


2017

Community Development Law and Economic Justice--Why Law Matters

Peter R. Pitegoff

University of Maine School of Law, pitegoff@maine.edu

Follow this and additional works at: <https://digitalcommons.maineraw.maine.edu/faculty-publications>

 Part of the [Growth and Development Commons](#), [Housing Law Commons](#), [Land Use Law Commons](#), [Law and Politics Commons](#), [Law and Society Commons](#), [Public Law and Legal Theory Commons](#), [Regional Economics Commons](#), and the [State and Local Government Law Commons](#)

Suggested Bluebook Citation

Peter R. Pitegoff, *Community Development Law and Economic Justice--Why Law Matters*, 26 26 J. Affordable Hous. & Cmty. Dev. L. 31 (2017).

Available at: <https://digitalcommons.maineraw.maine.edu/faculty-publications/83>

This Article is brought to you for free and open access by the Faculty Scholarship at University of Maine School of Law Digital Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of University of Maine School of Law Digital Commons. For more information, please contact mdecrow@maine.edu.

Symposium

Community Development Law, Economic Justice, and the Legal Academy

Peter Pitegoff

It was a reunion, of sorts, but also a cross-generational introduction. In January 2017, law professors and practitioners assembled in San Francisco to explore community development law and economic justice, reflecting on the past several decades in the legal academy and in practice. The occasion was a formal “Discussion Group” program at the annual meeting of the Association of American Law Schools.

The evolution of community economic development over the past several decades has witnessed dramatic growth in scale and complexity. Indeed, new 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 (CED). One goal of the Discussion Group was to revisit and assess an array of practices, initiatives, and theories fitting for what we might describe as a new CED era.

From the early days of community development corporations to today’s sophisticated tools of finance and organization, this evolution underscores “why law matters” in pursuit of economic justice and opportunity. For example, new approaches to enterprise development have stretched beyond traditional business forms to include experiments with cooperative structures, benefit corporations, and other hybrid entities. Federal tax incentives such as New Markets Tax Credits and Low Income Housing Tax Credits have created robust private sector financing regimes and have given rise to investment of billions of dollars in disadvantaged communities. Impact investing, crowdfunding, and novel grassroots initiatives combine to create a virtual “sharing economy,” while rapid technological change continues to pervade private space, public life, and the economy.

Moreover, the contexts for CED have undergone changes over time. Cities, for instance, have emerged in the last two decades as sites of gentrification and concentrated low-wage work, both of which have shifted

Peter Pitegoff (pitegoff@maine.edu) is Professor of Law and former Dean at the University of Maine School of Law.

thinking about CED strategies such as low-wage labor organizing in a world of contingent employment. The 2008 recession and its consequences in urban settings have amplified living wage advocacy, community benefits agreements, and efforts to contain runaway housing markets against a background reality of stressed municipal budgets. Rural poverty demands new strategies as it, too, has been exacerbated by the widespread economic downturn. New Americans face heightened immigration law hurdles, while longstanding racial inequities and tensions persist. The new presidential administration adds a palpable level of uncertainty and anticipated change and challenge.

We have seen a parallel evolution in the legal academy—emergence and maturing of affordable housing and community development clinics, other community engagement initiatives, interdisciplinary programs, and expanded attention in scholarship and teaching. I was among the founders in 1988 of the Affordable Housing and Community Development Law Program and transactional law clinic at the State University of New York (SUNY) at Buffalo. Among just a handful of law school transactional clinics at that time, it foreshadowed comparable development clinics at other law schools. Fast forward to 2017, and numerous law schools today house transactional clinics engaged in affordable housing, small business counseling, or community economic development. Our Discussion Group presented an opportunity to assess an array of new law school initiatives and strategies in the field and to give further definition to “community development law” at a fluid moment in its history.

Recalling comparable gatherings in decades past of legal educators involved in community development, the event brought together legal scholars and activists from across the nation and across generations. From a personal perspective, after serving as Dean of the University of Maine School of Law for ten years, it was an opportunity for me (again now as a professor) to re-engage with longtime colleagues and meet kindred scholars and activists, many of them meeting one another for the first time. In collaboration with co-organizers Professor Rashmi Dyal-Chand of Northeastern University School of Law and Professor Scott Cummings of UCLA School of Law, we invited a dozen core discussants, each of whom contributed an abstract in advance describing a community development initiative or strategy and its fit within the evolution of the field. Nine of these abstracts are published in this volume. Also published is a summary account, presented by Professor Cummings at our January Discussion, of the topics reflected in these contributions and thematic streams among them.

Core participants in the discussion, in addition to the three organizers as moderators, included: Lisa Alexander (Texas A&M University School of Law), Alicia Alvarez (University of Michigan Law School), Michelle Wilde Anderson (Stanford Law School), Alina Ball (University of California, Hastings College of the Law), Susan Bennett (American University Washington College of Law), Patience Crowder (University of Denver Sturm School of Law), Michael Diamond (Georgetown University Law Center), Sheila Foster

(Fordham University School of Law), Sushil Jacob (Tuttle Law Group, San Francisco), Kali Murray (Marquette University Law School), Lisa Pruitt (University of California Davis School of Law), and Brandon Weiss (University of Missouri-Kansas City School of Law). Also attending and participating, among another two dozen people, were Susan Jones (George Washington University Law School), Ted De Barbieri (Albany Law School), Matthew Rossman (Case Western Reserve University School of Law), Mark Aaronson (UC Hastings College of the Law), and others bringing extensive experience in the field.

An explicit outcome of the Discussion Group was to energize and nurture a continuing discussion in the legal academy about community development law and economic justice. Throughout the quarter-century history of the ABA Forum on Affordable Housing and Community Development Law, groups of legal educators in the field have gathered to discuss scholarship, CED work, and best practices in transactional clinical education, often in association with the Forum and in conjunction with the Forum's annual national conference. We appreciate the work of Professor Brandon Weiss and the editors of the *Journal of Affordable Housing & Community Development Law* in providing this venue to chronicle the 2017 San Francisco Discussion Group event and to help sustain a vibrant discussion.

Thematic Overview: Community Development Law and Economic Justice—Why Law Matters

Scott L. Cummings

Thank you for the privilege of reading and commenting on these fascinating papers on community economic development (CED). I personally came away from them thinking that 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. In my comments, I summarize some of the initial themes and questions that emerged most prominently from the papers.

First, *where does—and should—CED happen?* The classic stories of CED are big-city stories, powered by the familiar narrative of post-industrial white-flight, suburbanization, and “inner city” decline. And in these papers, that theme persists: I think particularly of Alvarez’s compelling account of Detroit. But what was most striking to me was the pivot away from the big city paradigm: the exploration of stories of struggle and resistance in different spaces where poor people have always been but perhaps where they have also been increasingly pushed as the U.S. metropolis—New York, Los Angeles, Chicago, San Francisco—becomes a space for the rich. In this regard, we have Anderson’s story of Lawrence, Massachusetts, Ball’s account of the Salinas Valley, Murray’s analysis of Ferguson, and Pruitt’s rich description of Round Mountain, California. Particularly after the 2016 presidential election revealed such stark divisions between big cities and small, between urban and rural, an important question is whether our work should be more focused on what is happening outside the “progressive city” in places of decline and distress often forgotten in our conventional analysis but critically important to holding the fabric of our country together.

Second, *what is the basic set of problems that CED seeks to address?* This is a variation on the familiar question of: “What is community development?” But here I want to frame it in terms of diagnoses and solutions. With respect to diagnoses, I was struck by themes of continuity and change. 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

Scott L. Cummings (cummings@law.ucla.edu) is Robert Henigson Professor of Legal Ethics and Professor of Law at UCLA School of Law.

plight of the most vulnerable members of our society. Looking at these problems, the papers coalesce around a common diagnostic analysis: they tell a story about the withering away of the state as a site of protection and poverty alleviation, and the painful persistence of white supremacy and nativism. In this regard, Anderson's paper emphasizes what happens to communities "When Governments Die"; Bennett's synthetic analysis focuses on the consequences for poor communities of withdrawing the social safety net. In all of the papers, there is an overarching narrative about the exclusion of marginalized people from local decision making and what could be done to help them better access the democratic process.

However, I was also struck by the degree to which these problems are not static. They can get better—or they can get worse. As the papers make clear, inequality is getting much worse, heightening the economic precarity of the poor and undermining the sense of connection between people's lives. The papers provide a range of compelling examples. Gentrification as a fundamentally unequal process in which poor communities of color are displaced as investors snatch up property to be inhabited by affluent whites is a deepening problem, explicit in Detroit, implicit in Lawrence. Revealing the significant backsliding in our social commitment to house the poor, Weiss spotlights the growing withdrawal of housing from the subsidized rental market, while Alvarez describes the massive loss of market-rate housing through tax foreclosure in Detroit. Economic precarity also affects, in a very practical way, the possibility of coming together to fight for improved conditions. Bennett's notion of "untethered" poverty and the volatility it creates in people's lives underscores the challenge of building collective action for change. In a related vein, Diamond suggests that increasing economic vulnerability has made it even more difficult to organize tenants to acquire housing and resist gentrification and displacement in Washington, D.C. Vulnerability based on immigration status plays a prominent role in the stories of Lawrence and Salinas—and forces us to consider how the precarity of immigrants' lives in the new political moment will affect the potential for organizing and reform.

Third, *what are the solutions that CED offers?* The papers offered competing views. Should reform efforts focus on people or place? Should they try to enhance individual capacity or promote collective capacity? For her part, Alexander presents the "tiny homes movement" as fundamentally about making homeless people "stewards" of their community rather than "recipients of services"—about creating novel spaces for self-determination that "challenge the prevailing power structures of urban development." Murray emphasizes the power of collective action and dialogue, focusing on new policing strategies that have the potential for deepening mutual exchange and trust between the police and communities of color.

Fourth, *what are the relevant units of action?* That is, what are the groups or organizational structures that advance change in the CED stories these papers present? Are there some collective formations that are more

effective than others in promoting empowerment and challenging inequality? Should the focus of CED be on building social movement organizations, like the Movement for Black Lives, in Murray's paper, or on supporting groups engaged in critical service provision in underserved communities? If the answer is "both," then what should be the criteria for allocating resources between them? What about the potential of multi-organizational collaborations? Foster's description of a "commons" envisions the locus of change in a collaborative governance structure that must be created and sustained; this resonates with Crowder's idea of "collective impact" as a process for bringing together multiple stakeholders to create a common agenda and set common goals and metrics. To what degree is CED about building organization where none exists—as Pruitt's account of the Hill Country Health and Wellness Center suggests?

Fifth, and related, *what is the role of the government in shaping CED and which level (national, state, local) is best suited to address different sorts of problems?* Weiss highlights how federal decisions about ownership of public housing profoundly affect the possibilities for local housing preservation. Bennett again shines the spotlight back on the dwindling federal safety net and forces us to ask what we can do about it. Alvarez talks about intervening in local government process around foreclosure as a potential lever for communities to preserve housing. For those committed to CED as a bottom-up strategy of social change, which levels of government, if any, should be the locus of advocacy and for which issues? How can advocacy strategies at different levels be combined and coordinated?

