pathways for effective democratic citizenship.<sup>220</sup> Framing democracy as a movement toward an amorphous conception of “better” attaches to it a moral agency and ethical subjectivity that explains the need for equal political participation, notwithstanding the importance of liberty. Justice is contingent on our willingness to question the subjective priority ordering of our democratic values.

---

214. *Id.* at 160 n.10 (quoting Glen Staszewski, *Avoiding Absurdity*, 81 IND. L.J. 1001, 1037 (2006) (quoting *Poe v. Ullman*, 367 U.S. 497, 543 (1961) (Harlan, J., dissenting))) (“The most influential judicial opinion ever written about the meaning of substantive due process proclaimed that ‘the liberty guarantee by the Due Process Clause . . . includes a freedom from all substantial arbitrary impositions and purposeless restraints.’”).

215. Perfectionism is a branch of moral and political philosophy that advances ethical theories of human well-being and the human good, often in terms of the development of human nature. *See generally* THOMAS HURKA, *PERFECTIONISM* (1993).

216. *See TO SHAPE A NEW WORLD*, *supra* note 53, at 40.

217. *See id.* at 39 (discussing Professor Chris Lebron’s notion of “moral-agency perfectionism,” which describes a flourishing democracy as an ongoing process of community and self-development).

218. STANLEY CAVELL, *EMERSON’S TRANSCENDENTAL ETUDES*, 141–83 (David Justin Hodge ed., 2003).

219. *See TO SHAPE A NEW WORLD*, *supra* note 53, at 40.

220. *See id.* at 41 (“Democracies need their citizens to remain dissatisfied with things as they stand, and to remain open to the possibility that justice will require reconstructing both society and the self.”).

Consequently, justice then not only requires equality in the rights that protect private autonomy, but also demands *political equality*—an equal right to participate in public decision-making. Democracy furthers justice by insisting upon the steady pursuit of political equality to not only protect liberty but facilitate our collective self-perfection.<sup>221</sup> But, is American democracy *democratic enough*? In other words, does American democracy enable the invention of new pathways for democratic citizenship? Does the American citizen's vote enable her to enjoy political equality? Or, does true political equality in America require a rethinking of equality itself, a rethinking of its relation to the many social and economic questions that lie at the heart of poverty's puzzle? As Paul C. Taylor suggests, “[j]ustice requires more than integrating an America that remains otherwise unchanged, or making segregation more humane, or seizing power by any means . . . more than fighting simply against racial oppression . . . our inadequacy must itself be subject to critique and continually revised.”<sup>222</sup>

### C. *Reframing Liberty—An Indeterminacy Critique*

Even if we presume that the ordering of liberty over equality is coherent, and further presume that such an ordering is universally valid, the nature of political economy that facilitates such an ordering is indeterminate. To begin, consider the dominant conception of the term *equality*. Rethinking equality is difficult, hindered by a constrained ‘social imaginary’ that Antonio Gramsci referred to as cultural and ideological hegemony.<sup>223</sup> According to Gramsci, certain ideas that are favorable to the ruling class are so deeply ingrained in social and economic processes that it becomes almost impossible for most people to conceive of alternate ideas.<sup>224</sup> Discussions of poverty often focus on social or economic equality, while some progressive and critical scholars emphasize the additional importance of intersectional categories like racial equality or gen-

---

221. Danielle Allen, Opinion, *Why the Dispossessed Riot*, WASH. POST (Apr. 30, 2015), [https://www.washingtonpost.com/opinions/the-last-straw-riot/2015/04/30/6e7168aa-edcf-11e4-8abc-d6aa3bad79dd\\_story.html](https://www.washingtonpost.com/opinions/the-last-straw-riot/2015/04/30/6e7168aa-edcf-11e4-8abc-d6aa3bad79dd_story.html) (explaining that freedom from domination requires more than merely the protection of basic liberties, but also an equal share of control over the legal institutions that shape daily life).

222. See TO SHAPE A NEW WORLD, *supra* note 53, at 47.

223. See generally, e.g., Michael G. Hanchard, *Racial Consciousness and Afro-Diasporic Experiences: Antonio Gramsci Reconsidered*, SOCIALISM AND DEMOCRACY, March 1991, at 83 (1991); T. J. Jackson Lears, *The Concept of Cultural Hegemony: Problems and Possibilities*, 90 AM. HIST. REV. 567 (1985) (describing the notion of social and cultural hegemony).

224. See Lears, *supra* note 223.

der equality.<sup>225</sup> Professor Danielle Allen argues that *human moral equality*—individual freedom as recognition of universal human worth (i.e., equal dignity)—is foundational to a democratic state and coextensive with liberty.<sup>226</sup> One cannot experience liberty if one does not also experience equal dignity.<sup>227</sup> Equal dignity, however, is undermined by the existence of laws, cultural practices, and societal norms that embed hidden biases and stereotypes.<sup>228</sup> Thus, beyond attaining freedom from interference (private autonomy vis-à-vis civil rights), if liberty is coextensive with dignity, then liberty also demands a society where citizens enjoy an equal share in the ownership and creation of the laws, policies, and procedures that govern their daily lives.<sup>229</sup> Danielle Allen refers to this aspect of political equality as the “co-ownership of political institutions.”<sup>230</sup>

This duality—liberty and dignity—manifests in two key goals of the civil rights movement—desegregation and integration. *Desegregation*, a critical first step in securing liberty for black Americans, can be described as upholding and preserving the negative liberties—freedom from the interference of racially-driven legal and societal prohibitions that infringe upon the private autonomy of black citizens. However, as Professor Allen explains, human moral equality also requires that we uphold and preserve the positive liberties of all citizens—the freedom to participate in shaping socio-political life to avoid domination by the biases or stereotypical assumptions of those in power.<sup>231</sup> This second requirement was the crucial work of *integration*, the second phase of the civil rights

---

225. *E.g.*, JAMES R. KLUEGEL & ELIOT R. SMITH, BELIEFS ABOUT INEQUALITY: AMERICANS' VIEWS OF WHAT IS AND WHAT OUGHT TO BE (1986) (describing the findings of a national survey of beliefs about social and economic inequality in America).

226. *See* Spencer Lee Lenfield, *The Egalitarian*, HARV. MAG., May–June 2016, at 42–43, <https://harvardmagazine.com/2016/05/the-egalitarian>.

227. As King argued in WHERE DO WE GO FROM HERE, “The dignity of the individual will flourish when the decisions concerning his life are in his own hands, when he has the assurance that his income is stable and certain, and when he knows that he has the means to seek self-improvement.” MARTIN LUTHER KING JR., WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY? 173 (1968).

228. Non-legal norms and practices also contribute barriers to the realization of moral equality. *Cf.* Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1333 (1964) (“For law is made not merely through statutes and legislative programs, but also through modes of official behavior.”).

229. Melvin L. Rogers, *Race, Domination, and Republicanism*, in DIFFERENCE WITHOUT DOMINATION: PURSUING JUSTICE IN DIVERSE DEMOCRACIES (Danielle Allen & Rohini Somanathan eds., forthcoming June 2020) (“[T]he security of freedom depends on (a) a republic imposing constitutional constraints that guard against arbitrary power and (b) institutional spaces that allow citizens contestatory power to ensure the proper functioning of a constitutional order.”).

230. Danielle Allen, *Political Equality and Empowering Economies—Toward a New Political Economy* 9 (Jan. 9, 2018) (unpublished manuscript) (on file with author), [http://henryfarrell.net/wp/wp-content/uploads/2017/04/Allen\\_equality.pdf](http://henryfarrell.net/wp/wp-content/uploads/2017/04/Allen_equality.pdf).

231. *Id.* at 5.

movement that Dr. King embarked upon in his Poor People's Campaign before his untimely assassination.<sup>232</sup> As King himself states, integration "unchains the spirit and the mind and provides for the highest degree of life-quality freedom."<sup>233</sup> In other words, King viewed integration as a necessary step toward affirming the full dignity of black Americans by enabling them not merely to vote, but also to become "co-creators in the kingdom of culture."<sup>234</sup>

The challenge, as King described it, is that while desegregation can be achieved by the requirements of legal reform, the law cannot easily mandate integration. In his essay, "The Ethical Demands of Integration," King remarked,

The ultimate solution to the race problem lies in the willingness of men to obey the unenforceable. Desegregation will break down the legal barriers and bring men together physically, but something must touch the hearts and souls of men so that they will come together spiritually because it is natural and right.<sup>235</sup>

Thus, human moral equality demands a radical reconstruction of our notion of liberty and, ultimately, our understanding of justice itself. Government must not merely enforce standards of non-interference through civil rights and a rejection of toxic ideologies, such as white supremacy; it must also embrace notions of non-dominance<sup>236</sup> through integration. Such integration can only be achieved through appeals to "an unenforceable moral law . . . awakened in the souls of all."<sup>237</sup>

It is here where scholars have oversimplified King's clarion call for integration. By integration, King meant something more than merely compelling citizens of different races to live in the same geographic space or attend the same public schools. True integra-

---

232. The first phase of the civil rights movement (1955-1965) focused on ending racial terrorism by white supremacists and abolishing discriminatory Jim Crow ordinances to secure the freedom of association and political participation of black Americans. The second phase emphasized substantive equality by advocating for an end to poverty and economic exploitation of marginalized communities. See TO SHAPE A NEW WORLD, *supra* note 53, at 187.

233. MARTIN LUTHER KING, JR., *The Ethical Demands of Integration*, in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES 121 (James M. Washington ed., 2003).

234. See Danielle Allen, *Integration, Freedom, and the Affirmation of Life*, in TO SHAPE A NEW WORLD, *supra* note 53, at 148.

235. KING, *supra* note 233, at 124.

236. Frank Lovett, *Domination and Distributive Justice*, 71 J. POL. 817, 820 (2009) ("The political and social institutions or practices of any society are just to the extent that, in expectation, they will tend to minimize the sum total domination, counting the domination of each person equally.").

237. See Danielle Allen, *Integration, Freedom, and the Affirmation of Life*, in TO SHAPE A NEW WORLD, *supra* note 53, at 149.

tion means engaging all community members in the work of creating and owning the political institutions that shape and govern their daily lives. By moving beyond a narrow focus on *residency* toward a broader engagement with the political institutions that govern daily life, as David Troutt explains, integration becomes the process of “connecting housing-related resources to residency without limitation by race, color, religion, sex, familial status, national origin or disability.”<sup>238</sup> This, of course, begs the question—what constitutes a political institution and what housing-related resources matter? Beyond America’s three branches of government, what additional political forces drive public decision-making and dictate whether law and order promotes dignity, thereby ensuring liberty and achieving justice?

Conventional notions of government comprise elected public officials who craft laws and policies that operate within a political economy—the systems of production, distribution, circulation, and consumption of goods and services that define how people seek material well-being. However, the rise of neoliberalism in America’s political economy reveals an abiding truth—large and powerful corporate institutions also yield a powerful influence on our political system.<sup>239</sup> Further, the ownership of productive economic property that generates wealth enables one to wield political influence on our economic system.<sup>240</sup> Consequently, the ownership of wealth in America should also be viewed as a kind of a political institution. Yet, the ownership of wealth remains highly segregated in America, enjoyed by a few, and left out of reach for many.<sup>241</sup> The economic segregation of the haves and the have-nots must not only be understood as a form of “social leprosy,” but also as a denial of dignity itself.<sup>242</sup>

Thus, political equality requires not only civil rights protecting one’s freedom from interference, but even more, it calls for public autonomy—freedom from domination through a democratization

---

238. David D. Troutt, *Inclusion Imagined: Fair Housing as Metropolitan Equity*, 65 BUFF. L. REV. 5, 90 (2017).

239. See generally JOHN MIKLER, THE POLITICAL POWER OF GLOBAL CORPORATIONS (2018) (describing global corporations as political actors that leverage economic power to influence political decision-making).

240. *Id.*

241. Kari Paul, *America’s 1% Hasn’t Controlled This Much Wealth Since Before the Great Depression*, MARKETWATCH (Aug. 5, 2018, 10:03 AM), <https://www.marketwatch.com/story/wealth-inequality-in-the-us-is-almost-as-bad-as-it-was-right-before-the-great-depression-2018-07-19> (“The incomes of the top 1% grew faster than the bottom 99% in 43 states between 2009 and 2015.”); REBECCA TIPPETT ET AL., CTR. FOR GLOBAL POLICY SOLUTIONS, BEYOND BROKE: WHY CLOSING THE RACIAL WEALTH GAP IS A PRIORITY FOR NATIONAL ECONOMIC SECURITY (2014), <http://globalpolicysolutions.org/report/beyond-broke/> (“When it comes to the racial gap in liquid wealth, African Americans and Latinos are nearly penniless.”).

242. KING, *supra* note 233, at 121.

of the ownership of productive economic property.<sup>243</sup> These two elements are critical to promoting human moral dignity for all citizens. This line of reasoning demonstrates the indeterminacy of the dominant neoliberal order. How then do we shift from a predominate focus on standards of non-interference via desegregation policies to embracing the demands of non-domination via meaningful integration across all aspects of sociopolitical life? The next section discusses the solidarity economy, or SSE, which scholars have described as an alternative approach to economic life that can democratize the ownership of wealth and promote economic justice.<sup>244</sup> SSE challenges the hegemony of neoliberalism by proposing a new vision of political and economic life.

#### D. *Reconstructing Theory—A Justice-Based Approach*

Although prevailing market-based CED models boast an ability to catalyze social impact by tapping into private sector financing, their adherence to the politics of neoliberalism undermines alternative approaches to economic development that may better advance justice. This Article argues that the adoption of a justice-based framing of CED will inspire a shift away from the principles of global capitalism toward the communitarian values of the social and solidarity economy, or SSE, thereby promoting participatory and inclusive community economic empowerment.<sup>245</sup>

Economic development policy in America has largely been driven by theories of economic growth grounded in neoclassical economics.<sup>246</sup> America's economic institutions of production, consumption, and distribution play a central role in determining

243. KING, *supra* note 227, at 105.

244. See, e.g., ERIC DACHEUX & DANIEL GOUJON, THE SOLIDARITY ECONOMY: AN ALTERNATIVE DEVELOPMENT STRATEGY? (2012), <http://www.im-pactes.eu/wp-content/uploads/2014/10/SE-alternative-development-strategy.pdf>.

