FROM EXCLUSION TO OWNERSHIP: REAL ESTATE INVESTMENT COOPERATIVES AS AN EQUITABLE DEVELOPMENT TOOL TO ADVANCE ECONOMIC JUSTICE

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Abstract

Economic development impacts communities in various ways, including unequally yielding benefits to some and displacing and harming others. Lower-income and marginalized communities face rising housing costs and cultural dispersion through gentrification, while outside investors open businesses that are not for the benefit of, nor consult with, the local community. This Note advocates for the use of real estate investment cooperatives as an equitable development tool to increase property ownership through alternative means and retain community agency by allowing impacted communities to participate in the direction of their neighborhoods. Cooperatives, as democratically governed and value-oriented entities, both have met group needs in the United States where the market did not rise to do so and have a history of use by Black communities as a tool of resilience.

This Note advocates for the wider use of a real estate investment cooperatives to meet current issues of ownership and gentrification by offering an alternative form of property ownership that yields social as well as financial return for members. This Note utilizes a movement lawyering lens to position the equitable development process as a way to center local communities and acknowledge their vital importance in the decision-making and potential success of any implemented solution.

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INTRODUCTION

Economic development is a vital part of healthy, growing cities, yet too often not fully realized for *all* communities. Lower-income and marginalized communities often struggle to capture the professed benefits of economic development, having their needs and concerns overlooked as those with higher degrees of financial, political, or relational power maximize their interests. Accordingly, cooperative entity structures provide a tool by which lower-income and marginalized communities can retain agency in the economic development process and capture its elusive benefits.[1]

The United States (U.S.) Economic Development Administration defines economic development as "creating the conditions for economic growth and improved quality of life by expanding the capacity of individuals, businesses, and communities to maximize the use of their talents and skills to support innovation, job creation, and private investment."[2] While that definition sounds idyllic, it fails to account for whose quality of life is expanded and who may be left behind by the actions pursued to achieve this end. There are many interconnected issues to the inequity that underpins economic development. It is difficult to neatly separate contributing and reciprocal factors impacting communities because of economic development, or to hold them in isolation of one another. In acknowledgement of this complexity, this Note proposes the use of real estate investment cooperatives to increase access to property ownership and improve the intersecting issues of the racial wealth gap and gentrification.

A cooperative is an "autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise."[3] A cooperative is an alternative structure to entities such as partnerships, limited liability companies (LLCs), and C or S corporations.[4] Cooperatives as an entity are not beholden to shareholders but instead are driven by agreed upon values that benefit the communities in which they are established.[5] This structure allows for localized, democratic decision-making that is driven by values other than, or

1. *See Cooperative Identity, Values & Principles*, INT'L COOP. ASS'N, https://ica.coop/en/whats-co-op/co-operative-identity-values-principles (last visited Mar. 9, 2024) [hereinafter *Cooperative Identity, Values & Principles*].

2. *Economic Development Glossary*, U.S. ECON. DEV. ADMIN., https://www.eda.gov/about/economic-development-glossary (last visited Mar. 9, 2024).

3. *What is a Cooperative?*, INT'L COOP. ASS'N, https://www.ica.coop/en/cooperatives/what-is-a-cooperative (last visited Mar. 9, 2024).

4. *See Choose a Business Structure*, U.S. SMALL BUS. ADMIN., https://www.sba.gov/business-guide/launch-your-business/choose-business-structure (last visited Mar. 9, 2024).

5. *See id.*

alongside, financial returns.[6] As such, communities utilizing a cooperative structure retain agency to determine what would best serve their needs and make decisions accordingly.

Using cooperatives to benefit marginalized communities is not a novel idea. Since the end slavery and into the Civil Rights Movement, Black communities used cooperatives to combat an economic system that excluded and/or disrespected them.[7] Black individuals have used cooperatives to retain agency and maintain dignity in an economic landscape that gave neither freely.[8] This Note examines the use of cooperatives as a historical tool of resilience and explores real estate investment cooperatives as a modern tool for building wealth and combatting gentrification through a movement lawyering lens.