Sixth, *what role does law play in CED?* As Alvarez prompted discussants to consider in describing the fundamental inequality at the heart of gentrification in Detroit, "Where is law?" At some level, as Austin Sarat reminded us, "law is all over." Even when poor people are not deploying law as a tool, it is operating on them pervasively in ways that shape the very possibility of thinking about acting collectively. Law is also deployed by those with power to further entrench their position—as Alvarez's description of investment companies gobbling up properties through foreclosure suggests. But law is also pervasive as a tool of resistance. A key and long-standing question in the CED field is whether lawyers should try to build collectivities through private ordering (a transactional approach) or challenge structures of power through legal and political activism (a law reform approach). With respect to the transactional approach, I was particularly intrigued by Dubal and Jacob's idea of a "platform cooperative" as a new legal structure for creating an "online marketplace that is owned and democratically governed by its members"—thus transcending the wage-slave/micro-entrepreneur binary. This type of project, while powerful, also raises the question: can such private solutions make a difference against the backdrop of broader legal and political structures that produce economic insecurity?

Finally, *what is the role of lawyers in CED?* The papers present different views on this question. Some suggest a limited role for conventional

lawyering, instead framing the lawyer's role in relation to supporting organizing and capacity building. In this regard, Ball suggests incorporating community lawyering ideals into the principles of transactional lawyering. Pruitt's account also implicitly questions the importance of lawyers by highlighting the effective self-help strategies of nonlawyers like the health center's founder. But in other cases, lawyers and lawyering seem to matter profoundly to CED's success. Lawyers help imagine new forms of governance and business, they contract for complexity in impact agreements, and they help define strategies and policy reforms that address the underlying causes of poverty and inequality. Of course, in the end, effective CED is always a productive and careful synthesis of law, politics, and grassroots mobilization. The best CED lawyers understand how to use their own professional expertise to complement and build structures of local expertise and power—and how to grow that power to make a difference.

In this moment when we are thinking about what types of local fights matter in the context of national-level struggles that feel so hostile to the basic goals of equality and empowerment, now more than ever I am grateful for the opportunity that these papers provide to think hard about how we can build alliances with local movements for change that will make a difference in this uncertain time.

Tiny Homes for the Homeless: A Return to Politically Engaged Community Economic Development Law?

Lisa T. Alexander

The HGTV show “Tiny House, Big Living” shows the growing popularity of downsized living among middle-class and wealthy Americans.¹ The typical American home is approximately 2,600 square feet,² while market-rate tiny homes typically range from 100–400 square feet. Tiny house living has become an increasing trend, offering more affordable and sustainable housing alternatives for millennials, environmentalists, and others seeking unconventional living.

Homeless individuals, housing advocates, and cities are also creating tiny house villages to address chronic homelessness.³ There are currently at least ten sanctioned and partially developed tiny homes for the homeless villages in places such as Eugene and Portland, Oregon; Ithaca, New York; Dallas and Austin, Texas; Olympia and Seattle, Washington; and Madison, Wisconsin.⁴ These projects are primarily developed and led by the homeless through “sweat-equity,” or by committed non-profit organizations, with the support

1. *Tiny House, Big Living* (HGTV), <http://www.hgtv.com/shows/tiny-house-big-living>.

2. See *What is the Tiny House Movement?*, THE TINY LIFE, <http://thetinylife.com/what-is-the-tiny-house-movement/> (last visited Apr. 26, 2016).

3. See, e.g., ANDREW HEBEN, *TENT CITY URBANISM: FROM SELF-ORGANIZED CAMPS TO TINY HOUSE VILLAGES* (2014); Chris Weller, *Cities Across America are Giving Homeless People Tiny Homes, and it's Working*, BUS. INSIDER (Feb. 11, 2016, 7:00AM), <http://www.businessinsider.com/tiny-homes-give-homeless-people-a-place-to-live-2016-1/#seattles-nickelsville-homeless-encampment-first-began-in-2008-with-just-a-few-tents-1>.

4. See Andrew Heben, *About: Where are these Tiny House Villages?*, TENT CITY URBANISM, <http://www.tentcityurbanism.com/p/about.html>.

Lisa T. Alexander (lalexander@law.tamu.edu) is a Professor of Law at Texas A&M University School of Law with a joint appointment in Texas A&M University's Department of Landscape Architecture and Urban Planning. She is Co-Director of Texas A&M University School of Law's Program in Real Estate and Community Development and a former Associate Professor at the University of Wisconsin Law School. She is also a former Associate Editor of the ABA Journal of Affordable Housing & Community Development Law.

of some local governments. Additionally, approximately twenty-five other projects are under development.⁵

In this discussion paper, I contend that the tiny homes for the homeless movement represents a return to a “politically engaged” approach to housing and community economic development practice. Politically engaged Community Economic Development law (CED), “deploy[s] transactional lawyering in a way that builds organized low-income constituencies that can challenge the distribution of political power.”⁶ The tiny homes for the homeless movement is a rejection of the traditional market-based and professionalized approach to CED that has come to dominate housing and CED practice since the late 1980s.⁷ The advent of the Low-Income Housing Tax Credit, the New Market Tax Credit, and the growing trends of urbanization in the United States has led traditional housing and CED practice to ignore the lowest-income individuals, to gentrify many formerly disinvested inner-city communities,⁸ and render the homeless as recipients, rather than stewards, of complex housing and social services.

The tiny homes for the homeless movement emerged organically as a set of self-help, local interventions to ameliorate an emerging homelessness crisis that local governments failed to solve in the wake of the 2008 housing crisis.⁹ Some of these villages began as tent camps of homeless individuals and activists protesting the lack of adequate alternatives for the homeless or the former criminalization of homelessness.¹⁰ Now, many of these tiny house villages are well-planned and organized communities that restore the dignity, purpose, and connection to others that many formerly homeless individuals had lost. Homeless individuals not only create needed shelter, but with the help of non-profits, lawyers, architects, planners, volunteers, and private fundraising through social media, they also create holistic communities that give real meaning to

5. See *id.*

6. Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 459 (2001).

7. See *id.* The Trump administration’s proposed budget cuts to the U.S. Department of Housing and Urban Development and other housing programs may cause a shift in the neo-liberal approach to housing and community development that has been dominant since the 1980s and redirect the energy of housing advocates toward more politically confrontational approaches. *But see* Jose A. DelReal, *Trump Administration Considers \$6 Billion Cut to HUD Budget*, WASH. POST (Mar. 8, 2017), https://www.washingtonpost.com/politics/trump-administration-considers-6-billion-cut-to-hud-budget/2017/03/08/1757e8e8-03ab-11e7-b1e9-a05d3c21f7cf_story.html?utm_term=.e2cddb5cf18.

8. See generally Cummings, *supra* note 6, at 447–53 (explaining that “market-driven housing programs have not produced clear gains for low-income communities”).

9. See HEBEN, *supra* note 3, at xii.

10. See *id.* at 8–9.

the term “sharing economy.”¹¹ Many of the villages have shared bathrooms, cooking facilities, gardening plots, and woodworking tools.¹²

Other villages create and connect formerly homeless and unemployed individuals to work and microenterprise opportunities, such as woodworking and bee keeping operations.¹³ The Austin-based Community First! Village also hosts an outdoor community cinema in which formerly homeless tiny house, teepee, and RV village residents work with Austin’s iconic Alamo Drafthouse Cinema to show free films to the public and provide concessions served by the formerly homeless residents of the village.¹⁴ Community First! Village also provides Community Inns, which are tiny bed and breakfast facilities where housed individuals can book an overnight stay to visit with the formerly homeless residents, learn about the village, and provide volunteer services.¹⁵ The Community First! Project connects formerly homeless individuals with each other as well as with housed members of surrounding communities. The web and social media enable tiny homes for the homeless villages to connect to one another and to share information. They also connect residents with wealthy and knowledgeable individuals outside of their communities, who provide volunteer legal, planning, construction services, and workforce development assistance.

While these projects are not a panacea to the problem of homelessness, they represent a return to the self-directed and empowering approaches to politically engaged CED that began the CED movement. These projects move organically from protest, to self-help development, to creative social media-driven fundraising, to engagement with local city officials for zoning and land use permits. I contend that this approach represents the possibilities of a new era of CED practice that eschews the neo-liberal approach in favor of a more empowering model that gives the most vulnerable members of the polity a role in shaping the direction of development. This approach also emboldens traditionally marginalized groups to challenge the prevailing power structures of urban development and to determine the goals of their development projects. Through self-help, self-

11. See *id.* at 13; see also Nestor M. Davidson & John J. Infranca, *The Sharing Economy as an Urban Phenomenon*, 34 *YALE L. & POL’Y REV.* 215, 216 n.1 (2016) (“The term ‘sharing economy’ is contested, with some commentators questioning whether there is, in fact, any sharing to this new economy and the normative valence of invoking its communal implications.” (citing Orly Lobel, *The Law of the Platform*, 101 *MINN. L. REV.* 87 (2016))).

12. See HEBEN, *supra* note 3, at 174–78.

13. See 2046 E Johnson St. Planned Property Improvements \$80,000 & 1000s of Volunteer Hours, OCCUPY MADISON INC., <https://occupymadisoninc.files.wordpress.com/2014/01/2046-pres0-bkbw-final2.pdf>.

14. See *What We Do: Community Cinema*, MOBILE LOAVES & FISHES, <http://mlf.org/community-cinema/>.

15. See *id.*

determination, and collaboration with other members of civil society, the homeless work to solve local housing problems and to restore their dignity and connection to community and opportunity.

The tiny homes for the homeless movement must be placed in the larger continuum of currently available housing and community economic development options to become a long-term solution to the problem of homelessness. These projects can be initial stepping stones to more stable housing and employment for individuals who previously could not participate in traditional housing or employment markets. These tiny homes for the homeless villages should supplement, not replace, traditional federal, state, and local housing subsidy programs. Yet, local, state, and federal governments, as well as non-profits, fourth sector B Corporations, and other novel funding sources, must support these efforts, if tiny homes villages for the homeless are to become a viable long-term solution to the problem of chronic homelessness. Additionally, lawyers and law will play a central role in legitimating these new innovations to enable them to flourish. Lawyers, planners, and other professionals will need to devise new zoning designations, conditional use permits, maximum density requirements, and dwelling definitions in order to accommodate these local CED variations. How law is employed in these endeavors will determine the success of the tiny home movement over time as well as its responsiveness to community needs. Law school clinics and emerging CED lawyers will need to employ novel approaches to support and legitimate these innovations. Yet, the tiny homes for the homeless movement represents promising possibilities for CED law and practice that direct CED law away from more politically passive and disempowering market-based approaches toward a more politically engaged approach that places the homeless at the center, rather than the margins, of the innovation process.

The Wild, Wild Midwest

Alicia Alvarez

It might seem paradoxical that in a city like Detroit with so much vacant land, few resources are going to preventing vacancy. Of the city's land area of 139 square miles, approximately twenty are vacant.¹ Roughly 80,000 of the city's housing units, amounting to 23 percent of the city's housing, are vacant.² The vacancy rate is similarly high for commercial and industrial properties, with 36 percent of commercial properties standing vacant and 22 percent of industrial properties being vacant.³ Simultaneously, some organizations and individuals in the city are finding it difficult to acquire land, especially for urban agriculture uses. Though there is no explicit policy, in some neighborhoods community members are not able to purchase city-owned land. In many ways, the current story of the city of Detroit is a study of contrasts. After emerging from bankruptcy, one might think that tax collections should be a priority. But not enough is being done to prevent the loss of housing by homeowners due to tax foreclosures.

By many regional and national accounts, the City of Detroit is undergoing a renaissance.⁴ The media accounts highlight the attractiveness of the city to young people, the inexpensive housing, available retail space, the art scene, the demand for local products, and "a gritty, 'can-do' and underdog attitude among Detroit residents."⁵

The city is experiencing extensive private and public investment.⁶ Several companies, including Compuware, Quicken Loans, and Fifth Third Bank, relocated their headquarters to the central business district.⁷ The downtown area is experiencing significant commercial and residential development.