245. Cf. ANUP DASH, UNITED NATIONS RESEARCH INST. FOR SOC. DEV., TOWARD AN EPISTEMOLOGICAL FOUNDATION FOR SOCIAL AND SOLIDARITY ECONOMY 2 (2014), [http://www.unrisd.org/unrisd/website/document.nsf/\(httpPublications\)/2DE9BF410E3B8F94C1257CA600310304?OpenDocument](http://www.unrisd.org/unrisd/website/document.nsf/(httpPublications)/2DE9BF410E3B8F94C1257CA600310304?OpenDocument) (noting that scholars emphasize "these very communitarian and cooperative qualities as the distinct identity of these alternative associative and participatory economic forms, which converge toward a central purpose, endowed with a unique economic rationality that places human beings and communities above material things, work and capital.").

246. Historians generally consider British economist Alfred Marshall (1842-1924) as the father of neoclassical economics. In *PRINCIPLES OF ECONOMICS* (1890), he developed "the *ceteris paribus* technique of economic analysis, formulated the general law of demand, discovered the concept of consumers' surplus, refined marginal analysis, and devised a formula for measuring the price elasticity of demand." Francisco E. Guerra-Pujol, *Cornel West, Meet Richard Posner: Towards a Critical-Neoclassical Synthesis*, 17 *BERKELEY LA RAZA* L.J. 39, 41 (2006).

whether individuals can, or cannot, meet their material human needs.<sup>247</sup> The neoclassical economic paradigm that drives mainstream economic theory traces its origins to Adam Smith and his seminal work, *Wealth of Nations*.<sup>248</sup> Premised on theories of human behavior that have been argued to be both primitive and largely inaccurate,<sup>249</sup> the neoclassical theory of economics describes “a formulation of the economy based on models derived from exchange markets in which the forces of supply and demand operate to achieve a state of equilibrium deemed to be the optimal allocation of society’s resources.”<sup>250</sup> Based on this framework, neoclassical economics embraces “efficiency” as the economy’s normative value, reinforced by a Protestant “waste not want not” ethic, and “rationality” as the basis of human motivation.<sup>251</sup> Alongside claiming great predictive power through its preference for empiricism, neoclassical economics describes a market that “seeks to promote efficiency and wealth maximization, tends to ignore distributional effects, favors market solutions, and has a strong individualist bias.”<sup>252</sup>

---

247. Traditional “neoclassical” economics focuses on how our society’s systems of production, distribution, circulation, and consumption of goods and services define the ways in which people organize themselves and seek their material well-being. Under this formulation of economic life, the extent to which one can navigate existing economic institutions and earn income to meet basic human needs ultimately determines his or her ability to devote time and energy to the spiritual, intellectual, cultural, and social activities that are necessary to fully realize human dignity and individual sovereignty. This Article argues for a broader conception of economic life, one that defines economics “as all of the diverse ways that human communities meet their needs and create livelihoods together.” DASH, *supra* note 245, at 11. This, in turn, opens the door for economic frameworks that are embedded in social and cultural processes, focused on social capital, cooperation, and collective action. *See id.* at 11–14.

248. Adam Smith famously situated the study of economics within the framework of moral philosophy, claiming in *The Wealth of Nations* that human economic choices are motivated by self-interest. Economists such as David Kreps have argued that the morality of neoclassical economics has evolved in recent decades, transitioning “from the assumption of utility maximization to wealth maximization, and [from] self-interest . . . into explicit greed.” DASH, *supra* note 245, at 4 (internal quotation marks omitted). As a result, “[e]conomics has changed from being a theory of our material subsistence to becoming a theory of human nature, with scarcity no longer rooted in material life, but rather in the human mind as a function of infinite human desires driven by greed.” *id.* at 5.

249. Generally, the orthodox, “neoclassical” economic system can be described as “[t]he intellectual and ideological home of the capitalist economic system . . . the belief in the universality of rational choice theory; the efficient market hypothesis; the instrumentally rational, utility-maximizing, ‘separative self’ (England 1993) underlying the concept of the ‘*homo economicus*’; the assumption of a ‘separate sphere’ of economic activity, and that markets and hierarchies are alternative modes of coordination.” Dash, *supra* note 245, at 3–4; Charles R.P. Pouncy, *The Rational Rouge: Neoclassical Economic Ideology in the Regulation of the Financial Professional*, 26 VT. L. REV. 263, 273 (2002).

250. Charles R.P. Pouncy, *Introduction, Latcrit X: Critical Approaches to Economic In/Justice*, 17 BERKELEY LA RAZA J. i (2006).

251. *Id.*; see also Guerra-Pujol, *supra* note 246, at 44 (“In the words of Richard Posner, for example, ‘economics is the science of rational choice in a world—our world—in which resources are limited in relation to human wants.’”).

252. Guerra-Pujol, *supra* note 246, at 41.

Critical legal studies scholars have long been suspicious of the rational choice theory of neoclassical economics, arguing that our marketplace should instead adopt a more “egalitarian, communitarian, and progressive” conception of economic life.<sup>253</sup> Further, scholars note that wealth maximization and economic efficiency are often incompatible with the anti-subordination and community-building principles of critical theory. Notwithstanding, neoliberalism as a political rationality has shaped the role of law in development—“the creation of stable and well-protected property rights, enforcement of private contracts, and limitation of the arbitrary exercise of government power—enabling a particular ideal of entrepreneurial liberty, not visions of society.”<sup>254</sup> Scholars trace the origins of neoliberal philosophy to the early work of Friedrich Hayek, who described the economic market as “spontaneous orders,” or cosmos; a complex system beyond the capacity of human knowledge.<sup>255</sup> According to Hayek, law should remain subordinate to the economic market because government can “never be aware of all the costs of achieving particular results by such interference.”<sup>256</sup> However, this framing strips government of its substantive role in building a collective vision of society. Further, it renders law merely “a condition for the preservation (and optimization)” of the market.<sup>257</sup> Accordingly, law derives legitimacy from creating the conditions for individual liberty, but it is not primarily concerned with notions of social solidarity.

SSE represents an opportunity to explore the range of alternative economic frameworks promoted by critical scholars that address some of the shortcomings of neoclassical economics and neoliberal ideology. Specifically, SSE integrates elements of both the “social” economy and the “solidarity” economy. The social economy—a variant of embedded liberalism<sup>258</sup>—offers an alternative perspective to the prevailing, crisis-ridden capitalist economic regime, focusing instead on empowering people-centered organizations and leveraging progressive societal norms that counteract the con-

---

253. *Id.* at 44.

254. Blalock, *supra* note 143, at 84.

255. *Id.* at 85–86 (quoting 1 F.A. HAYEK, *LAW, LEGISLATION, AND LIBERTY* 38 (1981)).

256. *Id.* at 86 (quoting HAYEK, *supra* note 255, at 57).

257. *Id.* (citing HAYEK, *supra* note 255, at 47–48).

258. See HARVEY, *supra* note 35, at 11 (“The term ‘embedded liberalism’ has been used to signal “how market processes and entrepreneurial and corporate activities were surrounded by a web of social and political constraints and a regulatory environment . . . State-led planning and in some instances state ownership of key sectors (coal, steel, automobiles) were not uncommon (for example in Britain, France, and Italy).”).



ventional economic paradigm.<sup>259</sup> The “solidarity economy” emphasizes redistributive justice, participatory democracy, and alternatives to capitalism and a debt-based monetary system.<sup>260</sup> Taken together, the combined social and solidarity economy offers a progressive approach to CED that serves as a counter-hegemonic advance against the structures of neoliberalism and the tenets of global capitalism.<sup>261</sup>

It is unlikely that present-day America will forego capitalism full stop for a new economic theory like SSE. Nevertheless, SSE incorporates principles that can help shift current CED models away from the dogma of market fundamentalism. The SSE theory focuses on reasserting the primacy of social control over private profit; emphasizing ethical behavior in economic activity; and rethinking economic life through the lens of democratic self-management and active citizenship.<sup>262</sup> In other words, instead of individualism, SSE promotes communitarianism; instead of profit, SSE promotes equity; instead of privacy, SSE promotes democratic participation. When these principles of SSE are woven into an economic development process, several strategies emerge that prove helpful in developing criteria for a justice-based conceptual framework of CED—(1) leveraging the existing cultural collective efficacy of marginalized neighborhoods by seeking to develop under-utilized community-based assets for the benefit of residents; (2) promoting local, broad-based ownership of newly developed assets to keep money circulating within the hands of people living in marginalized communities; (3) encouraging the usage of local, community-owned organizations and community-based financial institutions in the provision of social welfare services; (4) bringing community stakeholders to the decision-making table to foster transparency and engender accountability; and (5) prioritizing social welfare programs that consider the impact of institutional racism,<sup>263</sup> system-

---

259. See Utting, *supra* note 14, at 2; cf. DASH, *supra* note 245, at 6 (explaining that new evolutionary biology supports the contention that humans are by nature not selfish and isolated individuals, but rather inclined toward cooperative relationships).

260. See Utting, *supra* note 14, at 2.

261. The social and solidarity economy (SSE) traces its roots to historic debates on sociopolitical and economic problems facing Europe during the industrial revolution in the eighteenth century. The philosophy manifested as different economic theories—cooperatives, self-management, mutualism, social economy, etc.—that served as alternatives to the hegemonic capitalist regime that had come to define modern economic life. It was further developed as a philosophical formulation by the utopian socialists and early champions of cooperative philosophy, including Robert Owen, Henri de Saint Simon, Charles Fourier, and Pierre-Joseph Proudhon. See DASH, *supra* note 245, at 7. For more information on SSE, see generally Utting, *supra* note 14.

262. See Utting, *supra* note 14, at 2.

263. See TAYLOR, *supra* note 6, at 8 (“Black revolutionary Stokely Carmichael and social scientist Charles Hamilton coined the phrase ‘institutional racism’ in their book *Black Pow-*

ic economic inequality, and sustained racial segregation. These strategies stand in direct contraposition to the traditional drivers of place-based CED policy.<sup>264</sup>

As an economic framework, SSE is not without its critics.<sup>265</sup> But, if SSE can help advance political equality by democratizing the political institution called wealth, and if political equality is a necessary component of justice, then how might embracing SSE's core principles change the way we think about CED policy in America? By seeking to de-commodify economic activity, SSE offers a different perspective on economic life that can shift society toward a social conception of democracy that fosters justice. The current prevailing ideology of corporate capitalism has inspired an alphabet soup of market-based CED programs—the LIHTC, NMTC, HCV, and SIB, to name a few. By embracing the principles of SSE, and by integrating its strategies into a coherent justice-based conceptual framework of CED, emerging development programs like the SIB, or the newer Opportunity Zones program, can shift from profit-driven incentives toward a more democratic motivation for social welfare provision. Perhaps this approach would yield the 'new governance' America so desperately needs.

Importantly, this approach to CED does not perpetuate an outdated, unspoken, and implicit bias that assumes the deficiency and inherent inferiority of low-income, minority "ghettos."<sup>266</sup> It does not privilege our country's legacy of white supremacy by implicitly suggesting that the lofty American Dream exists for people of color generally, and black Americans specifically, only when such citizens abandon a toxic "ghetto" culture that has stymied progress since

---

*er. . . Institutional racism, or structural racism, can be defined as the policies, programs, and practices of public and private institutions that result in greater rates of poverty, dispossession, criminalization, illness, and ultimately mortality of African Americans.”).*

264. See *supra* Section I.B.

265. See Utting, *supra* note 14, at 4 (“Neoclassical economic or rational choice theory, for example, has emphasized problems of free riders or shirking; organizational theory points to issues of institutional isomorphism as organizations and managers from different (private, public, collective) fields assume similar characteristics; radical political economy cautions about the capacity of powerful actors not only to repress but also to co-opt ‘alternatives’; neo-structuralist analysis critiques so-called neo-populist tendencies within the SSE movement that depict homogeneity and harmony (as opposed to differentiation and conflict) among SSE actors . . .”).

266. Cf. *McFarlane*, *supra* note 21, at 303 (“Considered underdeveloped rather than undeveloped, inner-city ghettos are described in terms of obsolescence and dysfunction, culturally perverted and not in keeping with Western, middle-class norms.”); *id.* at 339; Alexander, *supra* note 3, at 807 (“This deficiency-oriented construction of the inner-city . . . reflects an overly simplistic understanding of the actual dynamics occurring in some low-income predominantly minority, inner-city neighborhoods. It also ignores the positive social capital that exists . . .”); see generally WILSON, *supra* note 132.

emancipation.<sup>267</sup> Rather, it emphasizes a communitarian ethic, and envisions new ontological formations of *community* itself, both at the expense of the presumed rationality,<sup>268</sup> utility maximizing, and atomistic self-interest of the “homo economicus”<sup>269</sup> that undergirds our current neoclassical capitalist economy. Low-income, under-served black and brown communities are not asked to “move to opportunity” in predominantly white, low-poverty neighborhoods. Nor are they asked to single-handedly solve their own poverty with resources garnered from altruistic social welfare programs as the beneficiaries of a new, Carnegie-inspired “gospel of wealth.”<sup>270</sup>

Instead, the justice-based framing of CED articulated below incorporates key principles from the SSE movement that celebrate the richness of American diversity and foster economic justice. This refashioning of economic life will require a shift away from neoliberalism toward a more social conception of democracy that challenges the plutocratic impulse in modern American life.<sup>271</sup> Alt-

---

267. Blaming marginalized communities of color for their poverty is not new. In 1965, sociologist Daniel Patrick Moynihan, then serving as Assistant Secretary of Labor under President Lyndon B. Johnson, published *The Negro Family: The Case for National Action*, known as the “Moynihan Report.” In his influential report, Moynihan argued that the rise of single parent black households was not the product of a failing labor market, nor the result of decades of state-sponsored racial injustice, but the product of a toxic “ghetto” culture that served as a “tangle of pathology.” Specifically, Moynihan argued, “at the center of the tangle of pathology is the weakness of the family structure. Once or twice removed, it will be found to be the principal source of most of the aberrant, inadequate, or antisocial behavior that did not establish, but now serves to perpetuate [sic] the cycle of poverty and deprivation.” See DANIEL PATRICK MOYNIHAN, U.S. DEP’T OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965), <https://www.dol.gov/general/aboutdol/history/webid-moynihan>.

268. See HARVEY, *supra* note 35, at 68 (“All agents acting in the market are generally presumed to have access to the same information. There are presumed to be no asymmetries of power or of information that interfere with the capacity of individuals to make rational economic decisions in their own interests.”).