While there is no single agreed upon definition of movement lawyering, there is consensus that the practice of social movement lawyering centers the client or communities' perspectives and decision-making in acknowledgement that the lawyer is not the main driver of social change.[9] Movement lawyering is relational in nature, sensitive to ethical implications, and conscious of power dynamics, making it an ideal fit for the topic of community-led economic development.[10] Its values align with both the principles of cooperatives, and paradigms for contemporary community development, working together to dismantle systemic injustice and forge more equitable paths forward.[11]

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6. *See* KIMBERLY A. ZEULI & ROBERT CROPP, COOPERATIVES: PRINCIPLES AND PRACTICES IN THE 21ST CENTURY 4 (2004) ("[C]ooperatives are organized to serve member needs and are focused on generating member benefits rather than returns to investors," which in part is what "makes them fundamentally different from other corporations.").

7. *See* Jessica Gordon Nembhard, *African American Cooperatives: From Economic Survival to Economic Justice*, *in* HANDBOOK OF RESEARCH ON COOPERATIVES AND MUTUALS 354, 354 (Matthew S. Elliot & Michael A. Boland, eds. 2023) [hereinafter Nembhard, *African American Cooperatives*].

8. *See* JESSICA GORDON NEMBHARD, COLLECTIVE COURAGE: A HISTORY OF AFRICAN AMERICAN COOPERATIVE ECONOMIC THOUGHT AND PRACTICE 1 (2014) [hereinafter NEMBHARD, COLLECTIVE COURAGE].

9. *See* Susan D. Carle, *Ethics and History of Social Movement Lawyering*, 2018 WIS. L. REV. FORWARD 12, 24; *see also* Azadeh Shahshahani, *Movement Lawyering: A Case Study in the U.S. South*, 5 HOW. HUM. & C.R. L. REV. 45, 47 (2020) (stating "[p]rogressive legal scholarship continues to highlight centering grassroots organizers as a tenant of movement lawyering, where movement lawyers are encouraged to use legal strategies that complement and advance the movements political goals and emphasize grassroots accountability"); William P. Quigley, *Ten Ways of Looking at Movement Lawyering*, 5 HOW. HUM. & C.R. L. REV. 23, 27 (2020) (stating "[t]hough lawyers can be, and are, helpful with movements for social change, is change is not lawyer-driven nor lawyer-led").

10. *See* Carle, *supra* note 9, at 20; Quigley, *supra* note 9, at 28.

11. *See Cooperative Identity, Values & Principles*, *supra* note 1; Kimberly Zeuli & Jamie Radel, *Cooperatives as a Community Development Strategy: Linking Theory and Practice,* 35 J. OF REG'L ANALYSIS & POL'Y 43, 45 (2005).

Through the lens of movement lawyering, this Note advocates for the use of real estate investment cooperatives as an alternative method of property ownership to ensure that economic development benefits lower-income and marginalized communities who have historically been ignored or disadvantaged by broad economic development measures. As stated above, the cooperative structure can be used by communities to serve their needs and align with agreed upon values. The primary needs of each community and the path to fulfill those needs will vary. This Note does not suggest that every community should implement real estate investment cooperatives but instead offers it as a tool to be more widely considered for equitable development use. The purpose of this Note is to highlight how the use of cooperatives can benefit community development in low-income[12] and marginalized communities, and advocate for real estate investment cooperatives as an avenue to address inequitable economic development, should a community decide it aligns with their desired goals.

Part I begins by analyzing two issues integrated with inequitable economic development and their impact on low-income and marginalized communities. Part II further inspects the historical background of cooperatives and movement lawyering in the United States. Part III then examines the use of cooperatives as a community economic development tool. Part IV explores the specific contours of real estate investment cooperatives, considering both the benefits and limits of implementing them within communities. Finally, Part V recommends action-based solutions to the issue of inequitable economic development.

I. CONTRIBUTING FACTORS TO INEQUITABLE ECONOMIC OPPORTUNITIES

Inequitable development is not a standalone issue, siloed from externalities, but is a product of contributing and integrated factors shaped by history, policy, and profits. The racial wealth gap and gentrification are two issues closely intertwined with inequitable development that the use of cooperatives, specifically real estate investment cooperatives, can target.[13] When delineating what makes economic development inequitable, this Note focuses on outcomes of development, economic opportunity, decision-making ability, and the engagement of the impacted communities.

12. *See* 26 U.S.C. § 45D(e)(1) (providing a definition of low-income).

13. *See* BRIAN BECKON, AMY CORTESE, JANICE SHADE & MICHAEL SHUMAN, COMMUNITY INVESTMENT FUNDS: A HOW-TO GUILD FOR BUILDING LOCAL WEALTH, EQUITY, AND JUSTICE 25–27 (2020) (stating that "East Bay Permanent Real Estate Cooperative (EB PREC) is leading the way, with innovative models incorporating community engagement, empowerment, and ownership," including the use of cooperatives to address development and displacement of long-time residents).