1. GARY SANDS & MARK SKIDMORE, *DETROIT AND THE PROPERTY TAX: STRATEGIES TO IMPROVE EQUITY AND ENHANCE REVENUE* 10, 11, LINCOLN INSTITUTE OF LAND POLICY (2015).

2. *Id.*

3. *Id.*

4. Peter Applebome, *In Detroit's 2-Speed Recovery, Downtown Roars and Neighborhoods Sputter*, N.Y. TIMES, Aug. 12, 2016.

5. Laura A. Reese, et al., "It's safe to come, we've got lattes": *Development Disparities in Detroit*, 60 CITIES 367, 369 (2017).

6. *Id.*

7. *Id.*

Alicia Alvarez (aalvar@umich.edu) Clinical Professor of Law and Director of the Community Economic Development Clinic at the University of Michigan Law School. In his book, Mark Binelli tells the story of people referring to Detroit as the "the Wild West" because the city is basically "lawless." MARK BINELLI, DETROIT CITY IS THE PLACE TO BE: THE AFTERLIFE OF AN AMERICAN METROPOLIS 16 (2012).

New retail, coffee shops, and restaurants are opening. Residential developments, including “new construction, rehabilitation and adaptive reuse,” are emerging throughout the downtown area.⁸ A new hockey and basketball arena is nearly complete.⁹ As the city emerged from bankruptcy, city services such as lighting, garbage pick-up, snow removal, and police and fire response times began to improve. Certain city services were privatized (lighting, Eastern Market) or regionalized (water and sewer), and the State of Michigan took over the operation of the city’s large riverfront park, Belle Isle.¹⁰ A new light rail line opened in May, 2017.¹¹

In many respects, Detroit is a tale of two cities. In addition to the development happening downtown, Detroit is also the poorest large city in the nation.¹² Over 40 percent of Detroit’s population lives in poverty.¹³ The city has lost more than half its population since 1970.¹⁴ The city currently has fewer than 700,000 residents,¹⁵ a decline from the high of over 1.8 million residents in 1950.¹⁶ The city’s residents are primarily African American (just over 80 percent), and 10 percent are White.¹⁷ The city continues to lose population, though the decline has recently slowed. Transportation to jobs continues to be a major issue. The school system continues to face challenges. There are several signs of the distress experienced by the city’s residents. In 2015, the city shut off water service to over 23,000 homes, approximately one in nine of the city’s residential accounts.¹⁸

Decades of deindustrialization, the decline of the automobile industry and suburban White flight “have severely eroded Detroit’s population, employment, and tax base.”¹⁹ Though the city has been losing population

8. *Id.*

9. Peter Eisinger, *Detroit Futures: Can the City Be Reimagined?*, 14 CITY & CMTY. 106, 110 (2015).

10. Reese et al., *supra* note 5, at 369.

11. Eric D. Lawrence & Robert Allen, *All aboard! Detroit QLINE is open for street-car riders*, DET. FREE PRESS, May 12, 2017.

12. Christine MacDonald & Charles E. Ramirez, *State Gains in Income, Still Below Pre-recession Levels*, DET. NEWS, Sept. 15, 2016.

13. *QuickFacts, Detroit City, Michigan*, U.S. CENSUS, <https://www.census.gov/quickfacts/table/PST045216/2622000,00> (last visited Apr. 24, 2017) [hereinafter *QuickFacts*].

14. Christine MacDonald, *Detroit Population Rank is Lowest Since 1850*, DET. NEWS, May 29, 2016. The city has approximately 677,000 residents and had approximately 1.8 million residents in 1950. *Id.*

15. *Id.*

16. *Id.*

17. *QuickFacts, supra* note 13.

18. Joel Kurth, *Detroit Hits Residents on Water Shut-Offs as Businesses Slide*, DET. NEWS, Mar. 31, 2016.

19. Daniel Clement & Miguel Kanai, *The Detroit Future City: How Pervasive Neo-liberal Urbanism Exacerbates Racialized Spatial Injustice*, 59 AM. BEHAV. SCIENTIST 369, 373 (2015).

for quite some time,²⁰ the recent economic recession exacerbated the problem of housing decline. The city has lost 37 percent of its housing units since 1960.²¹

The Detroit Land Bank Authority controls nearly 100,000 parcels of land in the city²² (over one in city four parcels). Since 2014–2016, the city has demolished over 11,000 properties.²³ The demolitions are slated to continue. Federal Hardest Hit funds provided much of the financing for the demolitions.²⁴ The Land Bank administers several programs to sell homes and vacant land,²⁵ auction homes,²⁶ and sell vacant lots to owners next door.²⁷ Community partners may purchase up to nine lots at a discount and ten or more lots with more oversight.²⁸ Properties continue going into the Land Bank inventory.

One of the reasons for the continuing entry of homes into the Land Bank inventory is the crisis in tax foreclosures in recent years. Between 2005 and 2014, one in three Detroit properties was foreclosed as a result of mortgage or tax default.²⁹ Not surprisingly, over half of the homes

20. See MacDonald, *supra* note 14.

21. Margaret Dewar et al., *Disinvesting in the City: The Role of Tax Foreclosures in Detroit*, 51 URB. AFF. REV. 587, 588 (2015).

22. See Quarterly Report of the Detroit Land Bank Authority to the Detroit City Council, April 14, 2017, <http://www.buildingdetroit.org/wp-content/uploads/2014/08/City-Council-Quarterly-Report-April-2017.-final.pdf> (last visited May 1, 2017).

23. See Detroit Demolition Program, <http://www.detroitmi.gov/demolition> (last visited May 1, 2017).

24. See Detroit Land Bank Authority, Hardest Hit Funds/Demolition Program, <http://www.buildingdetroit.org/our-programs/hardest-hit-funddemolition/> (last visited May 1, 2017).

25. The Land Bank sells homes under two programs. The Own It Now Programs sells homes that are need substantial investment because the homes are not cleared or secured and title may not be clear. See Detroit Land Bank Authority, Own It Now Program, <http://www.buildingdetroit.org/own-it-now/> (last visited May 1, 2017). Under the Rehabbed & Ready Program, the Land Bank sells homes that are move-in-ready. See Detroit Land Bank Authority, Rehabbed & Ready Program, <http://auctions.buildingdetroit.org/RehabbedAndReady/SplashPage> (last visited May 1, 2017).

26. See Detroit Land Bank Authority, Auction Program, <http://www.buildingdetroit.org/our-programs/auction-program/> (last visited May 1, 2017).

27. See Detroit Land Bank Authority, Side Lot Sales Program, <http://www.buildingdetroit.org/our-programs/side-lot-sales/> (last visited May 1, 2017).

28. See Detroit Land Bank Authority, Community Partnership Program, <http://www.buildingdetroit.org/community-partnership-overview/> (last visited May 1, 2017).

29. Joel Kurth & Christine MacDonald, *Volume of Abandoned Homes 'Absolutely Terrifying'*, DET. NEWS, May 14, 2015, <http://www.detroitnews.com/story/news/special-reports/2015/05/14/detroit-abandoned-homes-volume-terrifying/27237787/>. The exact figures are 139,699 of 384,672 properties, or 36 percent. *Id.*

that were in foreclosure became blighted.³⁰ Over three-quarters of the homes on the city's blight list are foreclosures.³¹ Detroit was fourth in mortgage foreclosures during the 2005–2014 period, behind Las Vegas, Phoenix, and Chicago, but it had more tax foreclosures than the other cities.³² In addition, Detroit's housing prices dropped the most, down 73 percent from the peak before the housing market crash.³³ That has meant a devastating loss of wealth to the residents as well as reduced tax collection for the city as a result of the reduction in value, and complete loss of revenue for the properties that are abandoned. Abandoned properties cost the city additional funds when they are demolished. Blighted homes means reduction in the value of nearby homes as well. Many properties "reenter tax delinquency."³⁴

In 2015, over 60,000 properties in the city entered the tax foreclosure process.³⁵ That amounts to one-sixth of the properties in the city. Of the more than 28,000 that went into auction, more than a third were occupied residential properties.³⁶ An enormous effort by many allowed some homeowners to enter into payment plans that permitted some of the homes initially subject to tax foreclosure to be saved (at least temporarily). The mayor worked with the state legislature to reduce penalties and interest for those owing back taxes.³⁷ Several churches, community organizations, and legal services programs sponsored sessions to inform residents of the various programs available to lower their taxes and make partial payments in order to avoid foreclosure. For many, these were temporary fixes. Even with the herculean efforts of many, close to 28,000 properties went to the tax action in 2015.³⁸ More than a third of those properties were occupied.³⁹ The majority of the occupied homes were sold in the auction. Some may have been purchased by the tenants living in them. The vast majority were likely sold to investors.⁴⁰ The list of purchasers

30. *Id.*

31. *Id.*

32. *Id.* Detroit had 100,000 tax foreclosures during that ten-year period. *Id.*

33. *Id.* The decline was the lowest among the fifty largest cities. *Id.*

34. See Dewar et al., *supra* note 21, at 595.

35. Joel Kurth & Christine MacDonald, *Detroit Braces for a Flood of Tax Foreclosures*, DET. NEWS, July 1, 2015, <http://www.detroitnews.com/story/news/special-reports/2015/07/01/detroit-braces-flood-tax-foreclosures/29589915/>.

36. *Id.*

37. Bill Laitner, *Tax-foreclosure Crisis Looming as Lawmakers Set to Act*, DET. FREE PRESS, Nov. 29, 2014.

38. Eric D. Lawrence, *Wayne County Foreclosure Numbers See Big Dip*, DET. FREE PRESS, June 26, 2016.

39. *Id.*

40. See list of bids and winners in 2015 tax foreclosure auction at Loveland Technologies, 2015 Leadershipboard, <https://makeloveland.com/2015/top> (last visited May 1, 2017).

shows many individuals and corporations purchased one property. Five individuals purchased over 100 properties, and one purchased 473.⁴¹ The situation improved in 2016 with a 36 percent decrease (from 2015) in the number of homes entering the county tax foreclosure process but that still meant that approximately 18,000 properties went to auction.⁴²

The reasons for the staggering number of tax foreclosures are varied. The city's poverty rate contributes to people's inability to pay. The County Treasurer's difficult-to-navigate poverty exemption results in many people liable for the full amount of taxes when they might otherwise be eligible for a reduction. Another major contributor to the tax foreclosure crisis has been the over-assessment of properties in the city. Under the Michigan Constitution, a property's assessed value cannot exceed half of its market value.⁴³ The city recognizes that properties in the city are over-assessed and decreased assessment in 2014 and 2015.⁴⁴ In early 2017, the city announced it had completed an individualized reassessment of all properties.⁴⁵ A recent study shows that most properties in the city were over-assessed and that the average assessment ratios declined as the property values increased.⁴⁶ The study finds that on average assessment were 7.3 times higher than market values in 2010 and 2.1 times higher than market values in 2015.⁴⁷ The American Civil Liberties Union and the NAACP Legal Defense and Educational Fund sued the city and county challenging the over-assessment as violations of the Fair Housing Act.⁴⁸ The city responded that the plaintiff's requests for reassessment threatens city services and violates the bankruptcy plan of adjustment.⁴⁹

Mortgage foreclosures contributed to the problems of abandoned homes. Detroit was "an epicenter of subprime lending."⁵⁰ In 2005, eight of the twenty census tracts with the highest rates of subprime lending in the country were in Detroit.⁵¹ Unlike other cities that faced a mortgage

41. *Id.*

42. Lawrence, *supra* note 38.

43. Bernadette Atuahene & Timothy R. Hodge, *Statecraft*, __ S. CAL. L. REV. __ (forthcoming 2018) (citing MICH. CONST. art. IX §211.27(a)(1) (2013)).