269. DASH, *supra* note 245, at 5 (explaining, “[t]he starting point for economic analysis in neoclassical economics is the individual, the *homo economicus*—anthropocentric, instrumentally (hyper)rational, atomistic and self-interested, utility maximizing, autonomous, economic actors. Emphasis on self-interest and maximization as prime movers of human action governed by the principle of competition strip the *homo economicus*—the ontologically cold and rational, calculative, instrumentally driven, atomistic man with a ‘separate self’—off [sic] any morality and substantive rationality, and create a thin theory of human action.”).

270. See Toussaint, *supra* note 126, at 155 (“Carnegie called for the wealthy to live ‘unostentatious’ lives, and become ‘trustees’ for the poor, by giving away the majority of their wealth after providing ‘moderately for the legitimate wants’ of those dependent upon them.”).

271. The term “socialism” has become taboo. However, a “social democracy” is an ideological stance that strikes a balance between market capitalism and the welfare state. While capitalism facilitates a reliable means to generate wealth, its inability to efficiently distribute wealth among its citizens necessarily leads to economic inequality and eventually poverty. To engender more egalitarian outcomes, and to promote democracy, a social democracy asserts that it is necessary for the state to both regulate the economy and provide social services to marginalized populations within the society. Historically, the notion of a social democracy was associated with Keynesian economics, state interventionism and the welfare state. More recently it has been characterized by a commitment to addressing inequality and systemic

though this uphill journey toward economic justice may seem far too difficult given the weight of partisanship in today's political landscape, this Article argues that such a democratic awakening is necessary, not only to challenge the intransigence of market fundamentalism in American society, but perhaps more importantly, to embrace the underlying moral commitments of American democracy.<sup>272</sup> Fortunately, the notion of sacrificing private profit for the sake of collective benefit is not entirely foreign to America's market economy, as demonstrated by the rise of corporate social responsibility, social entrepreneurship, and social impact investing. By uprooting the market moralities prevalent in traditional articulations of CED, and instead planting a firm commitment to the social responsibilities of economic justice, this Article argues that a justice-based conceptual framework of CED can sprout progressive projects and grow community-based institutions that target the root causes and structural determinants of inequality in America.<sup>273</sup>

### III. TOWARD A JUSTICE-BASED THEORY OF COMMUNITY ECONOMIC DEVELOPMENT

The pay-for-success model of impact investing, operationalized through social finance tools like the SIB, appears to be a promising approach to poverty alleviation. Indeed, it has already proven successful in helping to address educational disparities in Utah, for example, through an early childhood education SIB financed by Goldman Sachs.<sup>274</sup> Further, at least 100 new SIB programs are underway worldwide. Nevertheless, the pay-for-success model reflects

---

oppression. See ANDREW HEYWOOD, *POLITICAL IDEOLOGIES: AN INTRODUCTION* 128 (5th ed., 2012); Jonas Hinnfors, *Social Democracy*, in *INTERNATIONAL ENCYCLOPEDIA OF POLITICAL SCIENCE* 2423 (Bertrand Badie, et al. eds., 2011); Richard Hoefer et al., *Social Welfare Policy and Politics*, in *CONNECTING SOCIAL WELFARE POLICY TO FIELDS OF PRACTICE* 29 (Ira C. Colby et al. eds., 2013).

272. As Cornel West argues, a democracy is more than a system of elected leaders and political institutions, regulated by well-articulated check and balances. A democracy embodies timeless values and ethical beliefs, defined by "an enlightened and motivated democratic citizenry . . . that can so effectively push for democratic change . . . through democratic individuality, democratic community, and democratic society." WEST, *supra* note 7, at 203.

273. See Toussaint, *supra* note 19, at 81 (posing the following question to scholars and advocates of the emerging SIB model: "[a]t the conclusion of social service programs, are communities left more political engaged and prepared to challenge the institutional structures that perpetuate cyclical poverty?").

274. See Nathaniel Popper, *For Goldman, Success in Social Impact Bond that Aids Schoolchildren*, N.Y. TIMES: DEALBOOK (Oct. 7, 2015), <http://www.nytimes.com/2015/10/08/business/for-goldman-success-in-social-impact-bond-that-aids-schoolchildren.html> ("For people studying social impact investing, the results in Utah are exciting — even more so given the children's success. Among the 110 students who had been expected to need special education had they not attended preschool, only one actually required it this year.").

the rise of neoliberal rationality in CED policymaking. It deemphasizes the role of community stakeholders under an assumption that economic growth will nurture long-term community development. History has called into question that assumption, as market-based CED programs have largely failed to address the growing wealth disparities within American society.<sup>275</sup>

Scholars have made strides in combatting the pro-business and neoliberal trend in CED. Many now advocate for neighborhood-level, comprehensive strategies that “empower geographically discrete localities by channeling resources into communities to build affordable housing, foster community-controlled business enterprises, and provide important supplemental services, such as job training and child care.”<sup>276</sup> Nevertheless, limited community involvement in economic development decision-making must not become the endpoint of CED advocacy, but instead should serve as a launching pad toward a broader reconstructive movement for economic justice.<sup>277</sup> Consequently, while existing CED models may incorporate some level of community engagement—often by choosing to fund community-based social service providers—more work remains to move beyond the power dilemmas of new governance approaches described by Lisa Alexander.<sup>278</sup>

Justice-based CED offers a new, perhaps simpler, framing of development—what if lawmakers and development practitioners prioritized *justice*? This section explores that very question, mapping the contours of a new conceptual framing of CED that points toward the democratic principles of the solidarity economy. As described below, justice-based CED is built upon three foundational pillars—(1) social solidarity; (2) economic democracy; and (3) solidarity economy—forging a path for America to transgress its stubborn systems of domination. Taken together, the conceptual framework evokes what scholars have called “*the blending of people and place strategies*,”<sup>279</sup> while incorporating a unique emphasis on economic justice. The Author hopes that it will inspire a shift away

---

275. See generally DORITY JR., ET AL., *supra* note 104.

276. See Scott L. Cummings & Gregory Volz, *Toward a New Theory of Community Economic Development*, 37 CLEARINGHOUSE REV. 158, 158 (2003) [hereinafter *Toward a New Theory*].

277. See *id.* at 158 (“We must also measure success by the degree to which we are able to translate this community participation into structural reforms that actually distribute significant resources to low-income communities.”).

278. See Angela Glover Blackwell, *Promoting Equitable Development*, 34 INDIANA L. REV. 4, 1273, 1278 (2001) (“Equitable development includes policies and practices to promote and manage regional economic growth in a way that maximizes benefits for residents of low-income communities of color throughout metropolitan regions.”).

279. See *id.* at 1279 (emphasis in original) (“People strategies are investments in human capital, such as workforce development and safety net programs. Place strategies revolve around bolstering or safeguarding the physical infrastructure, the types of activities implicated by transportation or environmental policy.”); see also *supra* Section II.C.

from the stalled localism versus regionalism debate altogether, and instead refocus attention on the demands of justice.

### A. *Social Solidarity*

The first pillar of justice-based CED, *social solidarity*, calls for development efforts to foster political equality for all people within and beyond the dynamic boundaries of modern communities, with the ultimate goal of conferring power.<sup>280</sup> This goal can be achieved through two related strategies: (1) *participatory democracy* that disrupts systems of class privilege and racial hierarchy embedded in law; and (2) *equitable development* initiatives that transcend local autonomy concerns and embrace the regional dimensions of inequality. These two strategies work hand in hand. Creating participatory democratic spaces that build local power, such as broad-based multiracial coalitions that extend beyond the neighborhood level and engage existing political institutions, promote equity in public decision-making by giving citizens tools to hold civic leaders accountable. In turn, equitable development demands comprehensive strategies that transcend the boundaries of neighborhoods and consider the economic, political, social, and environmental dimensions of community development.<sup>281</sup> Yet, a comprehensive regional approach to participatory democracy must first wrestle with historical narratives of state-sponsored segregation and racial oppression that perpetuate inequality and weaken citizen power.

Racialized narratives of poverty, perpetuated by neoliberal ideology,<sup>282</sup> operate to convince skeptics that poor people are poor because of their own moral failings. However, a progressive CED strategy grounded in economic justice demands a deeper examination of politically and socially fragmented communities.<sup>283</sup> The first

---

280. Scholars have already noted the need to integrate economic empowerment strategies into CED through a regional, broad-based political reform agenda. See, e.g., Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLINICAL L. REV. 5, 8 (2016) (discussing the legacy of “rebellious lawyering” as “a transferable form of clinical pedagogy and practice, [sic] and as a legal-political method of community- and social-movement-building.”); Toward a New Theory, *supra* note 276, at 159 (noting, “CED has treated low-income communities as isolated markets amenable to exclusively local remedial economic action. Yet . . . the roots of racial and economic segregation in urban areas have a peculiar political, as well as economic, history.”); see generally, David J. Barron, *The Community Economic Development Movement: A Metropolitan Perspective*, 56 STAN. L. REV. 701 (2003).

281. See Trout, *supra* note 26, at 1171–74.

282. Cf. Blalock, *supra* note 143, at 88 (“With this neoliberal conception of the subject comes the assumption that the subject alone bears responsibility for the consequences of her actions.”).

283. See Cummings, *supra* note 84, at 905 (“A CED program that focuses narrowly on structuring economic incentives and facilitating economic investment loses sight of the

pillar of justice-based CED encourages new ontological formations of *community* that transcend traditional geographic boundaries shaped by race and class. CED initiatives have historically treated low-income communities as isolated, problem markets troubled by a culture of poverty that can be fixed with neighborhood-level, place-based initiatives.<sup>284</sup> Even where communities have implemented social mobility programs,<sup>285</sup> they have often failed to address the political construction of historic racial and economic segregation. In other words, the boundaries of community that dictate notions of accountability are illusory vestiges of white supremacy that both separate and ‘other’ black and brown Americans. This stems, in part, from an ideology of American exceptionalism—the notion that America operates under a post-racial, meritocratic social order where the American Dream is attainable for anyone who simply works *hard* enough.<sup>286</sup> Individuals who embrace this ideology believe that poverty can be overcome by greater self-determination in poverty-stricken neighborhoods through targeted social welfare programs, or through good old-fashioned “tough love.”<sup>287</sup>

Calls for self-determination as a solution to poverty make sense considering the historic election of Barack Hussein Obama, the first African American president of the United States. After decades of sluggish racial progress and the continued expansion of the racial wealth gap, the election of President Obama signaled for many the dawn of a new day in American politics, the birth of a so-called “post-racial” society, and the affirmation of what has become a persistent call for “colorblindness” and “race neutrality” in the law.<sup>288</sup> However, just eight years later, the recalcitrant legacy of

---

deeply embedded political structure of inter-jurisdictional relations that constrains inner city economic growth.”).

284. See *supra* Section I.A.

285. See *id.*

286. Yet, for many, the American Dream may soon be out of reach. See DEDRICK ASANTE-MUHAMMAD ET AL., PROSPERITY NOW, THE ROAD TO ZERO WEALTH: HOW THE RACIAL WEALTH DIVIDE IS HOLLOWING OUT AMERICA’S MIDDLE CLASS, INSTITUTE FOR POLICY STUDIES 5 (2017) (“If the racial wealth divide is left unaddressed and is not exacerbated further over the next eight years, median Black household wealth is on a path to hit zero by 2053—about 10 years after it is projected that racial minorities will comprise the majority of the nation’s population. Median Latino household wealth is projected to hit zero twenty years later, or by 2073. In sharp contrast, median White household wealth would climb to \$137,000 by 2053 and \$147,000 by 2073.”).

287. See Steve Holland, *Obama Has Tough-Love Message for African-Americans*, REUTERS (July 16, 2009), <https://www.reuters.com/article/us-obama/obama-has-tough-love-message-for-african-americans-idUSTRE56G06K20090717> (noting that at the 100th anniversary celebration of the NAACP, President Barack Obama “urged blacks to take greater responsibility for themselves and move away from reliance on government programs.”). *But see* DARITY JR. ET AL., *supra* note 104 at 8 (“[S]tudying hard and working hard clearly is not enough for black families to make up for their marginalized financial position.”).

288. See Samuel R. Bagenstos, *On Class-Not-Race, in A NATION OF WIDENING OPPORTUNITIES? THE CIVIL RIGHTS ACT AT 50*, 105 (Ellen D. Katz & Samuel R. Bagenstos

white supremacy<sup>289</sup> has resurfaced under the election of real estate mogul and entertainment celebrity Donald John Trump, ushering a new political order of pseudo-populism built upon a familiar platform of “law and order” and racial retrenchment.<sup>290</sup> With the support of an overwhelming majority of white voters,<sup>291</sup> Trump’s election led to the elevation of white-nationalist champion Steve Bannon to the White House advisor seat<sup>292</sup> and the appointment of Jefferson Sessions to the highest position of federal law enforcement.<sup>293</sup> Although both Bannon and Sessions spent limited time in office, the Trump administration reveals the bitter truth about American post-racialism; the “problem of the color line,” as described by W.E.B. Du Bois,<sup>294</sup> remains a salient force in American life. The antiquated political perspectives of a few continue to belie

eds., 2015) (discussing the arguments of “class-not-race” advocates and highlighting key problems in the struggle to address issues of social and economic justice).

289. See TAYLOR, *supra* note 6, at 210 (explaining that white supremacy was historically “a political strategy intended to manipulate racial fears as a means of maintaining class rule for the landed elite of the cotton-rich Black Belt,” and existed “to marginalize Black influence in social, political, and economic spheres while also obscuring major differences in experience in the social, political, and economic spheres among white people. Like slavery, this was necessary to maximize productivity and profitability, while dulling the otherwise sharp antagonisms between the richest and poorest white men.”).

290. See Kimberlé Williams Crenshaw, *Race to the Bottom: How the Post-Racial Revolution Became a Whitewash*, THE BAFFLER (June 2017), <https://thebaffler.com/salvos/race-to-bottom-crenshaw> (“Not only did Trump’s successful white-backlash candidacy for the Oval Office revive Nixonian tropes of Black lawlessness and depravity—complete with gruesome caricatures of life in Black-majority inner city neighborhoods and calls for a return to white-authoritarian “law and order”—but it also relied on an overt platform of racist retrenchment that prior Republican presidents had voiced only in code.”).