To consider the question of why equitable economic development matters, or what inequitable development may look like, imagine a city established on the banks of a river. As a result of racist policies and practices, mostly people of color have made their homes on the less desirable, east side of the river, where they experience fewer benefits and opportunities than White citizens established on the west side of the river.[14] Even once most of the racist policies and practices have ceased to exist on paper, the racial divide is still reflected in the geographic demographics of the city.

The downtown of the west side of the city experiences an economic boom with increases in tourists, local businesses, and restaurants. With this increase in tourism, more businesses cater to outside visitors, generating profit for the city and local businesses. There is an increase in employment, and overall development of the city, and the east side area begins to increase in desirability. Homes are bought above market value, flipped, and turned into short-term rentals for tourists who come to visit the attractions on the west side. Vacant buildings in the east side are bought at a low price by developers and turned into storefronts that cater to tourists and those on the west side.

As the east side increases in desirability, property values begin to rise, along with rents and property taxes. The businesses that move into the neighborhood are not the grocery stores needed by the residents in the community, but upscale restaurants and storefronts for tourists. As property values continue to rise, people of color who rent—some of whom have lived in the neighborhood their entire lives—can no longer afford the rental prices and are forced to move as the area attracts an increase of higher-wealth, White individuals. Longtime residents who have been able to buy their homes may be forced to sell as property taxes render the area unaffordable, and the properties are quickly bought up by higher-wealth individuals, or investors looking to purchase in an up-and-coming area.

This situation is not unique. While a city may be divided by a highway rather than a river, the overarching narrative in which low-income communities and communities of color are displaced by resulting increased desirability is being played out all over the nation.[15] How can this issue of inequitable development be remedied? In what ways can a community exercise agency and democratic

14. *See, e.g.*, Stephen DeBerry, *Why the "Wrong Side of the Tracks" is Usually the East Side of Cities*, TED (Apr. 2018), https://www.ted.com/talks/stephen_deberry_why_the_wrong_side_of_the_tracks_is_usually_the_east_side_of_cities (explaining "how both environmental and man-made factors have led to disparity by design in cities," and why it is the east side of cities that often seem to bear the disadvantage).

15. *See* Alina S. Schnake-Mahl, Jaquelyn L. Jahn, S.V. Subramanian, Mary C. Waters & Mariana Arcaya, *Gentrification, Neighborhood Change, and Population Health: A Systematic Review*, 97 J. URB. HEALTH 1, 2 (2020); Kaylie Hidalgo, *Keep Austin . . . White? How Equitable Development Can Save Austin, Texas from its Racist Past and Homogenized Future*, 9 TEX. A&M J. PROP. L. 108, 125–26 (2023).

control over the development of their neighborhoods? How is a community that has been historically disadvantaged able to capture the benefits of a growing economy? To support the success of all, such barriers must be addressed.

A. *Racial Wealth Gap*

The difference in wealth between White households and households of other races has been a persistent fixture in American history, upheld through legal and political measures that have disadvantaged people of color and perpetuated marginalization. The practice of redlining, discriminatory city planning, and use of eminent domain, among other tactics, have resulted not only in segregated cities, but also a significant difference in property ownership between White and Black Americans.[16] The U.S. Department of the Treasury defines wealth as the "total financial value of what an individual or household owns (assets) minus all debts (liabilities)."[17] Home ownership is one of the most determinative wealth factors for the bottom 90% of households.[18] White households had a 75% homeownership rate, while Hispanic households had a 48% ownership rate, and Black households had a 45% ownership rate in "the second quarter of 2022."[19] The homeownership gap has remained persistent, as the "Black-white gap in homeownership rates [were] the same in 2020 as it was in 1970, just two years after the passage of the Fair Housing Act of 1968, which sought to end racial discrimination in the housing market."[20] Both the historical and current rates of home ownership have lasting implications on Black households.[21]

16. *See Racial Differences in Economic Security: Housing*, U.S. DEP'T OF TREASURY (Nov. 4, 2022), https://home.treasury.gov/news/featured-stories/racial-differences-in-economic-security-housing [hereinafter *Racial Differences in Economic Security: Housing*].