44. Matt Helms, *Detroiters to See Property Assessment up to 20% Lower*, DET. FREE PRESS, Jan. 28, 2015.

45. Christine Ferretti, *Property Taxes Going Down for Over Half of Detroiters*, DET. NEWS, Jan. 23, 2017.

46. *Id.*

47. Bernadette Atuahene, Op-Ed., *Detroit's Tax Foreclosures Indefensible*, DET. FREE PRESS, Sept. 1, 2016. *See also* Atuahene & Hodge, *supra* note 43.

48. Christine MacDonald, *ACLU, NAACP Sue to Stop Wayne County Tax Auction*, DET. NEWS, July 13, 2016.

49. *Id.*

50. Christine MacDonald & Joel Kurth, *Detroit Backed off Suing Lenders over Risky Mortgages, Blight*, DET. NEWS, June 25, 2015.

51. *Id.*

foreclosure crisis, Detroit never sued the banks and other lending institutions over predatory lending and the blighted foreclosures. The city was in crisis and did not have the necessary staff.⁵² The city received money from national settlements and used it for blight removal.⁵³ The State of Michigan has also been criticized for not using more of its Hardest Hit Funds in foreclosure prevention.⁵⁴

The foreclosures have real consequences for people as well as the city. Studies show that foreclosures and auctions decrease owner occupancy.⁵⁵ Auctions are responsible for “dumping properties,” offering them at very low prices, as a result lowering the value of nearby properties, and therefore seeding blight.⁵⁶ Many of the purchasers at auction are investors.⁵⁷ More resources need to be used to prevent both mortgage and tax foreclosure. It is both the fiscally right thing to do as well as the morally correct thing to do. Foreclosures have both human and financial consequences for the city and the people involved. When properties go into foreclosure, families lose their home. That has lasting financial consequences since any investment is wiped out. The family has to then look for housing elsewhere. Families may lose their support networks, including schools and care networks for the children. In addition, the city and county have to spend the resources to process the foreclosure and eventually demolish the home.

Detroit is not the blank slate that many may think it is. It has a rich history. It also has a present. Even with its vacancy, the city’s “density remains significantly higher than cities of a comparable territorial size such as Atlanta, Denver, and Portland.”⁵⁸ The city does face substantial challenges, including high rates of unemployment and poverty, violent crime, an educational system needing extensive improvement, and vacant properties. What the future holds depends on the ability to craft more democratic and just approaches to the city’s challenges. The “current recovery discourse is focused on fiscal and physical concerns.”⁵⁹ Missing from much of the planning of the city’s future is a conversation about

52. *Id.*

53. *Id.*

54. Todd Spangler, *Federal Inspectors Criticize Michigan Housing Aid Program*, DET. FREE PRESS, Jan. 11, 2017.

55. Dewar, *supra* note 21, at 600.

56. *Id.* at 601.

57. *Id.* at 600.

58. Clement & Kanai, *supra* note 19, at 374.

59. Gary Sands, *Not Dead Yet: Response to William Tabb’s “If Detroit is Dead, Some Things Need to be Said at the Funeral*, 37 J. URB. AFF. 13, 15 (2015).

the current residents of the city, "human capital."⁶⁰ "Repairing the city's balance sheet and demolishing abandoned buildings will not . . . ensure the prosperity" of the city's residents.⁶¹ Fairness demands that we attend to the needs of the residents, not merely look to replace them.

60. *Id.*

61. *Id.*

Community Development Law and Economic Justice—Why Law Matters: The Potential Impact of Corporate Law Clinics

Alina Ball

The Social Enterprise & Economic Empowerment Clinic (“the Clinic”),¹ an in-house corporate law clinic at UC Hastings College of the Law, began working in the Salinas Valley with other legal service providers in late 2014 to promote community-driven solutions to access safe drinking water. The Salinas Valley, California, is one of the largest and most productive agricultural regions in the nation.² Agricultural businesses began to flourish in the mid-1900s and continue today to be the region’s major industry. The “green gold” of the Salinas Valley significantly contributes to Monterey County’s \$8 billion agricultural industry, making it the fourth highest producing region in California.³ The Salinas Valley is, however, also home to extreme wealth inequality and the tributaries that flow from its raging waters are not a new topic of discussion in the rural communities. Perhaps no other natural resource exemplifies the disparity within this region more than the access to potable water.⁴

1. For more information on the Clinic, see <http://www.uchastings.edu/academics/clinical-programs/clinics/socialenterpriseandeconomicempowerment/index.php>.

2. JOHN STEINBECK, *OF MICE AND MEN* 57 (1937) (“We could live offa the fatta the lan’.”).

3. See *Economic Contributions*, MONTEREY COUNTY FARM BUREAU, <http://montereycfb.com/index.php?page=economic-contributions> (last visited July 14, 2017) (“‘Monterey County agriculture pumps \$8.12 billion into the local economy and supports more than 76,000 jobs,’ Agricultural Commissioner Eric Lauritzen announced as he released an updated report of a comprehensive economic analysis of the county’s leading industry on June 30, 2015.”).

4. “Some people have a right to more water than others, . . . That’s built into the legal framework of California.” Gov. Jerry Brown on California Water Crisis, ABC News (Apr. 5, 2015), <http://abcnews.go.com/ThisWeek/video/gov-jerry-brown-california-water-crisis-30107922>. *Salad Bowl of the World: At What Cost?*, MONTEREY HERALD (Apr. 18, 2015), <http://www.montereyherald.com/article/NF/20150418/NEWS/150419757> (last visited July 14, 2017) (identifying that the agricultural industry consumes 90% of the water in the Salinas Valley).

Alina Ball (balla@uchastings.edu) is Associate Professor of Law and Director of the Social Enterprise & Economic Empowerment Clinic, UC Hastings College of the Law.

One of the Clinic's clients is a farmworker housing cooperative in the Salinas Valley ("the Cooperative"). The Clinic provides corporate and transactional counsel to the Cooperative and is representing the entity in its quest to own and control its water system. In our corporate lawyering, we seek to honor the sacrifices, ingenuity, and lay lawyering of the many residents of the Cooperative. This representation provides a textured portrayal of corporate lawyering that intentionally integrates the values of community lawyering.⁵ There is a pressing need for private ordering expertise in building institutional power within low-income communities as well as individual access to financial security.⁶ The objective of my comments in this essay is to legitimize and articulate what I describe as "corporate-community lawyering"—the intentional incorporation of community lawyering theory into a distinctly transactional practice.

A. A Community Fortified Through Resistance to Racial Subordination

The following narrative provides a brief history of the establishment of the Cooperative and the development of its leadership as a precursor to describing the Clinic's current representation.⁷ In the late 1960s, a group of farmworkers, who were unionized under the United Farm Workers, organized and operated their own strike against a local strawberry company. The company retaliated against the striking farmworkers by threatening to evict them from their labor camp. The farmworkers did not realize prior to the strike that the company owned the labor camp where most of their homes were located and their families resided. As a means to having the farmworkers removed from the labor camp, the company sold the camp to a new owner who eventually had the police evict the farmworkers. Approximately thirty-two families set up tents, built makeshift cardboard shacks, and converted their cars into sleeping quarters.

5. Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, *Conversations on "Community Lawyering": The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL'Y 359, 364 ("[C]ommunity lawyering is an approach to the practice of law and to clinical legal education that centers on building and sustaining relationships with clients, over time, in context, as a part of and in conjunction with communities. It incorporates a respect for clients that empowers them and assists them in the larger economic, political, and social contexts of their lives, beyond their immediate legal problems.").

6. Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 108 (2000) ("The goal for community lawyers should include assisting clients to create power and lasting institutions with the ability to influence the clients' environment, rather than solely the creation or enforcement of rights or providing legal remedies to legal wrongs.").

7. Several of the facts and details are withheld to maintain the client's identity.

The evicted farmworkers knew of an abandoned labor camp the county owned⁸ and moved into the barracks of the labor camp after several months on the streets. The city and county officials initially arranged for the families to be temporarily relocated to the camp, but as the families began to consider the possibility of somehow converting the labor camp into permanent homes they could own, there was resistance. The families refused relocation and defied deadline after deadline by the local government agency to move out of the labor camp. The living conditions at the dilapidated camp, however, were harsh. Over time, as the standoff between the farmworker families and the local government agency continued, more and more of the families moved out of the camp but remained active in problem solving around a long-term solution to affordable housing in Salinas Valley. There was well-organized and politically powerful opposition to the families staying at the labor camp that exploited racialized narratives of Latinos⁹ as justification for why the government should not allow these Latino families to permanently live on the property. But the families endured. When only a few families remained, the local government agency sold the labor camp property to a private entrepreneur. One of the primary organizers among the farmworker families negotiated with the new landowner and convinced him to sell the camp to the farmworkers.

B. Community-Led Institution-Building

The farmworker families engaged a local legal services organization to represent them in forming a housing cooperative on their newly acquired land. Membership into the Cooperative would consist of monetary payments as well as hours of community service to help the Cooperative cover the cost of development and rehabilitation of the property. The community service hours payment not only helped keep the Cooperative's development expenses down, but also lowered the cost of entry so that farmworker families that otherwise would not be able to afford homeownership

8. RONALD L. MIZE, *THE INVISIBLE WORKER OF THE U.S.-MEXICO BRACERO PROGRAM: OBREROS OLVIDADOS 20* (2016) ("One of the key means of securing a high degree of social isolation and racial segregation was the institutionalized practice of housing Braceros in labor camps. The labor camps were often located on growers' private property but there were other means of housing workers away from local communities or nearby small towns. During the Great Depression, labor camps were built and maintained by the federal government under the aegis of the New Deal unemployment-alleviation measure. . . . The federal labor camps housed labor for grower associations or even larger agribusiness entities.").

9. MARIO T. GARCÍA, *MEXICAN AMERICANS: LEADERSHIP, IDEOLOGY, AND IDENTITY, 1930-1960* 94 (1989) ("Most Mexican-Americans lived in de facto segregated tracts, but after World War II many, especially returning veterans attempted to purchase homes in new residential areas. Some realtors and developers, however, refused to . . . negotiate with them, insisting that if [homes were sold] to Mexicans, the Anglo residents of the tract would cancel their contracts and leave.").

could own membership in the Cooperative. The Cooperative would go on to secure federal grants and loans to finance the development of the land. By the end of the 1970s, the Cooperative was officially established and began opening its membership to other farmworker families in the areas. The community of persevering and determined Latino families who had nowhere else to go had blazed a new trail through difficult and sometimes hostile terrain to establish close to 100 permanently affordable housing units.

C. The Role of Corporate Law Clinics in Power Acquisitions

Cooperative members first received notice that something was wrong with their water in the 1990s when reports provided by the private company, which owned the water system, showed that the nitrate level in one of the wells was too high for human consumption. The second of three wells on the Cooperative's property was discovered to have high nitrate levels in the mid-1990s, and the private company owner took it out of commission. The persistent organizing by the Cooperative's residents, as well as lab reports, led the local board of supervisors to approve a temporary filtration system for the last active well in the Cooperative. The county's long-term solution for clean water was to apply for state and federal financing to identify a new location and construct a new well for the Cooperative. With the assistance of federal grants and funds, the county completed drilling a new, deeper well, which cost several million dollars to construct. The Cooperative residents now have access to the safe well water, but the average family pays high monthly water bills.