291. Cf. Alec Tyson & Shiva Maniam, *Behind Trump’s Victory: Divisions by Race, Gender, Education*, PEW RESEARCH CENTER (Nov. 9, 2016), <http://www.pewresearch.org/fact-tank/2016/11/09/behind-trumps-victory-divisions-by-race-gender-education/> (“Trump’s margin among whites without a college degree is the largest among any candidate in exit polls since 1980. Two-thirds (67%) of non-college whites backed Trump, compared with just 28% who supported Clinton, resulting in a 39-point advantage for Trump among this group.”).

292. See Julian Borger & Spencer Ackerman, *Steve Bannon’s Role in Inner Circle of Trump Team Raises Fears of Security Crisis*, THE GUARDIAN (Jan. 31, 2017), <https://www.theguardian.com/us-news/2017/jan/30/steve-bannon-nsc-politics-national-security> (“Placing Bannon on the NSC, with his lack of national security experience, was a ‘radical’ step, Rothkopf said, as the former Breitbart media chairman had shown himself to hold ‘racist, misogynist and Islamophobic’ views.”). Steve Bannon was eventually removed from his position, but he has vowed to continue supporting President Trump’s agenda of trying to erode Barack Obama’s political legacy. See Oliver Darcy, *Steve Bannon Returns to Breitbart After Ouster from White House*, CNN: BUSINESS (Aug. 18, 2017), <https://money.cnn.com/2017/08/18/media/steve-bannon-returns-breitbart/index.html>.

293. *Trump Cabinet: Senate Confirms Jeff Sessions as Attorney General*, BBC (Feb. 9, 2017), <http://www.bbc.com/news/world-us-canada-38915273> (“The confirmation follows a series of divisive hearings during which Democrats attacked Mr. Sessions’ record on civil rights. Democrat Elizabeth Warren was silenced after recalling historic allegations of racism against Mr. Sessions.”).

294. W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK; ESSAYS AND SKETCHES* (New York: Johnson Reprint Corp., 1968) (1903) (the term “color line” gained popularity after Du Bois used it to describe the problem of racial discrimination in America).



the lived experiences of the many. Justice demands a vision of social solidarity that disentangles the threads of racism woven into the fabric of American democracy.

The quest for social solidarity begs the question—are there hidden societal constraints that hinder human moral dignity and perpetuate racial domination? The answer depends on how one defines racial justice. Discussions of racial justice in America have traditionally sought to define racial domination and racial subordination as “discrimination,” an irrational distortion of reason that can be remedied through the enforcement of neutral, unbiased legal principles by a benign, colorblind state.<sup>295</sup> Emerging in the 1980s and 90s, scholars of the critical race theory (CRT) movement proposed new conceptions of racial power, grounding their analysis in the perennial tensions between prevailing “integrationist” civil rights strategies and the unorthodox views of more radical, “nationalist” factions of the black community.<sup>296</sup> CRT scholars, such as the late Derrick Bell, Richard Delgado, Cheryl Harris, Kimberlé Crenshaw, Charles R. Lawrence III, Patricia Williams, Mari Matsuda, Devon Carbado, and others, waged an epistemic critique of the dominant framings of racial power, asserting that demands of “race neutrality” in laws and public policies served to not only shelter white expectations of *de facto* race-based privilege, but also legitimized substantive inequality and rationalized the “property” rights of white privilege.<sup>297</sup> In effect, the race-neutral and colorblind

---

295. See, e.g., Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253, 1260–62 (2011).

296. See *id.* at 1274–75; Cummings, *supra* note 50, at 405, 410–13 (discussing the classic dialogue between Booker T. Washington and W.E.B. Du Bois over the best strategy to achieve racial justice and economic empowerment for emancipated slaves). A similar tension between the normative and political strategies of civil rights lawyers was visible in the struggle for school desegregation. See generally Derrick Bell, “*Serving Two Masters*”: *Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 471 (1976) (exploring whether “the political, organizational, and even philosophical complexities of school desegregation litigation justify a higher standard of professional responsibility on the part of civil rights lawyers to their clients”).

297. See Charles R. Lawrence III, *Passing and Trespassing in the Academy: On Whiteness as Property and Racial Performance as Political Speech*, 31 HARV. J. ON RACIAL & ETHNIC JUST. 8, 9–10 (2015); see also, generally, Devon W. Carbado & Daria Roithmayr, *Critical Theory Meets Social Science*, 10 ANN. REV. L. & SOC. SCI. 149, 156–57 (2014) (describing the impact of critical race theory’s critique of formalism and neutrality in law); Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1711 (1993) (arguing that “distortions in affirmative action doctrine can only be addressed by confronting and exposing the property interest in whiteness and by acknowledging the distributive justification and function of affirmative action as central to that task”); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, U. CHI. LEGAL F. 139, 150–52 (1989) (describing the failure of legal doctrine to adequately convey Black women’s experiences as Black women); Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 HARV. CIV. RTS.–CIV. LIBERTIES L. REV. 301, 303–07 (1987) (offering “criticism of certain trends in critical legal studies scholarship that some minority scholars of color find troubling, including the CLS critique of rights and disdain

“post-racial project”<sup>298</sup> of American political leadership has not freed America from the manacles of racism; it has instead reinforced and normalized racialized distribution of power, wealth, and opportunity, rendering us shackled to a false belief in the lofty American Dream and mired in a global capitalist society ruled by plutocratic elites.<sup>299</sup> Post-racialism blinds us to the intimate connection between the phenomenon known as the American ghetto and our belief in an American Dream. In other words, we racialize space because of unspoken insecurities and deeply-held fears triggered by the desire for self-perfection, or simply a need for something to ‘move on up’ from.<sup>300</sup>

History reveals a panoply of covert (and overt) systems of class privilege and racial hierarchy that have been baked into laws and public policies, making it immensely difficult for low-income communities to climb out of poverty.<sup>301</sup> Local government policies, often supported by federal programs, have both created the urban-suburban divide and have perpetuated false narratives about low-income communities.<sup>302</sup> The work to dehistoricize race in American culture and craft a colorblind society continues today; the early

---

for incremental, piecemeal reform”); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. CIV. RTS.–CIV. LIBERTIES L. REV. 323, 333 (1987) (discussing how “combining deep criticism of law with an aspirational vision of law is part of the experience of people of color”); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. CIV. RTS.–CIV. LIBERTIES L. REV. 401, 403–06 (1987) (discussing the CLS movement’s rejection of rights-based theory and its application for the black struggle for civil rights).

298. See Lawrence, *supra* note 297, at 9–10.

299. See generally Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimization in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988) (arguing the formal equality, which declares that only laws that classify by race on their face will be treated as suspect, actually legitimizes and reinforces the institutional and structural vestiges of white privilege and supremacy in society).

300. See McFarlane, *supra* note 21, at 340 (“The ghetto is a place that makes the places outside of it (whether affluent central-city neighborhoods, the suburbs, or exurbs) a desirable refuge and a safe haven. Racialized space also provides a stark point of reference that can make onlookers more content with where they are in their lives. Black racialized space is also space people usually leave as soon as they are able: moving up means moving out.”) (footnotes omitted).

301. See RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 217 (“If federal programs were not, even to this day, reinforcing racial isolation by disproportionately directing low-income African Americans who receive housing assistance into the segregated neighborhoods that government had previously established, we might see many more inclusive communities. Undoing the effects of de jure segregation will be incomparably difficult. To make a start, we will first have to contemplate what we have collectively done and, on behalf of our government, accept responsibility.”); see McFarlane, *supra* note 21, at 334 (“Bank redlining and Federal Housing Administration policies perpetuated and skewed this outmigration for many years by devaluing neighborhoods that were racially mixed and by refusing to insure or make available mortgages for neighborhoods occupied by blacks.”).

302. Cashin, *supra* note 26, at 2026 (explaining that localism tends to “institutionalize societal attitudes that, in turn, reinforce existing disparities of power, wealth and social access.”).

twenty-first century has already witnessed assaults on affirmative action and voting rights, to name a few.<sup>303</sup> New laws and public policies designed to remedy economic inequality, educational disparities, or social challenges like criminal activity and drug abuse, continue to ignore the institutional, structural, and ideological manifestations of racial hierarchy that continue in America today.<sup>304</sup> Even calls for our nation's first black president to be "post-racial," followed by President Barack Obama's sustained posture of racial avoidance (as evidenced in many of his presidential speeches),<sup>305</sup> reveals the continued presence of race-consciousness in the American polity. Many hardworking and ambitious Americans who live in low-income communities still find themselves "stuck in place" because of their race.<sup>306</sup> And, if human moral equality, or freedom from domination, is a key attribute of a just society, then CED in America has failed at promoting justice.

Social solidarity requires a dismantling of the vestiges of state-sponsored white privilege that impede human moral dignity. Unfortunately, scholars have noted a declining prioritization of race when engaging issues of poverty, with many practitioners seeking to instead refocus attention on issues of class.<sup>307</sup> Notwithstanding, the ideology of racial hierarchy has led to continued rationalizations of the income gap, the wealth gap, the achievement gap, the

---

303. Cf. Ari Berman, *The Trump Administration Is Planning an Unprecedented Attack on Voting Rights*, THE NATION (June 30, 2017), <https://www.thenation.com/article/the-trump-administration-is-planning-an-unprecedented-attack-on-voting-rights/>.

304. See generally Eduardo Bonilla-Silva, RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA (3 ed., 2009) (arguing that the post-racial project has led to an increase in racial disparities in the quality of education); Ian F. Haney-Lopez, *Post-Racial Racism: Racial Stratification and Mass Incarceration in the Age of Obama*, 98 CALIF. L. REV. 1023 (2010) (arguing that racial disparities in the American criminal justice system reflect the impact of our country's unwillingness to resolve institutional racism, evident in our shift from civil rights and social welfare policies to stereotype-driven crime control tactics); Peter Halewood, *Laying Down the Law: Post-Racialism and the De-Racination Project*, 72 ALB. L. REV. 1047 (2009) (arguing that colorblindness and the post-racial project has contributed to increased economic inequality).

305. See Crenshaw, *supra* note 290, at 13.

306. PATRICK SHARKEY, STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY (2013) (describing how political decision-making and government policies have marginalized black neighborhoods, perpetuating segregation and poverty that belie the promise of the civil rights movement.).

307. See, e.g., WILLIAM JULIUS WILSON, THE DECLINING SIGNIFICANCE OF RACE: BLACKS AND CHANGING AMERICAN INSTITUTIONS (3d ed. 2012) (classifying various categories of oppression experienced by black Americans that are rooted in class struggles). The erasure of "race" from public discourse transcends dialogue within the economic development community and manifests in other academic domains as well. For example, as award-winning novelist Toni Morrison explains regarding the field of literature, "[s]ilence and evasion have historically ruled literary discourse. Evasion has fostered another, substitute language in which the issues are encoded, foreclosing open debate . . . the system is aggravated by the tremors that breaks into discourse on race." See TONI MORRISON, PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION 9 (1993).

incarceration gap, the police brutality gap, and a panoply of other gaps we find ourselves stuck between, as the failings of an inferior “ghetto” American culture. These rationalizations of outcome with cultural inputs suggest, implicitly, that the poor are to blame for their lot in life. Yet, evidence suggests it is “racial differences in initial endowments of and access to financial resources that sustain and fuel the racial wealth gap.”<sup>308</sup>

Wrestling with the sticky issue of race becomes even more pertinent for CED initiatives targeting criminal justice reform, such as the first SIBs launched in the United States.<sup>309</sup> Professor and civil rights advocate Michelle Alexander highlights the implications of race within the broader context of mass incarceration in America by noting,

What is completely missing in the rare public debates today about the plight of African Americans is that a huge percentage of them are not free to move up at all. It is not just that they lack opportunity, attend poor schools, or are plagued by poverty. They are barred by law from doing so . . . the major institutions with which they come into contact are designed to prevent mobility . . . .<sup>310</sup>

Alexander argues that our current prison industrial complex is in fact a new system of social control designed to subjugate marginalized black communities, not merely a manifestation of wayward urban residents in need of “tough love.” Whether or not Alexan-

---

308. See DARITY JR. ET AL., *supra* note 104, at 29.

309. Whether mass incarceration is an outgrowth of racially-tainted economic development policies or simply the manifestation of similar personal choices, among a relatively homogenous demographic, it is undeniable that our prison system impacts an alarmingly high percentage of black Americans, stripping them of their humanity while incarcerated and limiting access to many civil rights once they are released. Today, as many as eighty percent of black men have criminal records and are subjected to life outside of prison as second-class citizens due to the stigma of their criminal record. Michelle Alexander, *The New Jim Crow*, THE AMERICAN PROSPECT (Dec. 6, 2010), <https://prospect.org/special-report/new-jim-crow/>. Black Americans are significantly overrepresented in the American prison system, comprising approximately thirty-eight percent of the federal incarcerated population. See *Inmate Statistics*, FED. BUREAU OF PRISONS, [https://www.bop.gov/about/statistics/statistics\\_inmate\\_race.jsp](https://www.bop.gov/about/statistics/statistics_inmate_race.jsp) (last visited Nov. 20, 2019). By imposing harsh drug laws and tough-on-crime policies on predominantly low-income communities of color, our system of mass incarceration has perpetuated a system of racial hierarchy in the United States, while also failing to rehabilitate offenders or prepare them for successful re-entry into our communities. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 8 (2010); Toussaint, *supra* note 19, at 64 (noting the formerly incarcerated citizens are “shackled with the stigma of their prison record long after serving time behind bars, a stigma that impairs their civil rights and limits their prospects for economic prosperity in the job market.”) (footnotes omitted).

310. See Alexander, *supra* note 309, at 13.

der's contentions, though brutally convincing,<sup>311</sup> are in fact true, they suggest that CED programs addressing the issue of prisoner recidivism, for example, should integrate (or be integrated into) a broader political strategy for criminal justice reform that engages issues of race.

Broad-based coalition building as a participatory democratic strategy to foster political equality preserves the cultural collective efficacy of black and brown communities by honoring voice. Further, it suggests a reframing of community by seeking to bridge racial divides.<sup>312</sup> Traditionally, due to the disempowerment of community action agencies,<sup>313</sup> the community development corporation (CDC) has served as an advocate for communities and their residents. However, CDCs do not always represent the full spectrum of community perspectives and experiences. Broad-based, multiracial coalitions must include not only CDCs, but also labor unions, faith-based institutions,<sup>314</sup> community-based organizations, educational institutions, and other community stakeholders.<sup>315</sup> A key feature of these coalitions is their multiracial design,

---

311. Historically, enslaved Africans were viewed not as humans deserving of equal treatment under the law, but as illiterate, hypersexual animals prone to barbarism and primitive violence. After the abolition of chattel slavery, the rise of "Black Codes", and the later development of "Jim Crow" segregation policies, horrific acts of racial terrorism were used to perpetuate a system of racial hierarchy in America that has, in some ways, persisted to this day. Even when economically self-reliant black communities arose in places like Atlanta, Georgia, Chicago, Illinois, Washington, D.C., New York City, St. Louis, Missouri, Rosewood, Florida, Knoxville, Tennessee, and Tulsa, Oklahoma, they were destroyed by racist white mobs who detested the notion of economic prosperity for people whom they deemed inferior. As each system of oppression in America has been erected and dismantled, a new system of racial domination has seemingly emerged to take its place. *See generally* DOUGLAS BLACKMON, *SLAVERY BY ANOTHER NAME: THE REENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* (1<sup>st</sup> ed. 2008).

312. *See* Alexander, *supra* note 3, at 851 ("[R]esidents in low-income, segregated communities can develop positive social assets that provide the basis for positive revitalization. An unfettered and unrestrained marketplace does not return the economic value of these assets to the broad communities that produced them. Rather, the marketplace often commodifies and, arguably, exploits these community assets for the benefit of groups and individuals external to the community.").

313. *See infra* section I.A.

314. *See* Brian Siebenlist, *The Role of Faith-Based Organizations in Smart growth and Regionalism*, in *SMART GROWTH, BETTER NEIGHBORHOODS: COMMUNITIES LEADING THE WAY* 113-14 (2000) ("[F]aith-based organizations have a base of values that gives them moral suasion. As a result, they enjoy tremendous credibility in public dialogue and are successful at community organizing.").

315. Maggie Potapchuk, *Multi-Racial Coalitions and Partnerships*, in *FLIPPING THE SCRIPT: WHITE PRIVILEGE AND COMMUNITY BUILDING* 103 (2005) (discussing how multi-racial coalitions comprised of residents and diverse organizational leaders work together toward common goals). Transactional law clinics at law schools can also serve as "engaged civic institutions" that advocate on behalf of community members and use transactional representation techniques to advance economic and racial justice. *See e.g.*, Susan R. Jones, *Representing Returning Citizen Entrepreneurs in the Nation's Capital*, 25 *J. AFFORDABLE HOUSING & COMMUNITY DEV.* L. 45 (2016) ("The George Washington University Law School Small Business and Community Economic Development Clinic (SBCED Clinic or Clinic) in Washington, D.C.,

cutting across traditional and illusory neighborhood boundaries and building communities of interest focused on poverty alleviation and racial justice.

Yet, the call for participatory democracy is not new;<sup>316</sup> it simply has been silenced by America's history of market-oriented CED programs. During the civil rights movement in the 1960s, organizations such as the Southern Christian Leadership Conference, the Student Nonviolent Coordinating Committee, and the Congress of Racial Equality lobbied government leaders to prioritize economic equality for politically disenfranchised groups.<sup>317</sup> Even Dr. Martin Luther King Jr.'s famous "I Have A Dream" speech delivered on the steps of the Lincoln Memorial in 1963 began with a metaphor of a "bad check," criticizing America for not honoring the debts of injustice to her oppressed populations.<sup>318</sup> Nevertheless, responses to political demands for economic justice have been mixed.<sup>319</sup> The tragic story of the defunding of community action agencies by local government leaders, largely due to an unwillingness to confer collective power to poor citizens, reveals a silencing of poor communities and a perpetuation of oppressive social hierarchies. While local and state governments have initiated important social welfare programs,<sup>320</sup> these programs have frequently failed to integrate community members into the economic development process or

---

provides legal representation to the nonprofit organizations that support returning citizens as well as direct representation to returning citizens."); Scott L. Cummings et al., *supra* note 276, at 162 (explaining that "the equitable approach to CED . . . embraces a reconfigured notion of 'community'—one defined not by traditional neighborhood boundaries but by a common interest in redressing poverty and inequality.").

316. See Mark Engler, *Dr. Martin Luther King's Economics: Through Jobs, Freedom*, THE NATION (Jan. 15, 2010), <https://www.thenation.com/article/dr-martin-luther-kings-economics-through-jobs-freedom/> (explaining that five years after his "I Have A Dream" speech, Dr. Martin Luther King, Jr. began the Poor People's Campaign, focused on joblessness and economic deprivation).

317. See Scott L. Cummings et al., *supra* note 276, at 160.

318. See Phillip Kennicott, *Revisiting King's Metaphor About a Nation's Debt*, THE WASH. POST (Aug. 24, 2011), [https://www.washingtonpost.com/lifestyle/style/revisiting-kings-metaphor-about-a-nations-debt/2011/07/26/gIQArshBaJ\\_story.html?utm\\_term=.2d90f71915f4](https://www.washingtonpost.com/lifestyle/style/revisiting-kings-metaphor-about-a-nations-debt/2011/07/26/gIQArshBaJ_story.html?utm_term=.2d90f71915f4).

319. *E.g.*, Scott L. Cummings et al., *supra* note 276, at 160; Thomas F. Jackson, *Martin Luther King and Economic Justice*, DSA: DEMOCRATIC SOCIALISTS OF AMERICA (Jan. 17, 2014), [http://www.dsasa.org/martin\\_luther\\_king\\_and\\_economic\\_justice](http://www.dsasa.org/martin_luther_king_and_economic_justice) ("King's assassination—and the urban revolts that followed—led to a local Memphis settlement that furthered the cause of public employee unionism. The Poor People's March nonviolently won small concessions in the national food stamp program. But reporters covered the bickering and squalor in the poor people's tent city, rather than the movement's detailed demands for waging a real war on poverty.").

320. See *infra* Section I.A. (discussing various governmental programs throughout America's history that sought to provide affordable housing and promote economic development in low-income communities).

incorporate strategies for linking local coalitions to broader regional reform movements.<sup>321</sup>

The recent rise in local government concern over metropolitan inequality marks a notable shift from traditional approaches to urban development.<sup>322</sup> As Paul Peterson described in his 1981 book *City Limits*, urban development traditionally comprised only two central actors—local government and the private sector, with local government typically occupying a weaker negotiating position in the relationship. Reflecting a post-New Deal consensus that the governance of economic development programs belonged at the local level, most local governments historically focused on avoiding “capital flight,” which in many ways drove local politics.<sup>323</sup> As a result, many local governments avoided redistributive policies to appease a corporate-dominated political economy. Richard Schragger argues that the notion of a “limited city” in urban development “still dominates the literature on urban power.”<sup>324</sup>

In cities across America, local governments are now employing progressive political strategies that include marginalized communities in the development process and promote justice by fostering political equality. Clawback provisions in development contracts, local living wage laws,<sup>325</sup> community benefit agreements,<sup>326</sup> and collective impact agreements<sup>327</sup> are but a few examples of participatory democratic strategies that have been used to empower residents and engender social solidarity across traditional divides. Community-based stakeholders have also expanded their influence in CED initiatives.<sup>328</sup> For example, in Cleveland, Ohio, University Hospital, a major nonprofit medical center, worked with the Mayor’s Office to procure 80 percent of a \$1.2 billion development project that created more than 5,000 jobs.<sup>329</sup> Alongside tapping into the resources of local educational institutions, CED advocates are lever-

---

321. See Scott L. Cummings et al., *supra* note 276, at 160.

322. See KELLY & MCKINLEY, *supra* note 13, at 36.

323. See Richard C. Schragger, *Mobile Capital, Local Economic Regulation, and the Democratic City*, 123 HARV. L. REV. 482, 488 (2009) (“Governments in a capitalist system depend on private economic activity to generate prosperity and well-being for their citizens, but they appear to have limited capacity to influence capital flows. In a free market system, capital cannot be commanded by government — it must be cajoled.”).

324. See *id.* at 489.

325. Cf. Brishen Rogers, *Justice at Work: Minimum Wage Laws and Social Equality*, 92 TEX. L. REV. 1543 (2014).

326. See generally Edward W. De Barbieri, *Do Community Benefits Agreements Benefit Communities?*, 37 CARDOZO L. REV. 1773 (2016).

327. See generally Patience A. Crowder, *Impact Transaction: Lawyering for the Public Good Through Collective Impact Agreements*, IND. L. REV. (2016).

328. See KELLY & MCKINLEY, *supra* note 13, at 38.

329. FARZANA SERANG, ET AL., THE ANCHOR MISSION: LEVERAGING THE POWER OF ANCHOR INSTITUTIONS TO BUILD COMMUNITY WEALTH 7 (2010).

aging the thousands of CDCs and the growing number of community development financial institutions that provide financial services to marginalized populations.<sup>330</sup>

Even more, new political institutions are being used to promote political equality. A recent example can be found in the town of Wisconsin Rapids, Wisconsin, where the Encourage Community Foundation has taken proactive steps to include community members in decision-making and empower residents to influence local development.<sup>331</sup> These participatory democratic strategies help to foster political equality by ensuring that the liberty of community members is not constrained by laws and policies that do not reflect their values or that embed false narratives about their worth. These progressive cities recognize that our vanishing social safety nets and increasingly neoliberal CED solutions are not stemming the tide of inequality. Professor Susan Bennett argues that decades of disinvestment in low-income communities, coupled with the “devolution” of public welfare function, has destabilized the lives of very poor people and, in some cases, “untethered” them from community relationships altogether.<sup>332</sup> An untethering of poor residents, at scale, may complicate the formation of community-based coalitions necessary for social solidarity to develop. Indeed, the political influence of corporate capitalism reveals that a seat at the table is not enough. Thus, building upon the call for social solidarity, the next section discusses the need for a democratization of the economic factors of production within developing communities or, in short, a democratization of wealth.

### B. *Economic Democracy*

The second pillar of justice-based CED, *economic democracy*, calls for development efforts to promote metropolitan equity by democratizing the ownership of wealth. The ownership of the primary factors of production within an economy—land, labor, and capital—often dictates who controls wealth. Traditional approaches to economic development have focused on a combination of supply-side and demand-side economic policies that enable land, labor, and capital within a geographic location to produce more ‘goods’ for export, generating economic growth. The neoclassical assump-

---

330. See KELLY & MCKINLEY, *supra* note 13, at 40.

331. See Drew Lindsay, *Rebuilding with a New Blueprint*, THE CHRON. OF PHILANTHROPY (Oct. 4, 2016), <https://www.philanthropy.com/article/Putting-Residents-in-Charge-of/237977>.

332. See Susan Bennett, *Coming of Age on \$2 a Day, Evicted: What CED Has to Say to Today's Untethered Poverty*, 26 J. Affordable Hous. & Cmty. Dev. L. 57, 58–59 (2017).



tions of perfect competition and economies of scale popularized exogenous theories of economic growth that predicted economic development benefits would trickle down to all members of a community. Such assumptions converged with neoliberal politics that suggested the private economic market could correct the ‘market failures’ that lie at the root of poverty. However, the resulting market-oriented CED programs have not only failed to consider who owns the economic factors of production but have also failed to account for the range of non-market economic factors of production in marginalized communities, including social capital, community culture, local decision-making power, neighborhood amenities, and public goods.

Whether private developers revitalize distressed urban communities or whether low-income families are given the resources to move to low-poverty neighborhoods, the result is “a system that produces vast differences in privilege, and then tasks the most privileged with improving the system.”<sup>333</sup> Conventional approaches to development perpetuate the belief that individual agency can singlehandedly pull one out of destitute circumstances, while spreading a stereotypical ‘culture of poverty’ based on an ideology of racial hierarchy. Conversely, justice-based CED recognizes that the solutions to economic inequality must wrestle with our nation’s political history of institutionalized racism that dictated who owns the primary factors of production that create intergenerational wealth.<sup>334</sup> The justice-based framing reveals the influence of corporate capitalism on public decision-making, a non-market factor of economic production that should be viewed as a community asset. Indeed, institutional stakeholders typically gain ownership of productive economic property within low-income communities during the economic development process. Justice-based CED urges local governments to shift the ownership of land, labor, and capital to community-based entities and community residents to more equitably distribute wealth during economic development.

The ownership of land in America has a complex history. The decline of the traditional urban-suburban divide has shifted the development trajectory of many urban spaces.<sup>335</sup> In cities across

---

333. Darren Walker, *Why Giving Back Isn't Enough*, N.Y. TIMES (Dec. 17, 2015), <https://www.nytimes.com/2015/12/18/opinion/why-giving-back-isnt-enough.html>.

334. Cf. McFarlane, *supra* note 21, at 351 (explaining that economic development programs often ignore “configurations of poverty segregated by race or ethnicity” and “[threaten] to harden these boundaries beyond all hope of remedy because the program ignored current structural and historical policies that have shaped and configured our racialized landscape.”).

335. See Alexander, *supra* note 3, at 818; BERNADETTE HANLON, ET AL., CITIES AND SUBURBS: NEW METROPOLITAN REALITIES IN THE US 77 (2010).

America, new patterns of investment and targeted government action, or inaction, are making low-income neighborhoods increasingly attractive to young professionals and wealthier families.<sup>336</sup> Aware of these trends, private investors and developers are constantly seeking ways to acquire the land in low-income, disinvested areas before they become gentrified.<sup>337</sup> Much like the Urban Renewal of the mid-twentieth century, these development practices reflect the power dynamics of urban spaces.<sup>338</sup> While CED programs have sought to *improve* the land, less attention has been paid to who *owns* the land. Community residents typically have little influence in the development process, and are rarely positioned to benefit economically from development programs in their neighborhoods.<sup>339</sup> The treatment of low-income neighborhoods and their residents as economic markets to be exploited for the financial gain of prudent investors stems not only from the plutocratic impulse in American life, but also from a racially-driven and stereotype-infused cultural framing of poverty.<sup>340</sup> Black inner-city communities, we are told, suffer from a “culture of poverty”<sup>341</sup> and “mutually . . . destructive forces”—unemployment, crime, lack of education, poor health—that reflect the dangers of concentrated poverty, the realities of minority behavioral choices, and the dearth of positive social capital.<sup>342</sup>

The narratives of poverty perpetuated by many CED programs undermine the relationship that low-income individuals have with their community and the non-market assets in their neighborhood.<sup>343</sup> Scholars have argued that structural disadvantage may be

336. See Alexander, *supra* note 3, at 819–20.

337. See *id.* at 821; McFarlane, *supra* note 21, at 6–8.

338. See Diamond, *supra* note 33, at 160 (“[T]he poor are the disadvantaged group when analyzing power through the lens of dependency. The poor typically depend upon the state for various transfer payments, on the public hospitals and emergency rooms for health care, on landlords for housing, and on employers for jobs. The only choices available to them may be ‘take it or leave it’ when leaving it is not realistic.”); Alexander, *supra* note 3, at 823.