Recently, the county announced its plan to sell the Cooperative's water system to a private company through a bidding and proposal process. Despite high assessment fees paid by the Cooperative members, the water system does not generate sufficient income to support the county's costs to maintain the system. Given the Clinic's unique experience representing business entities with a social mission and its commitment to community lawyering, several community partners introduced the Cooperative to the Clinic as a potential legal service provider. The Cooperative retained the Clinic to provide corporate counsel as they attempt to acquire ownership of their water system. We are advising the Cooperative on possible entity options to own and operate the water system; corporate governance issues; and counseling on the variety of federal, state, and local regulatory layers the Cooperative must consider in this transaction. By working to obtain control over its water system, the Cooperative is continuing its mission toward self-sufficiency and economic empowerment that led to its establishment.

Even this brief history of the Cooperative makes it clear that lawyers, while necessary along the way, have never been central to this community's quest for dignity and power. This is the context for community lawyering that the Clinic inhabits as legal counsel to the Cooperative. The Cooperative's journey did not start with lawyers, it will not depend solely on lawyers, and yet lawyers have an important role to play in the pursuit of economic justice.

The Cooperative members, and the community organizers before them, identified the problems, engaged in problem-solving, and then sought out support from lawyers based on their identified options and preferences. Lawyers then worked within those parameters to provide support and assistance. While the Cooperative's history is unique, the pressing need of disenfranchised communities across the country to build institutional power is not.

Thus, corporate law clinics similar to the Clinic have a significant role they can play in representing community-based institutions in disenfranchised and low-income communities. Community economic development legal scholarship will undoubtedly serve as a foundation for corporate law clinics if they take on this mantle to intentionally represent community-based institutions in marginalized communities. However, corporate law clinicians will also need to develop their own narratives and theories for corporate-community lawyering. Progressive lawyering models, which to date have focused on individual representation in litigation proceedings, need to contemplate the distinctions of community lawyering within transactional practices to fill gaps in our lawyering theory on the nuances of corporate law in community development practices. With a solid theoretical framing of corporate-community lawyering, corporate law clinics can help community-based institutions effectuate change and achieve economic justice.

Coming of Age on \$2 a Day, Evicted: What CED Has to Say to Today's Untethered Poverty

Susan D. Bennett

*Poverty will not be stopped by people who are not poor. If poverty is stopped, it will be stopped by poor people. And poor people can stop poverty only if they work at it together.*¹

Fresh looks at extreme poverty in America compel a re-examination of Wexler's declaration and of the anti-poverty capacities of CED. This title is a mash-up of three books: *Coming of Age in the Other America*,² *\$2.00 a Day: Living on Almost Nothing in America*,³ and *Evicted: Poverty and Profit in the American City*.⁴ All emerged from late 2015 into the first half of 2016, a convergence that may be coincidence, or an indication of a singular moment in American poverty and its sociology. *Coming of Age* follows the trajectories of 150 young people whose families moved away from public housing projects in Baltimore. *\$2.00 a Day* documents the fortunes of heads of household who, with the passage of the Personal Responsibility and Welfare Reform Act of 1996 and the passage of time since, lost their income supports. *Evicted* describes the experiences of renters in, and owners of, unsubsidized private sector housing in Milwaukee. The books are page turners, chronicles of desperation that recall Jonathan Kozol's impassioned witness.⁵ Kozol interviewed as a journalist and educator. As sociologists, DeLuca, Edin and Shaefer, and Desmond came to their outrage through personal encounters and quantitative studies.⁶

1. Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1053 (1970).

2. STEFANIE DELUCA, SUSAN CLAMPET-LUNDQUIST & KATHRYN EDIN, *COMING OF AGE IN THE OTHER AMERICA* (2016).

3. KATHRYN J. EDIN & H. LUKE SHAEFER, *\$2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA* (2015).

4. MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016).

5. See, e.g., JONATHAN KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS 7-12* (1991) (describing the residue left in parks and playgrounds in East St. Louis from breaks in sewer mains).

6. See DESMOND, *supra* note 3, at 315-34 (describing the influence of the author's own background on his interest in housing insecurity, his process for identifying

Susan D. Bennett (sbennet@wcl.american.edu) is Professor of Law and Director of the Community & Economic Development Law Clinic, Washington College of Law, American University.

The element that these narratives share is destabilization. Desmond describes the low income renter's bargain: in return for a light glance over credit and rental history and sporadic leniency on rent, the tenant gets a space without expectation of security, safety, repairs, or, sometimes, appliances.⁷ Edin/Shaefer chronicle the sporadic low wage or no wage work for which poor people travel long distances and endure punishing conditions, where shifts change without notice and one slip-up means termination.⁸ While the amount of income matters, the reliability of it matters more. Edin/Shaefer's and Desmond's subjects illustrate what other researchers observe as the phenomenon of volatility: unpredictable fluctuations in income prevent low wage and middle class workers from setting any money aside for emergencies. This contemporary version of "living paycheck to paycheck" leaves workers vulnerable to physical displacement and personal upheaval through eviction or foreclosure.⁹

Public benefits and public housing had their deserved, if self-fulfilling, detractors. But the destabilization narratives highlight the impacts of decades worth of "devolution" of public welfare function, from AFDC, with nominally enforceable standards, to haphazard, lightly regulated private or local support. Freed from constrictions previously imposed by Title IV-A of the old Social Security Act, states spend their federal social services funds not on cash supports, employment, or child care assistance, but on shoring up deficits in child welfare administration, on other budget items, or on the state earned income tax credit.¹⁰ Edin/Shaefer and

subjects for study, and his inevitable involvement in their lives). As Desmond notes, "The hardest feat for any fieldworker is not getting in; it's leaving." *Id.* at 336.

7. DESMOND, *supra* note 3, at 134–38 (describing how owners failed to supply appliances to their low rent properties and relied on tenants and homeless men to make quick, cheap repairs).

8. EDIN & SHAEFER, *supra* note 2, at 35–42 (describing how a mother of two traveled by bus from her family's third homeless shelter in ten months to report by 7 a.m. to her job cleaning vacant, unheated apartment buildings, offices, and foreclosed homes; and how her hours were cut to nothing because illness from exposure to cold and mold forced her to miss work; *id.* at 56–60 (describing how a worker whom Wal-Mart honored twice as "cashier of the month" lost her job the first and only time she missed the beginning of her shift, when she had no cash left after rent and food for gas).

9. See, e.g., Jonathan Morduch & Rachel Schneider, *Is Financial Unsteadiness the New Normal?* SHELTERFORCE (Summer 2016), http://www.shelterforce.org/article/4560/is_financial_unsteadiness_the_new_normal/ (summarizing results of the U.S. Financial Diaries Project, which found that incomes of 235 low- to moderate-income families averaged 25% higher or lower than their annual average for five months out of the year).

10. Liz Schott, LaDonna Pavetti & Ife Floyd, *How States Use Federal and State Funds Under the TANF Block Grant*, CENTER ON BUDGET AND POLICY PRIORITIES, Oct. 15, 2015, <http://www.cbpp.org/research/family-income-support/how-states-use-federal-and-state-funds-under-the-tanf-block-grant> (describing regional

Desmond describe the shift away from spending public money for the benefit of those who are “extremely” poor to those who earn income.¹¹ Plans for “affordable” housing do not reach the poorest¹² or the largest¹³ of families.

To “destabilized,” I add “untethered.” The lives of very poor people are destabilized in part because they are untethered. As a consequence of the elimination of the “safety net,” very poor people have lost ties to an expectation of guaranteed incomes or to a baseline of shelter that minimal incomes will support. Those baselines support not just physical and emotional stability, but productive community. Tenants’ associations—protected in private sector housing, mandated in subsidized and public housing—epitomize the kind of platform for building and protecting community that exists only when people are connected to systems that enable a productive use of place.

Raj Chetty’s body of work on neighborhood effects co-exists with and complicates the destabilization narratives. Chetty’s analysis of data from the Moving to Opportunity projects demonstrates the benefits of early childhood exit from neighborhoods of concentrated poverty.¹⁴ His comparisons of gain or loss of income across generations within and beyond “commuting zones” show that immersion in poor communities can become

variations in expenditures on cash supplements, employment assistance, and child care, with eight states spending less than a quarter of their federal social services block grants on those core categories, five states spending more than 75%, and all states averaging 50%).

11. EDIN & SCHAEFER, *supra* note 2, at xxiii (characterizing post-1996 welfare policy as eliminating the safety net of minimal cash payments for the desperately poor in favor of the safety net of tax credits for the steadily employed).

12. The shortfall in federal, state, and municipal assistance for housing affordable to tenants below half the area median income is well documented. *See, e.g.,* DESMOND, *supra* note 3, at 302 (noting that 67% of all poor renting families in 2013 received no federal rental assistance); *see also* Office of the District of Columbia Auditor, *The District of Columbia Housing Production Trust Fund: Revenues and Expenditures and Five-City Comparison* at 25–26 (June 30, 2016) (noting the continuing failure of the District of Columbia’s dedicated fund for construction and preservation of affordable housing to meet statutory mandates to spend 40% of the fund on units affordable to residents with incomes below 30% of area median income (AMI), and 40% on units affordable to those with incomes between 31% and 50% of AMI).

13. *See, e.g.,* Andrew Giambrone, *Northeast Tenants Sue owner for Alleged Discrimination*, WASH. CITYPAPER (Aug. 25, 2016), <http://www.washingtoncitypaper.com/news/housing-complex/blog/20831721/northeast-tenants-sue-owner-for-alleged-discrimination> (citing owner’s decision to eliminate three- and four-bedroom units from redevelopment plans).

14. Raj Chetty et al., *The Effects of Exposure to Better Neighborhoods on Children*, 106 AMER. ECON. REV. 855 (2016).

permanent.¹⁵ Chetty recommends not abandonment, but enrichment. As his pockets of entrapment are so granular and localized, he proposes that someone (government? the private sector?) double down on resources to create conditions from which, presumably, mobility across percentiles of income will be possible.

Can the “Community” in CED,¹⁶ grounded in place, dedicated to inclusive process and democratic participation, ameliorate untethered poverty? The new insights into extreme poverty provided by Chetty’s work and by the destabilization narratives urgently revive the old debates about “place” or “people.” Edin/Shaefer’s and Desmond’s subjects suffer from mobility and fluidity of the wrong kind: of wages, of work hours, of roommates. In different ways, Chetty and DeLuca conclude that “place”—at least, some place—is for fleeing from. One generation away from the violence and unpredictability of Lafayette Courts or Cherry Hill, DeLuca’s interviewees surpassed their parents in educational attainment and continuous work experience.¹⁷ Even so, they described the “crab in a bucket” syndrome, the crush of family obligations and lack of emotional or financial support for long term educational goals that forced them into “expedited childhoods.” DeLuca describes several of her interviewees as attached to an “identity project,” an intense engagement to an engrossing activity, often prompted by communication with a mentor outside the home. Such attachments have served these young people as both protective and redemptive preoccupations.¹⁸

Louise Howells and co-authors Rashmi Dyal-Chand and James Rowan have noted the inadequacy of social entrepreneurship to address extreme, untethered poverty. (Ironically, Desmond portrays one of the most finely drawn urban entrepreneurial success stories in Shereena Tarver, owner and manager of thirty-six units of housing in distressed single family houses and duplexes on Milwaukee’s North Side.¹⁹) They recommend, instead, an approach that develops individual capacities so that individuals may attain greater financial and personal stability.²⁰ Their insights echo

15. Raj Chetty et al., *Where Is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States*, 129 Q. J. ECON. 1553 (2014).

16. See ALICIA ALVAREZ & PAUL TREMBLAY, INTRODUCTION TO TRANSACTIONAL LAWYERING PRACTICE 312–18 (2013) (summarizing the differences among the “Community,” “Economic,” and “Development” strands of CED).

17. DeLuca et al, *supra* note 1, at 5, 56–58 (noting that seven out of ten youth whose families had moved out of public housing completed high school or the GED, compared to one out of four of their parents; and that over eight out of ten youth not still in school were working or recently working, compared to one in four of their parents).

18. *Id.* at 64–69.

19. DESMOND, *supra* note 3, at 13, 319.

20. See Louise A. Howells, *The Dimensions of Microenterprise: A Critical Look at Microenterprise as a Tool to Alleviate Poverty*, 9 J. AFFORDABLE HOUSING & CMTY. DEV. L. 161, 162 (2000) (questioning whether very poor people, who by definition

those which DeLuca and her team developed through their analysis of identity projects.

We have a diagnosis and a recommendation. To follow through, CED must direct its efforts towards re-tethering: enabling individuals to secure predictable incomes that will enable them to live in predictably affordable, healthy homes in communities that support staying, moving, and participation in decisions about development. If it asks too much of desperately poor people to take charge of the revitalization of their neighborhoods, then it is not too much to consult with them about what of their current situation they want replicated, in whatever place will sustain the formation of nurturing communities.

have limited financial resources, would benefit more from training to become employable than from the inadequate assistance available to individuals starting a small business); Rashmi Dyal-Chand & James V. Rowan, *Developing Capabilities, Not Entrepreneurs: A New Theory for Community Economic Development*, 42 HOFFSTRA L. REV. 839, 842 (2013–14) (noting the absence of a clear connection between the strategy of social entrepreneurship and alleviation of poverty); *id.* at 859–60 (commenting that the instability of poor people's lives makes them less able to tolerate the inevitable risks of entrepreneurship).

Contracting for Complexity: Collective Impact Agreements in Community Economic Development

Patience A. Crowder

The full impact of the 2008 recession will not be known for years; however, its debilitating effect on state and local governments is clear. While the Great Recession materialized differently in different states, state and local governments suffering from financial anemia decimated their community and economic development programs. Compounded by cuts in spending at the federal level, shrinking philanthropic resources and property tax revenue, and dormant housing and construction industries, state and local governments froze or reduced spending on redevelopment projects and economic development programs. In an extreme case, California shuttered its redevelopment agencies. In many instances, private industries behaved similarly. Along with the consequences of the foreclosure crises, these shifts or cessations in spending led to devastating effects on the funding of small business development programs, the availability and new construction of affordable housing, and the operation of job and workforce training programs—all traditional arenas for community economic development (CED) projects. Some state and local governments, however, are beginning to creep out of shell shock to respond to the crisis in innovative ways, and they are not isolated in their efforts because many community advocates are boldly leading the way. Most importantly, however, these advocates are doing so in ways that seek to cure the inequities that have historically run through public programs. As the economy begins to stabilize, the arousing of such programs necessitates a renewed vigilance against inequity through the implementation of novel mechanisms designed to alleviate poverty. While there are myriad ways to approach these outcomes, this presentation focuses on a transactional law approach to poverty alleviation by exploring the potential of collective impact, particularly collective impact agreements, to facilitate economic development throughout metropolitan regions.

Our metropolitan regions are places that house extreme social and economic disparities. The 2008 recession aggravated the existing disparities between central cities and suburbs, and one of its legacies is the deep expansion of poverty beyond the boundaries of urban central cities—increasing the number of suburban poor by as much as 50 percent by some estimates. This changing geography of poverty has triggered a

Patience A. Crowder (pcrowder@law.du.edu) is Associate Professor of Law & Director, Community Economic Development Clinic at the University of Denver Sturm College of Law.

different national conversation about class, race, inequity, and economic justice, a conversation that is not limited by inner-city boundaries. As such, anti-poverty advocates (such as community organizers, policy makers, legal advocates, and other supporters) must look for mechanisms that not only address the high tide of suburban poverty but that also work for the poor who remain in our traditional enclaves of poverty: urban centers and rural towns. Just over two years after the 50th anniversary of the “War on Poverty,” this particular time in history presents a unique opportunity to explore innovative approaches to alleviating poverty in our metropolitan communities. Collective impact initiatives and collective impact agreements are such approaches. Collective impact initiatives are cross-sector coalitions collaborating to address the most persistent and pernicious societal ills in communities across the United States. Many of these initiatives are memorialized, to some extent, through what are commonly referred to as collective impact agreements. These agreements are an emerging tool that secures the participation of a diverse group of organizational actors for the purpose of addressing a specific social problem (e.g., public education, public health, or environmental racism and degradation). The successful implementation and execution of collective impact agreements revolve around the following five conditions for “collective success:” (1) a common agenda, (2) shared measurement systems, (3) mutually reinforcing activities, (4) continuous communication, and (5) backbone support organization.¹ As these conditions suggest, collective impact agreements are inherently complex contracts among multiple parties. Like community benefit agreements, collective impact agreements are designed to contract for improvement in underserved neighborhoods. Unlike community benefits agreements and because of their very nature, collective impact agreements to date are agreements that generally do not have clearly identified deliverables or mechanisms for measuring the parties’ accountability. As such, “predetermined solutions can neither be reliably ascertained nor implemented.”² In other words, collective impact agreements appear to be more aspirational than effective because, due to the shared agenda among the parties, the agreements are typically not structured to identify which parties are responsible for which deliverables—an outcome completely counter to fundamentals of contract law. Because these are an emerging type of contract with the support of influential stakeholders, such as certain Federal Reserve banks, it is important to analyze current collective impact contract practices to develop a more efficient form that still speaks to the

1. John Kania & Mark Kramer, *Collective Impact*, STAN. SOCIAL INNOVATION REV. (Winter 2011).

2. See *id.*

goal of achieving a shared agenda while providing mechanisms for accountability to help ensure that the public outcomes of collective impact agreements are more likely to be achieved. To explore the question “why law matters,” this presentation will focus on the ability of private contracts, specifically collective impact agreements, to pursue large-scale economic justice in the “post-CED” era.

Escaping the Wage-Slave/ Micro-entrepreneur Binary: Platforms for Liberating Labor

Veena Dubal and Sushil Jacob

Whether a worker is legally classified as an “employee” or an “independent contractor” determines whether he or she is entitled to any employment and labor law protections. With the innovation and proliferation of business models intended to lower corporate costs by relying on “independent contractor” labor, especially in the “on-demand” or “gig” economy, more workers are working “casually” in positions as contractors, lessees, temporary laborers, and freelancers. These workers, carved out of the web of safety net protections, often live precarious lives, unable to support themselves or their families despite full-time work. Empirical research suggests, however, that despite the instability, many workers prefer contract labor because of the structural freedom and independence that the work sometimes facilitates. A cottage industry of social scientists, legal scholars, and even private firms has emerged to address the gaps between the realities, needs, and desires of workers. This paper contributes to this literature by thinking about how work can be structured so that workers live free and independent work lives, have the power to make real business decisions, and potentially benefit from safety net protections accorded employees.

We propose a new form of labor-owned business organization, “the platform cooperative,” as an opportunity to escape the binary between wage slavery and precarious, unregulated labor. A platform cooperative, by our definition, is an online marketplace that is owned and democratically governed by its members. Through a detailed proposal and analysis, we argue that platform cooperatives, as we define them, have the potential to provide a liberatory alternative to precarity, using technology-coordinated work to put power, capital, and security in the hands of workers.

Veena Dubal (dubalv@uchastings.edu) is Associate Professor of Law, UC Hastings College of the Law. Sushil Jacob (sushil@cooplawgroup.com) is an attorney with the Tuttle Law Group, LLP in San Francisco.

Policing in Place: A Community Economic Development Strategy?

Kali Murray

One way Black Lives Matter has built its critique as to the thicket of dispossession that has enmeshed the lives of African-Americans in the twenty-first century is to invoke a litany of places: Ferguson, West Baltimore, Sherman Park. This mournful litany has become a shorthand way to describe how communities and their residents are marginalized from the larger social, legal, and cultural society. Place matters for these communities and individuals and, as Sharon E. Sutton and Susan P. Kemp suggest, because “it is simultaneously a source of inequality and oppression *and* a context of transformation and possibility.”¹ Legal response to place is often divvied up among many different subjects, including property law, environmental law, poverty law, and most fittingly for the topic of this symposium, community economic development law.

William H. Simon² states that the “community economic development” movement can be broadly described as three interlocking goals: “(1) efforts to develop housing, jobs, or business opportunities for low-income people, (2) in which a leading role is played by non-profit, non-governmental organizations, (3) that are accountable to residentially defined communities.”³ Community economic development law consequently has focused primarily on private law concepts as a way to achieve its primary goals.

The urgency, however, of achieving social justice in marginalized communities suggests that we need to reconsider the sharp binary between civil and criminal law in understanding community economic development. Specifically, community economic development law needs to grapple with how “policing,” a broad set of voluntary and coercive practices by which the state, through a designated body of individuals, exercises

1. Sharon E. Sutton & Susan P. Kemp, *Introduction: Place as Marginality and Possibility*, in *THE PARADOX OF URBAN SPACE: INEQUALITY AND TRANSFORMATION IN MARGINALIZED COMMUNITIES* 4 (Sharon Sutton & Susan Kemp, eds. 2011). Marc Poirer defined place as a physical location, such as “a building, a beach, a mall, a highway, or an entire town.” *Same-Sex Marriage, Identity Processes, and the Kulturkampf: Why Federalism is Not the Main Event*, 17 *TEMP. POL. & C.R. L. REV.* 387, 401 (2008).

2. WILLIAM H. SIMON, *THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS AND THE NEW SOCIAL POLICY* 3 (2001).

3. *Id.*

Kali Murray (kali.murray@marquette.edu) is Associate Professor of Law at Marquette University Law School. A special thanks to Brandon Weiss for organizing this Symposium to commemorate a wonderful and invigorating panel.

authority over a citizen population.⁴ The subject of policing is not often linked to community economic development since policing practices are perceived to be unrelated to the economic sustainability of marginalized communities because policing is nominally directed towards addressing criminal behavior.

A key revelation, however, of current research on the relationship between policing and community is that policing practices can disrupt the economic sustainability of marginalized communities. For instance, policing can harm impoverished communities through the practices such as municipal fee-mining as seen in Ferguson, Missouri, and Milwaukee, Wisconsin,⁵ or by reinforcing spatial segregation experienced by the redlined neighborhoods of Sherman Park, Milwaukee, or West Baltimore, Maryland.⁶ Introducing “policing” into community economic development law is consistent with its interdisciplinary nature.

William Simon notes that community economic development strategies, while diverse in nature, serve three primary functions. First, community economic development strategies serve a relational function by “multiplying the contexts and roles in which people confront one another,” thus allowing neighbors to become “employers and employees, sellers and consumers, property occupiers and property owners, planners and citizens, administrators and service recipients.”⁷ Second, community economic development strategies serve a geographic function because neighborhoods serve as the physical and social focal point of legal advocacy.⁸ Finally, community economic development strategies serve to increase “face to face” relations to achieve an increased social, political, and legal cohesion.⁹

Policing as an authoritative strategy is consistent with these three articulated functions. First, police encounters and reform of such encounters permits neighbors to take on a variety of roles as planners, citizens, and administrators. Second, community conflicts over policing draw their

4. P.A. WADDINGTON, *POLICING CITIZENS: POLICE, POWER AND THE STATE* 30 (2014).

5. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, *INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT* (Mar. 4, 2015) (outlining the damages); JUSTICE INITIATIVES INSTITUTE, *CITED IN MILWAUKEE: THE COST OF UNPAID MUNICIPAL CITATIONS* 15 (2015), http://dc.uwm.edu/eti_pubs/1/ (assessing municipal court citations and their impact on marginalized socio-economic communities in Milwaukee).