339. See Diamond, *supra* note 33, at 162 (“[T]o achieve a set of goals, the poor, those with a power deficit, must acquire power. This is most readily done through the process of organizing individuals into groups and institutions in order to increase the leverage that arises from combining their assets and from the relative reduction in their dependence . . . [l]egal scholars and others have for some time pointed out the need to organize to achieve political power . . . [yet], ‘[a] basic tenet of classical political liberalism . . . is that the individual rather than the organized group or community is the fundamental political actor.’”); Alexander, *supra* note 3, at 823–24.

340. See McFarlane, *supra* note 21, at 339.

341. See Wilson, *supra* note 132, at 60–62.

342. Alexander, *supra* note 3, at 825, n. 144; see also Darity, *supra* note 104, at 41 (“[T]he argument that intergroup disparities in wealth are borne out of group based cultural/behavioral deficiencies is misleading and misdirected. Instead, we should focus on the long exposure of low wealth racial/ethnic groups to theft of wealth and blockades on wealth accumulation.”).

343. Cf. Alexander, *supra* note 3, at 825–29.

an inadequate proxy for understanding the complex social networks, cultural frames, and historical narratives that impact how low-income residents respond to their neighborhood's conditions.<sup>344</sup> Low-income black Americans living in disinvested neighborhoods, for example, may not believe that changing the culture of their community, or being gifted resources to move to a low-poverty, predominantly white suburb, is the 'best' opportunity for their family. Notwithstanding narratives to the contrary, low-income neighborhoods retain an important type of positive social capital called "cultural collective efficacy" that influences the ability of neighborhood residents to realize common values and maintain social control through participation in cultural endeavors.<sup>345</sup> Although low-income residents may not own the land in their community, they do collectively own community-based, non-market goods that bring economic value to the neighborhood, from culture, to social capital, to community relationships. These assets should not be discarded, manipulated, or destroyed during the development process simply because they do not fit neatly into the box of our current legal regime. Rather than dismantle urban spaces deemed unworthy of preservation, a justice-based conception of CED queries how development programs can honor existing non-market factors of economic production and empower residents by increasing the local control of land.

There are several progressive projects in cities across America that are seeking to democratize the ownership and control of land. Community land trusts, land banks, and cooperative housing developments are but a few examples. In Boston, the Dudley Street Neighborhood Initiative has played a vital role in empowering low-income community members to actively participate in the development of their neighborhood.<sup>346</sup> The organization was successful in creating a community land trust to redevelop housing on thirty acres of abandoned lots and preserve affordability amidst gentrification.<sup>347</sup> Land banks are another progressive vehicle whereby city governments exercise eminent domain to obtain city-owned land, tax-delinquent properties, and land owned by absentee landlords,

---

344. See *id.* at 827–28.

345. *Id.*

346. See Jessica Kannam, *Community-Based Organizing for Educational Justice: A Case Study of the Dudley Street Neighborhood Initiative* 10–11 (May 5, 2016) (UNPUBLISHED B.A. THESIS, CONNECTICUT COLLEGE), [https://static1.squarespace.com/static/5515d04fe4b0263cc20b3984/t/57632a10d1758e98278180d3/1466116625824/Kannam\\_Jessica\\_2016.pdf](https://static1.squarespace.com/static/5515d04fe4b0263cc20b3984/t/57632a10d1758e98278180d3/1466116625824/Kannam_Jessica_2016.pdf).

347. The Dudley Street Neighborhood Initiative's mission is to "empower Dudley residents to organize, plan for, create and control a vibrant, diverse and high-quality neighborhood in collaboration with community partners." DUDLEY STREET NEIGHBORHOOD INITIATIVE, <https://www.dsni.org> (last visited Nov. 6, 2019).

to be used for community development purposes.<sup>348</sup> After obtaining the land, land banks then transfer the properties to community land trusts that are democratically governed by neighborhood residents.<sup>349</sup> For example, a coalition of statewide and citywide community groups, faith groups, and labor groups in Philadelphia, Pennsylvania, collectively helped to pass a law that will increase community entities' control of up to 40,000 vacant properties in low-income neighborhoods.<sup>350</sup> Such efforts empower community members to preserve affordable housing and resist the threat of displacement by gentrification. Finally, cooperative housing programs have been leveraged in cities like Washington, D.C. to combat displacement during urbanization. Under D.C.'s Tenant Opportunity to Purchase Act, residents of an apartment building are granted a right to collectively organize and purchase their building when it is marketed for sale by the owner.<sup>351</sup> The progressive law seeks to stabilize longstanding D.C. neighborhoods by providing financial counseling, technical assistance, and pro bono organizational/legal assistance in support of tenants becoming homeowners.<sup>352</sup>

Alongside democratizing the ownership of land, economic democracy requires a democratization of the ownership of labor. Collective worker-ownership has long been utilized in low-income communities to address systemic poverty,<sup>353</sup> either by community members who form cooperatives because of an inability to access living-wage jobs,<sup>354</sup> or by progressive CED advocates seeking to em-

---

348. See, e.g., FRANK S. ALEXANDER, *LAND BANK AUTHORITIES: A GUIDE FOR THE CREATION AND OPERATION OF LOCAL LAND BANKS* 2–3 (2005), <https://files.hudexchange.info/resources/documents/LandBankAuthoritiesGuideforCreationandOperation.pdf>.

349. See, e.g., Matthew J. Samsa, *Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment*, 56 CLEV. ST. L. REV. 189 (2008); Diana A. Silva, *Land Banking as a Tool for the Economic Redevelopment of Older Industrial Cities*, 3 DREXEL L. REV. 607 (2001).

350. Karen Black, *Philadelphia Achieves Land Bank Through Compromise*, SHELTERFORCE (Jan. 22, 2014), [https://shelterforce.org/2014/01/22/philadelphia\\_achieves\\_land\\_bank\\_through\\_compromise/](https://shelterforce.org/2014/01/22/philadelphia_achieves_land_bank_through_compromise/).

351. Kathryn Howell, *Preservation from the Bottom-Up: Affordable Housing, Redevelopment, and Negotiation in Washington, DC*, 31 HOUSING STUD. 305, 306 (2015).

352. Law school clinics have played an important role in providing legal support for cooperative housing development in Washington, D.C. See, e.g., *Community Development Law Clinic*, U. OF D.C. <https://www.law.udc.edu/page/CommunityDevelopment>, (last visited Nov. 6, 2019).

353. See Peter Pitegoff, *Worker Ownership in Enron's Wake—Revisiting a Community Development Tactic*, 8 J. SMALL & EMERGING BUS. L. 239, 244–45 (2004) (explaining that worker ownership generally refers to enterprises where workers buy in to the business and obtain either indirect ownership through a beneficial trust (e.g., an ESOP), or direct ownership through a worker cooperative entity structure).

354. See Jessica Gordon Nembhard, *Principles and Strategies for Reconstruction: Models of African American Community-Based Cooperative Economic Development*, 12 HARV. J. AFR. AM. PUB. POL'Y 39, 46–49 (2006). For a history of the impact of cooperative economic thought in the

power low-income workers.<sup>355</sup> By placing ownership of business activity into the hands of local workers, the worker ownership model ensures that the benefits of economic development—monetary profit and job security—remain within the community. The primary vehicle for worker ownership in the U.S. has been the Employee Stock Ownership Plan (ESOP). Developed in the 1970s, the ESOP allows for the redistribution of capital asset ownership from wealthy business owners to their employees through the form of company stock.<sup>356</sup> The National Center for Employee Ownership estimates over 6,000 ESOPs in the U.S. as of 2016.<sup>357</sup> Alongside the ESOP, the worker-owned cooperative is a nontraditional business ownership structure that challenges the capitalist assumption that business enterprises must be privately owned and autocratically managed. In a worker-owned cooperative, governance rights are based upon the democratic principle of “one-person-one-vote,” rather than a “one-share-one-vote” concept where voting rights are solely tied to a member’s capital investment in the business.<sup>358</sup> For example, in California, the cities of Richmond and Oakland have sought to integrate employee ownership into the economic system through a project led by the nonprofit Project Equity, in collaboration with the Sustainable Economies Law Center and the East Bay Community Law Center.<sup>359</sup> The project was designed to launch and scale up local cooperative businesses and convert existing businesses to employee ownership models.<sup>360</sup> Another example exists in Madison, Wisconsin, where the city has committed to spending \$1 million a year, over a five-year period, to establish new worker cooperatives.<sup>361</sup> In other cities, governments have supported the de-

---

Black community, see generally JESSICA GORDON NEMBARD, *COLLECTIVE COURAGE: A HISTORY OF AFRICAN AMERICAN COOPERATIVE ECONOMIC THOUGHT AND PRACTICE* (2014).

355. See Pitegoff, *supra* note 353, at 241 (“Rather than an end in itself or just another way of doing business, worker ownership can be a vital element of a broader job creation, community organizing, or community revitalization strategy.”).

356. See Michael Murphy, *The ESOP at Thirty: A Democratic Perspective*, 41 WILLAMETTE L. REV. 655, 656–57 (2005). The author notes that the ESOP was the result of a collaboration between economist Louis Kelso and Senator Russell Long. Codified as a retirement benefit under the Employee Retirement Income Security Act of 1974 (ERISA), the ESOP enables companies to distribute company stock to employees and, in many cases, earn a tax incentive. *Id.* at 257.

357. *Employee Ownership by the Numbers*, NAT’L CTR. EMP. OWNERSHIP (Sep. 2019), <https://www.nceo.org/articles/esops-by-the-numbers>.

358. Carmen Huertas-Noble, *Worker-Owned and Unionized Worker-Owned Cooperatives: Two Tools to Address Income Inequality*, 22 CLINICAL L. REV. 325 (2016).

359. See generally PROJECT EQUITY, *A BLUEPRINT FOR CREATING PATHWAYS TO OWNERSHIP FOR LOW AND MODERATE INCOME WORKERS IN THE SF BAY AREA* (2015), [https://www.planbayarea.org/sites/default/files/pdf/prosperity/East\\_Bay\\_Community\\_Law\\_Center\\_Blueprint\\_for\\_Creating\\_Pathways\\_to\\_Ownership.pdf](https://www.planbayarea.org/sites/default/files/pdf/prosperity/East_Bay_Community_Law_Center_Blueprint_for_Creating_Pathways_to_Ownership.pdf).

360. *Id.* at 2.

361. See KELLY & MCKINLEY, *supra* note 13, at 46; *Co-operative Enterprises for Job Creation and Business Development*, CITY OF MADISON (Feb. 2, 2019), <https://www.cityofmadison.com/>

velopment of benefit corporations, hybrid entities, and sharing economy initiatives that may better reflect community needs and capitalize on existing community-based assets.<sup>362</sup> Importantly, however, scholars note that calls for self-determination through social entrepreneurship and business ownership are unlikely to reach citizens trapped in extreme poverty. Professor Louis Howells has long called for a nuanced approach, developing individual capacities of the extremely poor to bring greater stability to their lives.<sup>363</sup>

Lastly, alongside democratizing the ownership of land and labor, economic democracy requires a democratization of the ownership of capital circulating within and through a community. Scholars have argued that city-owned banks and credit unions with local involvement can empower citizens to dictate how capital is used within their community, whether to reduce tax burdens or support important public services.<sup>364</sup> In the context of CED, Professor Susan Jones explains that democratizing the ownership of capital calls for “equal access to the social and economic benefits of development” and “empowerment for residents as shareholders of a community’s economic development projects.”<sup>365</sup> This may require a restructuring of the financial incentives that motivate investors to participate in market-based CED programs, but it is not an impossible task. Economic inclusion initiatives in places like Pittsburgh, Pennsylvania, reveal the viability of equitable development strategies.<sup>366</sup> A former rust belt city, Pittsburgh has recently seen growth in the healthcare, education, and technology sectors. To help promote equitable development, William Generett created Urban Innovation21, a consortium of 20 businesses, nonprofits, and government organizations that use a combination of business incentives, grants, internships, and training programs to promote wealth

---

dpced/economicdevelopment/co-operative-enterprises-for-job-creation-and-business-development/1646/.

362. See, e.g., Deborah Groban Olson, *Fair Exchange: Providing Citizens with Equity Managed by a Community Trust, in Return for Government Subsidies or Tax Breaks to Businesses*, 15 CORNELL J.L. & PUB. POL’Y 231 (2006); Barbara L. Bezdek, *To Attain “The Just Rewards of So Much Struggle”: Local-Resident Equity Participation in Urban Revitalization*, 35 HOFSTRA L. REV. 37 (2006).

363. See Louise A. Howells, *The Dimensions of Microenterprise: A Critical Look at Microenterprise as a Tool to Alleviate Poverty*, 9 J. AFFORDABLE HOUS. & CMTY. DEV. L. 161 (2000).

364. See generally Mehrsa Baradaran, *Jim Crow Credit*, 9 U.C. IRVINE L. REV. 887 (2019) (describing several legislative responses to credit inequality).

365. Susan R. Jones, *Transactional Law, Equitable Development, and Clinical Legal Education*, 14 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 213, 213 (2005); see also Scott L. Cummings et al., *supra* note 276, at 159; DARITY JR., ET AL., *supra* note 104, at 44 (“[C]ontrary to conventional wisdom, earnings and other types of income are not key determinants of wealth. . . . The linchpin for wealth accumulation is the transfer of resources across generations.”).

366. See KELLY & MCKINLEY, *supra* note 13, at 22.

generation in disadvantaged communities.<sup>367</sup> Other cities have created opportunities for “micro” impact investments by community-based entities and even community members themselves.<sup>368</sup> For example, in 2014, the Vermont Department of Financial Regulation created the Vermont Small Business Offering (VSBO). The VSBO includes revisions to Vermont securities regulations that enable local businesses to raise equity without having to navigate complex federal securities laws.<sup>369</sup> To meaningfully narrow the wealth gap, institutional investors must consider equity-oriented development strategies, including sharing development opportunities with local community-based investors, funding social welfare programs with longer maturation periods than typical for impact investments, or even accepting a lower rate of return to facilitate greater community economic empowerment. Community members should play a more substantive role in their community’s development process, including both program negotiation and program remuneration.<sup>370</sup>

From land ownership to community-owned labor and capital, progressive CED projects have leveraged nontraditional entity structures to shift attention away from the capitalist drive for profit toward a social solidarity focus on economic justice.<sup>371</sup> These progressive CED projects—land trusts, land banks, housing cooperatives, worker-owned companies, community development corpora-

---

367. *Id.* Scholars have noted the value of entrepreneurship to helping marginalized communities generate wealth. *Cf.* Susan R. Jones, *Representing Returning Citizen Entrepreneurs in the Nation’s Capital*, 25 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 45, 46–47 (2016) ([T]here are 28.5 million U.S. businesses; 25.1 million, or 88 percent, of these are micro-businesses operating with five or fewer employees . . . The median net worth for a nonbusiness owner is \$85,000, and for a business owner, it is \$211,000.”). *But see* DARITY JR., ET AL., *supra* note 104, at 33 (“When we compile the data even those members of marginalized communities who manage to enter into entrepreneurship largely fail. This is due to a number of factors ranging from under-capitalization, limited market access, or outright theft or destruction.”).

368. *See* KELLY & MCKINLEY, *supra* note 13, at 58–59; Louisa Schibli & Janice Shade, *Investing in the Local Economy: A Win/Win for Business and Community*, VERMONTBIZ (June 24, 2016), <http://www.vermontbiz.com/news/investing-local-economy-winwin-business-and-community>; *Vermont Small Business Offering Exemption Helps Small Businesses to Raise Capital*, VERMONTBIZ (June 16, 2016), <https://vermontbiz.com/news/june/vermont-small-business-offering-exemption-helps-small-businesses-raise-capital>; VT. DEP’T OF FIN. REGULATION, *Exemptions*, VERMONT.GOV (2019) <https://dfr.vermont.gov/industry/securities/corporate-finance/exemptions>.

369. *See, e.g.*, S.B. 220, 2013–14 Gen. Assemb. (Vt. 2014).

370. For discussions of policies and initiatives designed to democratize ownership in marginalized communities, see generally *Democratizing Ownership*, DEMOCRACY COLLABORATIVE, <https://democracycollaborative.org/democracycollaborative/ownership/Democratizing%20Ownership>, (last visited Nov. 20, 2019).

371. *See generally* KELLY & MCKINLEY, *supra* note 13; HOLDING GROUND: THE REBIRTH OF DUDLEY STREET DOCUMENTARY (New Day Films 1996); PETER MEDOFF & HOLLY SKLAR, STREETS OF HOPE: THE FALL AND RISE OF AN URBAN NEIGHBORHOOD (1994). Both sources describe how a community-based nonprofit organization used the community land trust model, the power of eminent domain, and grassroots organizing to create more affordable housing options for residents.

tions, social enterprises, credit unions, and others—are being explored across the country. They are helping to democratize the ownership of the primary factors of production within economic markets. Still, a critical challenge lies in scaling these initiatives. While individual progressive projects may collectively chip away at the flaws in our capitalist system, they may nevertheless struggle to break down the walls of poverty that encircle America. Moreover, how do we account for the range of non-market goods produced within marginalized communities—social capital, culture, community relationships—that do not confer wealth or power in the traditional sense, and are consistently ignored by CED programs? We not only need system influence; justice demands system change. Thus, the third pillar of justice-based CED focuses on creating solidarity economy institutions that are community-owned, empowerment-centered, and strategically designed to combat the structural dimensions of oppression.

### C. *Solidarity Economy*

The third pillar of justice-based CED, *solidarity economy*, calls for development efforts to create empowerment-centered and community-owned institutions that address the structural dimensions of poverty. This Article has argued that a justice-based framing of CED will shift policy beyond localist strategies toward politically progressive, regional, and equity-oriented solutions that advance economic justice by democratizing the ownership of wealth. However, unless these progressive projects are replicated at scale, they will likely fail to produce meaningful change in America's political economy or address the growing wealth gap.<sup>372</sup> Further, by ignoring non-market assets that hold value within certain neighborhoods, but lack value in traditional markets, progressive projects fail to address aspects of America's economic system that disempower black and brown communities. While projects are often temporary or experimental, *institutions* are cemented into the local landscape via legislation that triggers systemic change.

Yet, toxic narratives of poverty have hindered the adoption of progressive law reform. Too often, we pathologize the poverty of low-income communities by preaching a doctrine of personal responsibility.<sup>373</sup> Viewing CED through a justice-based lens urges us to

---

372. See Scott L. Cummings et al., *supra* note 276, at 160.

373. See, e.g., Brandon M. Terry, *Prisons of the Forgotten: Ghettos and Economic Injustice*, in *TO SHAPE A NEW WORLD*, *supra* note 53, at 191 ("The white majority doesn't hold government accountable for changing the conditions in disadvantaged black communities but in-



embrace a *collective* democratic responsibility to resolve our country's legacy of institutional racism and economic segregation through law reform.<sup>374</sup> Scott Cummings, Susan R. Jones, Roger A. Clay Jr., and Rashmi Dyal-Chand are but a few legal scholars who have highlighted progressive law reform strategies to overcome the vestiges of racial and economic segregation in America, including “establishing community land trusts, authorizing housing trust funds, expanding inclusionary zoning ordinances, and implementing linkage programs.”<sup>375</sup>

The idea of legislating community-based institutions that reflect a social solidarity perspective of economic life and facilitate community economic empowerment is not new. Dating back to 1956 in the town of Mondragón in Spain's Basque region, the Mondragón Corporation was formed to facilitate the creation of a solidarity economy. Over a decade earlier, in 1941, a young Catholic priest, José María Arizmendiarieta, had settled in Mondragón as an evangelist. At the time, the small town was riddled with poverty due to the recent Spanish Civil War. In line with Catholic social teaching, and in response to growing globalism, Arizmendiarieta established a technical college in Mondragón to train skilled laborers for community-based companies. He also educated community members about social solidarity and group participation.<sup>376</sup> The Mondragón Corporation has since grown into a federation of worker-owned cooperative businesses, a self-sustaining economic ecosystem of community-owned economic enterprises.<sup>377</sup> As of

---

stead directs all its resentment and hostility toward black ghetto dwellers.”). *But see* DARITY JR. ET AL., *supra* note 104, at 44 (arguing, “[m]ore personal responsibility or motivation on the part of blacks is not what is needed. Rather, what is needed is an active program of wealth redistribution and the removal of structural and discriminatory obstacles that stand in the way of bridging the wealth divide.”).

374. See, e.g., MARTIN LUTHER KING JR., *THE TRUMPET OF CONSCIENCE* 8 (2011) (“The slums are the handiwork of a vicious system of the white society; Negroes live in them, but they do not make them, any more than a prisoner makes a prison.”).

375. See Scott L. Cummings et al., *supra* note 276, at 162; see generally Roger A. Clay Jr. and Susan R. Jones, *A Brief History of Community Economic Development*, 18 J. AFFORDABLE HOUS. & CMTY. DEV. L. 257 (2009); RASHMI DYAL-CHAND, *COLLABORATIVE CAPITALISM IN AMERICAN CITIES: REFORMING URBAN MARKET REGULATIONS* (2018).

376. Virgil Makilan Lorenzo, *Toward Cooperative Ethics: A Ricoeurian Reading of the Educational Aim of Jose Maria Arizmendiarieta, Founder of the Mondragon Cooperatives*, (1998) (unpublished dissertation, University of San Diego) (on file with PhilPapers), <https://philpapers.org/rec/LORTCE>.

377. In 1995, the International Cooperative Alliance adopted the revised Statement on the Cooperative Identity, which contains the seven Rochdale Principles, along with a list of cooperative values—self-help, self-responsibility, democracy, equality, equity, and solidarity. *Cooperative Identity, Values & Principles*, INT'L COOP. ALL., <https://www.ica.coop/en/cooperatives/cooperative-identity> (last visited Nov. 20, 2019) (“A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.”).

2018, it is regarded as one of the largest companies in Spain, employing over 80,000 employees across four sectors—industry, finance, retail, and knowledge.<sup>378</sup>

Scholars have mixed opinions on the ability of cooperative economics to overcome the challenges of corporate capitalism and neoliberalism.<sup>379</sup> Nevertheless, the idea of creating solidarity economies that cement cooperative economics and participatory democracy into the local landscape has piqued the interest of communities far beyond the shores of Spain. Although not always broadly publicized, and sometimes met with resistance,<sup>380</sup> solidarity economies have been implemented in many regions of the United States for decades. For example, emerging from the American black liberation struggle, which spanned from Reconstruction to the Black Power Movement following the Civil Rights Movement,<sup>381</sup> the Jackson-Kush Plan sought to incorporate the principles of the solidarity economy and participatory democracy into a grassroots effort to develop the eastern Black Belt portions of Mississippi, in-

---

378. MONDRAGON CORPORATION, ANNUAL REPORT 2012 (2012), <https://www.mondragon-corporation.com/en/about-us/economic-and-financial-indicators/annual-report/>. The Mondragón business model incorporates seven universal cooperative principles, known as the Rochdale Principles—(1) voluntary and open membership; (2) democratic member control; (3) member economic participation; (4) autonomy and independence; (5) education, training, and information; (6) cooperating among cooperatives; and (7) concern for community. See Yair Levi, *'Internal' and 'External' Principles: Inward Versus Outward Orientation in Co-operatives*, 94 REV. OF INT'L CO-OPERATION 50, 51 (2001).

379. See Richard Wolff, *Yes, There Is an Alternative to Capitalism: Mondragon Shows the Way*, THE GUARDIAN (June 24, 2012), <https://www.theguardian.com/commentisfree/2012/jun/24/alternative-capitalism-mondragon> (“MC displays a commitment to job security I have rarely encountered in capitalist enterprises: it operates across, as well as within, particular cooperative enterprises. MC members created a system to move workers from enterprises needing fewer to those needing more workers—in a remarkably open, transparent, rule-governed way and with associated travel and other subsidies to minimize hardship. This security-focused system has transformed the lives of workers, their families, and communities, also in unique ways.”). But see Laura Flanders, *Talking with Chomsky*, COUNTERPUNCH.ORG (Apr. 30, 2012), <https://www.counterpunch.org/2012/04/30/talking-with-chomsky/> (“It’s worker owned, it’s not worker managed, although the management does come from the workforce often, but it’s in a market system and they still exploit workers in South America, and they do things that are harmful to the society as a whole and they have no choice. If you’re in a system where you must make profit in order to survive. You are compelled to ignore negative externalities, effects on others.”).

380. See generally JOHN CURL, *FOR ALL THE PEOPLE: UNCOVERING THE HIDDEN HISTORY OF COOPERATION, COOPERATIVE MOVEMENTS, AND COMMUNALISM IN AMERICA* (2009) (describing the largely unknown history of American cooperative movements for social change, from farming to labor, that were each met with unique challenges and resistance).

381. For more information on the black liberation movement, see generally GEORGE M. FREDRICKSON, *BLACK LIBERATION: A COMPARATIVE HISTORY OF BLACK IDEOLOGIES IN THE UNITED STATES AND SOUTH AFRICA* (1995) (providing a sweeping account of the struggle for racial justice in the United States, from reconstruction to the rise of the black power movement); Adjoa Aiyetoro & Adrienne D. Davis, *Historic and Modern Social Movements for Reparations: The National Coalition for Reparations in America (N'COBRA) and Its Antecedents*, 16 TEX. WESLEYAN L. REV. 687 (2010) (describing the social movement for reparations in the United States).

cluding the city of Jackson.<sup>382</sup> Founded in 2008 by the Malcolm X Grassroots Movement and its parent organization, the New Afrikan Peoples Organization, the Jackson-Kush Plan sought to foster self-determination, social liberation, and economic justice for historically marginalized black communities.<sup>383</sup> More than simply a series of progressive projects, it was designed to build an ecosystem of cooperatively-owned entities via progressive legislation that generated wealth for local families while honoring non-market community-based assets.

Cooperation Jackson, the present-day outgrowth of the Jackson-Kush Plan, proclaims as its agenda a mission to “create jobs with rights, dignity, and justice that generate wealth and distribute it equitably based on the principles of cooperation, sharing, solidarity, and democracy.”<sup>384</sup> In the past few years, the group has taken over abandoned buildings and vacant lots, using community land trusts to nurture self-sufficiency and economic democracy.<sup>385</sup> Some have called Cooperation Jackson a radical strategy for economic

---

382. The Jackson-Kush Plan was originally designed to build upon the People’s Assembly political project that was created in the aftermath of Hurricane Katrina to support Chokwe Lumumba’s successful run for City Council. It also has roots in a number of key historical moments in the black liberation movement, including: (1) the 1981 campaign of Kwablah Mthawabu for mayor of Waterproof, Louisiana; (2) the Jackson Human Rights Coalition of the late 1980s; and (3) the plans of the Provisional Government of the Republic of New Afrika, which sought to establish a community called El Malik as its capital near Bolton, Mississippi in the early 1970s. *The Story of Cooperation Jackson*, COOPERATION JACKSON, <https://maineworkers.org/wp-content/uploads/2018/09/jackson-rising-chapter1.pdf> (last visited Nov. 24, 2019).

383. Brandon King, *Building Power in a Frontline Community: The Cooperation Jackson Model*, 30 SOCIALISM AND DEMOCRACY 219, 219 (2016).

384. *The Story of Cooperation Jackson*, COOPERATION JACKSON, <https://cooperationjackson.org/story> (last visited Nov. 20, 2019). Interestingly, an earlier group called the Provisional Government of the Republic of New Afrika (“PG-RNA”, a predecessor of Cooperation Jackson) had attempted to create a progressive community of cooperative enterprises in the early 1970s, much like that in Mondragón, Spain. Formed during the civil rights movement, the PG-RNA was a group that sought to create a majority-black nation in the Deep South as a reparations payment for centuries of slavery and Jim Crow racial oppression. They chose the name “El Malik” after the name that Malcolm X had taken for himself after his break from the Nation of Islam: El-Hajj Malik El-Shabazz. However, the plan was foiled by the Ku Klux Klan. On the day before the PG-RNA planned to move into the small town of Bolton, Mississippi where they had agreed to purchase twenty acres of land to start their community, PG-RNA leaders witnessed “a hand-painted sign near the property that the KKK had posted: NIGGERS, THERE WILL BE NO MEETING HERE SUNDAY. FREE SIX-FOOT HOLES.” NAPO and MXGM were later formed in the 1980s and 1990s respectively to continue to advocate for social and economic justice for black American communities, and their work continues today. See Katie Gilbert, *The Socialist Experiment*, OXFORD AMERICAN (Sept. 5, 2017), <https://www.oxfordamerican.org/item/1296-the-socialist-experiment>.