6. Deanna Schmidt, *Urban Triage: Saving the Savable Neighborhoods in Milwaukee*, 26 *PLANNING PERSPECTIVE* 569, 584–85 (2011) (examining failed efforts to preserve Sherman Park in light of intense spatialized segregation in Milwaukee); PATRICIA FERNANDEZ-KELLEY, *HERO'S FIGHT: AFRICAN-AMERICANS IN WEST BALTIMORE AND THE SHADOW OF THE STATE* (2015) (assessing the impact of coercive authority in the place of West Baltimore).

7. SIMON, *supra* note 2.

8. *Id.* at 41–42.

9. *Id.* at 5.

intensity from specific geographic regions that share common cultures of dispossession as demonstrated by recent uprisings in Sherman Park and West Baltimore. Finally, policing involves intense face-to-face encounters that can devolve into significant violence that can undermine economic development. Indeed, much "policing reform" seeks to improve these face-to-face practices within neighborhoods.

Understanding "policing" as a community economic development strategy demonstrates "why law matters" in community economic development law. As an initial matter, dysfunctional "policing" practices can reinforce the systemic economic inequalities that community economic development law seeks to resolve through its reform of property, environmental, business association, and tax law. Understanding policing as a community economic development strategy, therefore, may help to resolve its particular ability to undermine the goals of community economic development.

Moreover, understanding policing as a community economic development strategy may help to more effectively evaluate legal efforts of police and prosecution reform, such as community policing and community prosecution. For instance, the City of Milwaukee has embarked on a new strategy of community prosecution, in which city prosecutors are embedded within specific communities. Such community prosecution teams are usually evaluated in terms of their success in achieving certain types of criminal statistics. Community economic development law, however, offers alternative metrics of success. These alternative metrics of success include examining the impact of such teams on the relational, geographic, and interactive functions of a given community.

Finally, understanding policing as a community economic development strategy would solidify its role in the teaching and scholarship functions of law school. Specifically, understanding policing as a community economic development strategy would strengthen its subject-matter commitment to an inter-disciplinary subject of the neighborhood as a place for legal action. Breaking the binary between criminal law and civil law would prompt significant innovation in how legal doctrine is taught in law school, thus strengthening a claim that "law matters" in serving all of our neighborhoods.

A Case Study in Rural Community Economic Development: Hill Country Health & Wellness Center

Lisa R. Pruitt

Economic development, a leading strategy for addressing poverty, operates on the premise that economic growth will result in benefits to the poor by creating jobs, raising wages, and improving opportunities.¹ Yet community economic development (CED) can be difficult to effectuate in rural communities due to scarce resources, inability to achieve economies of scale, and the spatial dispersion of the population.² Rural areas are typically defined by small and scattered populations, but they also tend to struggle with poverty,³ poor infrastructure, and reduced access to technical assistance.⁴ Although the rural poor are more likely than their urban counterparts to work fulltime, rural residents tend to earn lower wages.⁵

Formally educated human capital tends to be scarcer in rural places and thus fewer available economic development efforts are available.⁶ Most rural areas have disproportionately high percentages of elderly residents because young people who achieve higher levels of education often depart for more densely populated metropolitan areas that offer a wider array of job opportunities.⁷ Rural populations also feature higher percentages of

1. See Gary Paul Green, *The Opportunities and Limits of Economic Growth*, in RURAL POVERTY IN THE UNITED STATES (Ann Tickamyer, Jennifer Sherman & Jennifer Warlick eds., 2017).

2. Steven M. Virgin, *Community Economic Development and Rural America: Strategies for Community-Based Collaborative Development*, 20 J. AFFORDABLE HOUS. & CMITY. DEV. L. 9, 25 (2010).

3. See generally RURAL POVERTY IN THE USA, *supra* note 1. Rural areas have recovered more slowly than urban areas from the Great Recession. USDA ERS, RURAL AMERICA AT A GLANCE, 2016 edition, <https://www.ers.usda.gov/webdocs/publications/80894/eib-162.pdf?v=42684>.

4. Virgin, *supra* note 2, at 25.

5. *Id.* at 14–15.

6. *Id.* at 25.

7. See PATRICK J. CARR & MARIA J. KEFALAS, *HOLLOWING OUT THE MIDDLE: THE RURAL BRAIN DRAIN AND WHAT IT MEANS FOR AMERICA* (2010).

Lisa R. Pruitt (lrpruitt@ucdavis.edu) is Martin Luther King, Jr. Professor of Law, UC Davis School of Law. Thanks to Maureen Dahl for excellent research assistance and to Sarah Fielding of Legal Services of Northern California for introducing me to Hill Country and Lynn Dorroh.

veterans and disabled.⁸ Further, less public funding is available in rural areas, as illustrated by the fact that between 1994 and 2001, the annual per capita federal spending in rural areas was less than half of what it was in urban communities.⁹ Private philanthropy is also less robust in non-metropolitan areas.¹⁰ Inadequate transportation, energy, and telecommunications infrastructure has a negative effect on employment growth and is an obstacle to rural CED initiatives.¹¹ In addition, CED efforts typically integrate a range of highly technical practices, which often require professional support that is less available in rural areas.¹² Indeed, geographic isolation means that many services, including legal assistance, are less readily available.

The situation in rural northern California exemplifies all of these trends. Legal services are particularly out of reach—spatially and fiscally—for low-income rural residents. Because services, like rural populations themselves, are spatially dispersed over large areas, rural residents may have to travel extensively to reach them.¹³ Access to legal representation is also more challenging because far fewer attorneys per capita practice there. The California Bar district covering the greatest land area (District 3) includes twenty-three of California's fifty-eight counties, all in the state's far northern reaches and nearly all rural. But only 12,854 active attorneys practice in that massive district (including 8,296 in populous Sacramento County alone), compared to 54,809 attorneys practicing in Los Angeles County and 17,858 in San Francisco County.¹⁴ A significant disparity also exists between urban and rural areas in terms of the amount of legal aid funding per poor person. The mean legal aid funding for California's rural counties is \$18.56 per poor person, compared to a mean of \$44.83 per poor person in the state's seven most urban counties, and a more moderate \$26.43 for counties with mixed rural/urban populations.¹⁵

8. Lisa R. Pruitt & Bradley Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. REV. 466, 471 (2014).

9. Virgin, *supra* note 2, at 26.

10. *Id.*

11. *Id.*

12. *Id.* at 27.

13. *Id.* at 17; see also April Dembosky, *In a Conservative Corner of California, a Push to Preserve Obamacare*, NPR, July 5, 2017, <http://www.npr.org/sections/health-shots/2017/07/05/535029503/in-a-conservative-corner-of-california-a-push-to-preserve-obamacare>.

14. State Bar of Cal., *Member Demographics*, https://members.calbar.ca.gov/search/demographics_counties.aspx (last visited Apr. 10, 2017).

15. See also Ronald Robie et al., *Improving Civil Justice in Rural California*, CAL. COMM. ON ACCESS TO JUST., 11, Appendix A (Sept. 2010), <http://calbar.ca.gov/LinkClick.aspx?fileticket=wBD9dBjuIm4%3D&tabid=216>. The seven most urban counties in California are Alameda, Contra Costa, Los Angeles, Orange, Sacramento, San Francisco, and Santa Clara. *Id.* at Appendix A. Rural areas for

It is in this rural northern California context that Hill Country Health and Wellness Center, a hugely successful community development project in Shasta County¹⁶ was founded in 1985. Hill Country employs more than 100 people, which is roughly the population of Round Mountain, where it is located, about an hour east of Redding, which is the largest California city north of Sacramento.¹⁷ Round Mountain and neighboring Montgomery Creek are impoverished communities that are home to a significant population of Pit River American Indians.¹⁸

Access to health care is typically quite poor in rural areas like Round Mountain, in part because of the huge obstacles to recruiting and retaining highly educated professionals who generally have little interest in moving to an isolated area where pay is low and cultural amenities are lacking.¹⁹ Hill Country has filled the health care void in Round Mountain and surrounding communities for more than three decades by providing health care services, education, and support to residents.²⁰ When the clinic was founded, it employed one doctor, one nurse practitioner, one registered nurse, and three administrative employees. Its three exam rooms were

these purposes are defined as regions with less than 250 persons per square mile and no population cluster within the region having a population greater than 50,000. *Id.* at 6–7.

16. Shasta Cty. Health & Human Servs. Agency, *Demographics* at 2 (2014), <http://www.co.shasta.ca.us/docs/HHSA/Community-Health-Data/demographics2014.pdf?sfvrsn=0>. The total number of actively practicing attorneys in Shasta County is 354. *See Member Demographics*, *supra* note 14. Those attorneys serve a population spread over 3,775 square miles. *State and County Quick Facts, Shasta County, California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/table/PST045216/06089,00> (last visited Apr. 16, 2017).

17. City of Redding, *Economic Development*, CityofRedding.com, <http://www.cityofredding.org/departments/economic-development> (last visited Apr. 1, 2017); *see also* U.S. Census Bureau, *Quick Facts Redding City, California*, <https://www.census.gov/quickfacts/table/PST045216/065992> (last visited Apr. 1, 2017) (population 91,582).

18. *See Quick Facts*, *supra* note 17, at 4; *see also* U.S. Dep't of Interior, *2013 American Indian Population and Labor Force Report* at 84–85 (Jan. 16, 2014), <https://www.bia.gov/cs/groups/public/documents/text/idc1-024782.pdf> (reporting an American Indian population of 9,831 in Shasta County, which is home to Redding Rancheria and Pit River populations).

19. David Freed, *Health Care: As Doctors Age with No Successors, Rural Areas Face Dire Shortage*, SFGATE, Jan. 2, 2011, <http://www.sfgate.com/health/article/As-doctors-age-small-towns-face-critical-shortage-2534487.php>; *see also* Kirk Siegler, *Doctor Shortage in Rural Arizona Sparks Another Crisis in 'Forgotten America'*, NPR, July 14, 2017, <http://www.npr.org/sections/health-shots/2017/07/14/535792864/doctor-shortage-in-rural-arizona-sparks-another-crisis-in-forgotten-america> (reporting that according to the “National Rural Health Association, rural areas could be short 45,000 doctors by 2020” and that more than 70 rural hospitals have closed since 2010).

20. Hill Cty. Health & Wellness Ctr., *Philosophy & History*, <http://www.hillcountryclinic.org/philosophy-and-history/> (last visited Apr. 1, 2017).

housed in a double-wide trailer. Initially, all of the employees worked without compensation, while also hosting community fundraisers to support clinic expansion. The clinic eventually was able to add rooms for dental care and counseling services, and it set up residency rotation programs with students at the Redding branch of U.C. Davis Medical School.²¹ The Hill Country Health and Wellness Center, like much of the community infrastructure and many homes, was completely destroyed by a wildfire in 1992, but it re-opened just six months later.²²

In 2004, the clinic sought status as a Federally Qualified Health Center (FQHC). Health centers with this designation from the Bureau of Primary Health Care and the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services receive special reimbursement rates and funding to assist with services. The Hill Country Center was able to obtain this status because of its dedication to patients in underserved areas regardless of their ability to pay. This designation, along with funds from a state bond, a grant from a Redding-based foundation, and various individual donations, allowed the Hill Country Center to expand further. Hill Country now boasts a purpose-built facility with dental and behavioral health departments, a great room for community activities, a library, and a small kitchen for special events and occasional use as a nutrition-grant-funded lunch café. Somewhat ironically, Hill Country has recently established a second location in Redding,²³ the county seat, which one would expect to be adequately served by larger providers.