385. See, e.g., *The Kuwasi Balagoon Center for Economic Democracy and Development*, COOPERATION JACKSON, <https://cooperationjackson.org/lumumba-center/> (last visited Nov. 20, 2019).

development because of its shift away from capitalist norms.<sup>386</sup> Indeed, Mayor Chokwe Antar Lumumba has been deemed “the most radical mayor in America” for his audacious plan to make Jackson the Mondragón of the South.<sup>387</sup> Mayor Lumumba’s vision centers on co-governance, including forming “assemblies to elevate ordinary people’s voices, an independent political party accountable to the assemblies, and publicly financ[ing] economic development through local cooperatives.”<sup>388</sup> Held every quarter, the People’s Assemblies are designed to provide a platform for community members to critique government decision-making and engage in the co-creation of sociopolitical life, evocative of the community action agencies launched during President Lyndon B. Johnson’s War on Poverty that were later defunded. While Lumumba’s emphasis on cooperative economics and participatory democracy may seem radical because of its roots in the black liberation movement, the notion that community economic empowerment is radical merely underscores the hegemonic nature of neoliberalism. Indeed, Lumumba’s ideas harken back to an oft-forgotten moment of American democracy—Radical Reconstruction—that once held similar promise for black residents of Jackson, Mississippi.

During America’s Reconstruction period after the Civil War, the Freedmen’s Bureau laid the foundation for a more equitable ownership of land, labor, and capital by engaging the participation of black citizens in local government. Mississippi boasted the highest recruitment of black Americans into government among southern states with more than 200 black citizens elected to office in an eleven-year period. Sadly, a strategy of organized terrorism called the Mississippi Plan trampled upon the progress of formerly enslaved Africans by using violence and state-sponsored racial oppression to reclaim power for white conservative Democrats.<sup>389</sup> Throughout the early to mid-twentieth century, Jim Crow policies, white flight, and decades of neglect and disinvestment by local government drove black neighborhoods in Jackson, Mississippi, deep into the well of poverty, a familiar story to many black urban communities across America.<sup>390</sup> Like many American cities, Jackson, Mississippi—the place where civil rights activist Medgar Evers

---

386. Cf. *A Socialist Southern Strategy in Jackson*, COOPERATION JACKSON (June 13, 2018), <https://cooperationjackson.org/blog/2018/7/13/a-socialist-southern-strategy-in-jackson>.

387. D.D. Guttenplan, *Is This the Most Radical Mayor in America?*, THE NATION (Nov. 17, 2017), <https://www.thenation.com/article/is-this-the-most-radical-mayor-in-america/>.

388. Nathan Schneider, *The Revolutionary Life and Strange Death of a Radical Black Mayor*, VICE (Apr. 17, 2016), [https://www.vice.com/en\\_us/article/5gj7da/free-the-land-v23n2](https://www.vice.com/en_us/article/5gj7da/free-the-land-v23n2).

389. See Gilbert, *supra* note 384.

390. See *supra*, section I.A., describing how racism perpetuated poverty in many communities across America.

was killed by a member of the White Citizens Council in 1963 for decrying racial oppression—still struggles with racial tension.<sup>391</sup> Perhaps the only things radical about Mayor Lumumba’s vision are his willingness to return to the participatory democracy of the Radical Reconstruction era and his commitment to the legacy of cooperative economics in black American life.<sup>392</sup>

Other examples of solidarity economies abound but must be scaled to take root in the American landscape. For example, progressive local governments have passed legislation for impact investors to support minority-owned businesses, helping to connect local products and services to local demand.<sup>393</sup> In Jamaica Plain in Boston, Massachusetts, the Boston Impact Initiative has taken an economic justice approach to empowering local residents and business owners to establish a community-controlled economy by providing a range of integrated capital tools—“loans, credit enhancements, equity investments, royalty finance, direct public offerings, crowdfunding, grants, etc.”—to local community-based businesses.<sup>394</sup> In Cincinnati, the Greater Cincinnati Foundation, in partnership with city government, created the Minority Business Accelerator,<sup>395</sup> creating nearly 2000 jobs since 2003. Progressive local governments have also launched revolving loan funds managed by CDFIs or local credit unions to finance economic empowerment through community-based cooperative start-ups and small to mid-sized businesses. For example, Minneapolis-St. Paul created the Ready for Rail program to ensure that their new light rail system would benefit all community members. The program created a \$4 million revolving loan fund that has made over 200 zero-interest loans to small businesses, many of which are owned by black Americans.<sup>396</sup> Additionally, in Oakland, California, Impact Hub Oakland and Self-Help Federal Credit Union created the Runway Project, a new five-year pilot program that “will explore how to fill in the

---

391. See Jesmyn Ward, *Racism Is ‘Built into the Very Bones’ of Mississippi*, THE ATLANTIC (Mar. 1, 2018), <https://www.theatlantic.com/magazine/archive/2018/02/jesmyn-ward-mississippi/552500/>.

392. Indeed, Fannie Lou Hamer, a well-known civil rights activist for voting rights, was instrumental in the cooperative movement by organizing the Freedom Farm in Sunflower County, Mississippi in 1969 to secure food sovereignty for marginalized black families. As political economist Jessica Gordon Nembhard asserts, “there seems to be no period in U.S. history where African Americans were not involved in economic cooperation of some type.” JESSICA GORDON NEMBHARD, *COLLECTIVE COURAGE: A HISTORY OF AFRICAN AMERICAN COOPERATIVE ECONOMIC THOUGHT AND PRACTICE* 28 (2014).

393. See KELLY & MCKINLEY, *supra* note 13, at 56; Toussaint, *supra* note 19, at 74–75.

394. See *Investing for Justice*, BOSTON IMPACT INITIATIVES, <http://bostonimpact.org> (last visited Nov. 20, 2019).

395. See JAMES A. CROWDER JR., *ALL-IN CINCINNATI: EQUITY IS THE PATH TO INCLUSIVE PROSPERITY* (1), [https://www.gcfndn.org/Portals/0/All-In\\_Cincinnati\\_Final%20Report.pdf](https://www.gcfndn.org/Portals/0/All-In_Cincinnati_Final%20Report.pdf).

396. See KELLY & MCKINLEY, *supra* note 13, at 58.

‘friends and family’ capital gap for entrepreneurs of color” through a dedicated pool of capital for business loans and a business accelerator providing technical training and assistance for local residents.<sup>397</sup>

Some solidarity economy projects have created new economic markets altogether, capturing the hidden value in non-market transactions and stimulating new forms of social capital. For example, Dr. Edgar S. Cahn, creator of Time Dollars and the founder of TimeBanks USA, popularized timebanking in America as an alternative time-based currency to facilitate the exchange of skills and experience within communities by individuals with limited access to traditional capital.<sup>398</sup> As Dr. Cahn explains, timebanking can “enable individuals and communities to become more self-sufficient, to insulate themselves from the vagaries of politics and to tap the capacity of individuals who were in effect being relegated to the scrap heap and dismissed as freeloaders.”<sup>399</sup> Another example is the platform cooperative, a democratically-controlled digital platform that is cooperatively-owned and governed by its users, eliminating the need for traditional venture-capital funding and promoting the equitable distribution of power among members. Popular examples include Fairbnb,<sup>400</sup> a cooperatively-owned online hospitality service for people to lease or rent short-term lodging, and Loconomics,<sup>401</sup> a cooperatively-owned, online marketplace that enables customers to find freelance labor for everyday tasks. These solidarity economies enable community members and community-based organizations to build wealth and experience the dignity that true political equality brings. CED practitioners can identify such opportunities by conducting inventories of community-based assets to map community needs and refocus revitalization efforts from a “deficit-oriented” approach toward a community economic empowerment mindset.<sup>402</sup> Local governments can advance legislation that acknowledges the economic interdependence within and across regions, and the need for more equitable distribution of

---

397. See Oscar Perry Abello, *Closing the “Friends and Family” Capital Gap for Entrepreneurs of Color*, NEXTCITY (Oct. 25, 2016), <https://nextcity.org/daily/entry/runway-project-friends-family-capital-gap-entrepreneurs>.

398. See EDGAR S. CAHN, *NO MORE THROW-AWAY PEOPLE: THE CO-PRODUCTION IMPERATIVE* 5–6 (2d ed. 2004).

399. *Id.* at 6.

400. FAIRBNB, <https://fairbnb.coop/> (last visited Nov. 20, 2019).

401. LOCONOMICS COOPERATIVE, <https://loconomics.com/> (last visited Nov. 20, 2019).

402. There are existing tools that can assist SIB practitioners in mapping the needs of marginalized communities, crafting state and local public policy strategies to promote equitable development, and identifying the current state of investments and ownership in those communities. See POLICYLINK, *EQUITABLE DEVELOPMENT TOOLKIT*, <https://www.policylink.org/resources-tools/edtk> (last visited Nov. 20, 2019); KELLY & MCKINLEY, *supra* note 13, at 51.

community resources.<sup>403</sup> These progressive mechanisms can help ensure that CED programs not only improve the lives of people living in low-income communities but also promote long-term economic justice.

### CONCLUSION

*“It is learning how to take our differences and make them strengths. For the master’s tools will never dismantle the master’s house. They may allow us to temporarily to beat him at his own game, but they will never enable us to bring about genuine change.”—Audre Lorde*<sup>404</sup>

A Harris poll administered in the summer of 1967, following the explosion of race riots in cities like Los Angeles, Detroit, and Newark, revealed that 40% of white Americans at that time believed that “the way Negroes have been treated in the slums and ghettos of big cities” was a primary contributing factor to social unrest.<sup>405</sup> Prominent civil rights leaders, such as Dr. Martin Luther King, Jr., were also beginning to connect racial discrimination against black Americans to a broader critique of America’s political and economic system.<sup>406</sup> In a posthumously published essay, titled “A Testament of Hope,” that discussed the black rebellions during the Civil Rights Movement, Dr. King asserted,

It is forcing America to face all its interrelated flaws—racism, poverty, militarism, and materialism. It is exposing the evils that are rooted deeply in the whole structure of our society. It reveals systemic rather than superficial flaws

---

403. See Parlow, *supra* note 147, at 70 (suggesting region-wide taxation as a strategy “to distribute resources where they are needed in an attempt to address regional problems such as poverty and segregation. In doing so, a region could better spread the costs and resources and avoid the free-rider problem that benefits the affluent localities in the current localist structure. In these and other regards, equitable regionalism would trigger a ‘regional revenue balance mechanism[]’ that seeks to encourage fiscal transparency, limit inequitable interlocal subsidization, and diminish the negative externalities that localities impose on one another.”).

404. Audre Lorde, *The Master’s Tools Will Never Dismantle the Master’s House*, in THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR 25, 26-27 (Cherríe Moraga & Gloria Anzaldúa eds., 2d ed. 1983).

405. TAYLOR, *supra* note 6, at 43.

406. See Chartier, *supra* note 20, at 274 (noting that “[d]uring the final period of his life, Martin Luther King focused his energy with increased intensity on economic issues . . . he grew more and more attentive to the links between the racial agenda of the civil rights movement and the question of economic democracy.”).

and suggests that radical reconstruction of society itself is the real issue to be faced.<sup>407</sup>

Despite a growing sentiment that low-income black communities have become “prisons of forgotten men,”<sup>408</sup> CED in America has historically failed to address America’s legacy of institutional racism, systemic economic inequality, and sustained racial segregation. Place-based CED programs like Urban Renewal sought to improve blighted urban neighborhoods, yet they have led to gentrification and increased poverty concentration. More recent people-based CED strategies, such as HUD’s Moving to Opportunity for Fair Housing program, have perpetuated a racialized construction of distressed urban neighborhoods, while undermining the existence of positive social capital and non-market community-based assets. These approaches to urban revitalization have been influenced by a neoliberal political economy that relies upon theories of economic growth that benefit private investors through marginal improvements in the lives of the poor, and little change to the status quo of wealth inequality in America. Sadly, although King delivered his famous “I Have a Dream” speech on the steps of the Lincoln Memorial over fifty years ago, his words still ring true today for many low-income black Americans—“The Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity.”<sup>409</sup>

Emerging CED innovations, such as the social impact bond, ostensibly overcome the many criticisms of place-based and people-based CED models. However, despite its proven ability to stimulate positive social change, this Article has argued that the emerging SIB model, much like the place-based and people-based CED strategies of old, will struggle to achieve economic justice because of its grounding in the hegemony of neoliberalism. Building upon the work of progressive scholars in local government law, housing law, and community economic development law, this Article has articulated a new justice-based conceptual framework of CED to guide the implementation of current and emerging economic development programs. The justice-based approach urges local governments and public policy advocates alike to consider the economic values and political principles that underlie conventional ap-

---

407. MARTIN LUTHER KING JR., *A Testament of Hope*, in THE ESSENTIAL WRITINGS AND SPEECHES, *supra* note 2, at 313.

408. MARTIN LUTHER KING JR., *All Labor Has Dignity*, in THE ESSENTIAL WRITINGS AND SPEECHES, *supra* note 2, at 105.

409. MARTIN LUTHER KING JR., *I Have a Dream*, in THE ESSENTIAL WRITINGS AND SPEECHES, *supra* note 2, at 217.



proaches to CED, proposing instead the guiding tenets of the solidarity economy where non-market human assets are valued and community relationships are prioritized.

The three pillars of justice-based CED—social solidarity, economic democracy, and solidarity economy institutions—not only challenge the dogma of market fundamentalism and neoliberal politics that have overshadowed much of America’s poverty alleviation efforts since Reconstruction, it also advances a strong democratic vision of economic life. Innovative market-based strategies may allow us to temporarily beat neoliberalism at its own game, but they will never enable us to bring about genuine change. As Audre Lorde once remarked, “[t]he master’s tools will never dismantle the master’s house.” Perhaps with a focus on justice, America’s emerging CED programs can finally begin to unravel the web of social subordination and racial capitalism that has mired so many families in the trappings of poverty. Perhaps then, our heralded American Dream can finally become something worth fighting for.