Hill Country attributes its rapid growth and many successes to an “excellent, responsive staff and devoted commitment to the communities that surround it.” Those successes are also a product of the energy and creativity of founder and CEO Lynn Dorroh, a mental health professional who saw the needs of the community shortly after she moved there some four decades ago. Since that time, Dorroh has built not only Hill Country, but also (along with her husband) two other community non-profits, one a small group home for boys in the foster care system (since closed) and the other a job-training organization for youth and adults.

21. See UC Davis School of Medicine, *Rural-PRIME Sites and Preceptors*, https://www.ucdmc.ucdavis.edu/mdprogram/rural_prime/sites.html (last visited Apr.10, 2017) (describing initiative to prepare medical students to work in rural communities); see also Hannah Haksgaard, *Rural Incentive Programs for Legal and Medical Professionals: A Comparative Analysis*, 59 S.D. L. REV. 585 (2014).

22. Dylan Darling, *Embers to Ashes: Fire's 15th Anniversary Recalls Destruction*, RECORD SEARCHLIGHT (Aug. 20, 2007), <http://archive.redding.com/news/embers-to-ashes-fountain-fires-15th-anniversary-recalls-destruction-ep-378423705-356527331.html>; Hill Cty. Health & Wellness Ctr., *supra* note 20.

23. Hill Cty. Health & Wellness Ctr., *Our Facilities: Redding*, <http://www.hillcountryclinic.org/our-facilities/> (last visited Apr. 1, 2017).

Rarely have any of these organizations had legal assistance. Dorroh herself has completed the necessary forms for forming the non-profits, and even Hill Country has rarely employed an attorney. "There are a couple of lawyers we use in [California] that know FQHCs really well. Not often though," Dorroh reports. In short, she typically relies on self-help when a regulatory issue arises.²⁴

The times when Dorroh has been involved in engaging legal counsel have related less to her non-profit enterprises and more to her other roles within the community. In particular, once during her tenure as a member of the local school board, Dorroh and other school board members hired outside counsel to assist in terminating a teacher convicted of desecrating Pit River Indian relics. Outside counsel was again utilized when a long-time school bus driver was accused of molesting children. Dorroh had provided counseling to one of his early victims, who disclosed the situation. In both cases, the allegations against the employees were divisive within the community: a minority of the members of the school board voted to retain the problematic employees, but a majority (including Dorroh) wished to dismiss them. In each instance, Dorroh was instrumental in engaging private practice lawyers from outside the community (once from Sacramento and once from Marin County) to navigate the situation. Dorroh used her social networks, including those she developed as an undergraduate student at UC Berkeley, to identify lawyers who provided services on either a pro bono or reduced fee basis. In both instances, the employees were dismissed with the public sector equivalent of a "golden handshake." As Dorroh expresses it, "in none of those situations did we accomplish what I thought was optimal, but we got the bad people to go away."

Dorroh describes one other instance in which she worked with lawyers, this time public interest attorneys employed by environmental/conservation organizations. The conflict regarded the use of herbicides by timber interests when forests were being replanted following the devastating 1992 wildfire. While Dorroh and her allies ultimately did not prevent the use of herbicides, they were able to delay their use for a year. Dorroh views this as a limited success, in part because of the signal it sent to powerful, outside interests—here the timber company. Dorroh summarized that message: "Those people in Round Mountain and Montgomery Creek know what they're doing. They can make a big fuss." The suggestion was that Dorroh and her allies flexed some metaphorical muscle on

24. See Robert C. Ellickson, *Of Coase and Cattle: Dispute Resolution Among Neighbors in Shasta County*, 38 STAN. L. REV. 623 (1986); Pruitt & Showman, *supra* note 8, at 507, 523 (citing Cal. Comm. on Access to Just., *Improving Civil Justice in Rural California*, at 41–42 (Sept. 2010), <http://calbar.ca.gov/LinkClick.aspx?fileticket=wBD9dBjuIm4%3D&tabid=216>).

behalf of a community that might otherwise not have asserted itself in the face of a wealthy, lawyered-up corporation.

While these instances in which Dorroh engaged legal assistance do not appear to be directly related to her efforts with Hill Country and the other non-profits she has founded and fostered, they do reflect much of the conventional wisdom about the role of law (or lack thereof) in rural communities. One aspect of that conventional wisdom is that rural people are reluctant to engage lawyers. (Recall that Shasta County, home of Hill Country, is where Robert Ellickson famously studied how ranchers resolve disputes without engaging formal legal processes, as documented in *Order without Law* (1991)). By extension, this would make rural residents reluctant to employ or engage lawyers.

Dorroh is a "newcomer" or "outsider" in Round Mountain, in contrast to "old-timers" or multi-generational residents. She therefore might not have shared the aversion to law associated with rural society or rural culture. But she did grow up in rural Calaveras County in the Sierra Nevada foothills and thus may bring the stance of (or at least predisposition to) rural self-sufficiency when encountering conflicts in her endeavors. However, Dorroh also brought to Round Mountain social capital developed during her time at UC Berkeley, and these networks, as well as her enhanced (by formal education) human capital, equipped her to engage law when she found it necessary to do so.

What does all of this have to do with community development and Dorroh's crown jewel, Hill Country Health and Wellness? In part because of the lack of anonymity that marks rural communities,²⁵ Dorroh's role as the founder and CEO of Hill Country cannot be neatly severed from her other community roles, e.g., school board member. Thus, Dorroh explains, the profile of her non-profits "was raised by these community conflicts." Further, the instances when lawyers were hired were "instrumental in creating community confidence and allegiance, especially among the most vulnerable members of the community." That enhanced confidence was beneficial not only for the local school district and its patrons, for example, but also for Hill Country and Dorroh's other non-profits. Dorroh concludes that, as a consequence of these uses of law and lawyers, "disenfranchised people in the community gained a greater degree of trust in us [Hill Country]."

25. See William F. Freudenberg, *The Density of Acquaintanceship: An Overlooked Variable in Community Research?*, 92 AM. J. SOCIOLOGY 27 (1986); Lisa R. Pruitt, *Rural Rhetoric*, 39 CONN. L. REV. 159, 228-32 (2006).

Narrowly-Tailored Privatization

Brandon M. Weiss

Affordable housing projects in the United States have served as an integral part, and often the backbone, of broader community economic development (CED) initiatives for as long as community development corporations (CDCs) have existed. As the field of CED evolves, and critical thinking about the role of law and lawyers within it continues to develop, it is important that this thinking include a rigorous reevaluation of how affordable housing strategies can best support the broader aims of CED. Evidence from eighty years of significant federal policy intervention in affordable housing, fifty years of experimentation by CDCs, and thirty years of modern Low-Income Housing Tax Credit (LIHTC) financing teaches at least one lesson that will be particularly relevant to CED initiatives in the decades to come: privatization is a tool best used as a scalpel rather than a bludgeon. An example will help flesh out this principle.

In San Francisco, attorneys at the National Housing Law Project (NHLP) have for the last several years engaged in a multi-year advocacy and community education effort around the U.S. Department of Housing & Urban Development's (HUD's) plans to revitalize the nation's subsidized housing stock. By HUD's estimates, public housing in the United States suffers from a \$26 billion capital needs backlog.¹ Leaky roofs, dilapidated elevators, and old plumbing and heating systems threaten the health and safety of residents. HUD's proposed FY2011 budget included a line item for a new program to address this problem: the Transformation of Rental Assistance Program² or, as it colloquially (and regrettably) came to be known, TRAP. Over the ensuing years, the program evolved—first to Preservation, Enhancement, and Transformation of Rental Assistance (PETRA), and then to the Rental Assistance Demonstration (RAD)—but the primary goal remained the same: to leverage private financing to recapitalize and rehabilitate the stock of federal subsidized housing.

RAD authorizes public housing authorities (PHAs) to convert public housing operating and capital funding streams into Project-Based Section 8

1. U.S. DEP'T OF HOUS. & URBAN DEV., CAPITAL NEEDS IN THE PUBLIC HOUSING PROGRAM 23, 41 (2010) (estimating that this figure will increase to \$89 billion over the next twenty years).

2. See U.S. DEP'T OF HOUS. & URBAN DEV., PROMOTING BETTER LOCATIONAL OUTCOMES FOR HOUSEHOLDS RECEIVING RENTAL ASSISTANCE THROUGH TRA FY2011 FUNDING (2010), https://portal.hud.gov/hudportal/documents/huddoc?id=TRA_FY11_50MPublicFinal.pdf.

Brandon M. Weiss is Associate Professor of Law, University of Missouri–Kansas City School of Law.

assistance³ and, in doing so, allows a given public housing project to enter into the mainstream of modern affordable housing finance. Banks are comfortable lending against the promise of future Section 8 income. The conversion process enables layering LIHTC financing on top of Section 8 rental assistance, paving the way for the infusion of millions of dollars of rehabilitation funds into an aging project.

In order to facilitate access to this financing, however, the RAD conversion process allows for the transfer of public housing ownership from PHAs to private single-asset entities.⁴ This feature of the program raises a number of potential concerns: Will the substantive rights of tenants be affected? Will current tenants be displaced? And, perhaps most alarming from a long-term perspective, what happens if affordability restrictions expire or are terminated, and our public housing stock is now held in private hands?

Recognizing these risks, NHLP began a sustained effort of community engagement with subsidized housing residents and advocacy with HUD—in part, as facilitator of the national Housing Justice Network (HJN). Lawyers involved in HJN submitted letters, commented on and suggested draft programmatic language, and organized meetings between senior HUD officials and residents to voice these concerns.

HUD's final implementation of the program incorporated a response to the issue of long-term public housing control. While PHAs could transfer projects to private entities in order to access LIHTC financing, they could only do so in certain enumerated circumstances, such as where the PHA (or PHA-controlled entity) serves as the sole general partner or managing member of the tax credit entity, or where the PHA retains fee ownership of the project and leases the land to the tax credit entity pursuant to a long-term ground lease.⁵ The program, however, did not go as far as many would have hoped—for example, a catchall provision allows for transfers to private entities by “other means that HUD finds acceptable, in its sole discretion.”⁶

As the program is still in its infancy, we are learning precisely how the conversion process will be structured by PHAs around the country. But the development of RAD already serves as a revealing case study. The history of the federal government's attempts to infuse private market incentives into affordable housing policy has been a story of mismatch—failing to appropriately calibrate that which is being leveraged from the private market with the incentives that are necessary and sufficient to offer in exchange. As a result, the government has often given away too much: the

3. See U.S. DEP'T OF HOUS. & URBAN DEV., PIH No. 2012-32 (HA), REV-2, RENTAL ASSISTANCE DEMONSTRATION—FINAL IMPLEMENTATION (2015).

4. *Id.* at 30–31.

5. *Id.* at 31.

6. *Id.*

assisted housing programs of the 1950s–1980s resulting in massive back-end profits to private owners far out of proportion to their value added; the LIHTC program setting the stage for similarly unnecessary windfall profits starting in 2020 when thirty-year rent restrictions start to expire; and now, in the RAD context, PHAs potentially giving away fee title to our public housing when recapitalization is possible without doing so.

In the case of RAD, NHLP recognized that it is possible to bifurcate the goal of leveraging private capital from the mechanism of transferring control of public housing assets to private interests. Hopefully, thanks to the dedicated lawyering of NHLP and HJN, the limiting language referenced above will create a more nuanced program—one that leverages private capital while not paying the excessive price of sacrificing long-term control.

Most formulations of the aims of CED as a field include the value of preserving and expanding access to material and social resources in underserved communities as well as prioritizing local control and accountability with respect to those resources. As we think about the future of CED, and the respective role that law and lawyering will play, advocacy for a more narrowly-tailored approach to the infusion of market mechanisms into our affordable housing strategies will be critical to achieving the broader goals of the field.