17. Benjamin Harris & Sydney Schreiner Wertz, *Racial Differences in Economic Security: The Racial Wealth Gap*, U.S. DEP'T OF TREASURY (Sept. 15, 2022), https://home.treasury.gov/news/featured-stories/racial-differences-economic-security-racial-wealth-gap ("Assets include the value of a home and other physical assets, retirement savings, other financial investments, cash, and money in the bank. Liabilities include home mortgages, auto loans, credit card debt, student debt, and other types of debt and money owed.").

18. *See Racial Difference in Economic Security: Housing*, *supra* note 16. ("Households outside the top wealth decile derive more wealth from housing equity than from financial assets, businesses, or other components of non-retirement wealth.").

19. *Id.* (using data from "the second quarter of 2022").

20. *Id.*

21. *See* Rashawn Ray, Andre M. Perry, David Harshbarger, Samantha Elizondo & Alexandra Gibbons, *Homeowner, Racial Segregation, and Policy Solutions to Racial Wealth Equity*, BROOKINGS (Sept. 1, 2021), https://www.brookings.edu/articles/homeownership-racial-segregation-and-policies-for-racial-wealth-equity/#:~:text=Homes%20in%20majority%2DBlack%20neighborhoods,on%20higher%20levels%20of%20debt.

1. Historical Barriers to Property Ownership

Black individuals in pursuit of property ownership have faced opposition throughout American history. Barriers to property ownership are explicitly and implicitly woven into policy and practice in the United States. In the last hundred years, redlining, discriminatory city planning, and use of eminent domain have all contributed to the disparity in property ownership of Black Americans.

Redlining was a practice that disadvantaged communities of color from receiving favorable loans and disincentivized investment within their neighborhoods. The Home Owners' Loan Corporation (HOLC) was established as an offshoot of the New Deal in 1933 to assist homeowners in danger of default.[22] HOLC mortgages had favorable terms and allowed "working- and middle-class homeowners [to] gradually gain equity while their properties were still mortgaged."[23] The "HOLC, therefore had to exercise prudence about its borrowers' ability to avoid default."[24] To do this, "[t]he HOLC created color-coded maps to assess risk of default, where green areas were the safest to offer mortgages, and red areas were the riskiest.[25] Racial composition was considered in the rating, and neighborhoods would be rated red if African Americans resided within them, "even if it was a solid middle-class neighborhood of single-family homes."[26] This not only created a discriminatory loan system, but incentivized White homeowners to keep their neighborhoods segregated.

The Federal Housing Administration (FHA) was created in 1934 and insured bank mortgages to increase the ability of "middle-class renters to purchase single-family homes for the first time."[27] The FHA had a White-only requirement in their property appraisal, and "judged that properties would

22. *See* RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA 63 (2017) (stating that the HOLC assisted households both by purchasing existing bank mortgages, which "typically required 50 percent down, interest-only payments, and repayment in full after five to seven years," and issuing new ones with more favorable terms).

23. *Id.* at 63–64 (stating that "HOLC mortgages were amortized, meaning that each month's payment included some principal as well as interest, so then the loan was paid off, the borrower would own the home," had low interest rates, and longer repayment schedules).

24. *Id.* at 64.

25. *Id.*; *see also Mapping Inequality*, AM. PANORAMA, https://dsl.richmond.edu/panorama/redlining/#loc=12/47.668/-117.468&city=spokane-wa (last visited Mar. 14, 2023) (providing, as an example, a 1929 redlined map of the city of Spokane, Washington).

26. ROTHSTEIN, *supra* note 22, at 64 ("[I]n St. Louis, the white middle-class suburb of Ladue was colored green because, according or an HOLC appraiser in 1940, it had 'not a single foreigner or negro.'").

27. *Id.* (stating that the FHA provided favorable mortgage terms for buyers, such as "insur[ing] bank mortgages that covered 80 percent of purchase prices, had terms of twenty years, and were fully amortized").

probably be too risky for insurance if they were in a racially mixed neighborhoods or even in White neighborhoods near black ones that might possibly integrate in the future."[28] The FHA favored White neighborhoods with clear segregation, considering "areas where boulevards or highways served to separate African American families from whites" to be favorable, and encouraged banks to make loans to "newly built suburbs."[29] In 1952, the appraisal guidelines still retained race as a factor when making property valuations, considering whether "compatibility among the neighborhood occupants" existed.[30] These practices prevented Black individuals and families from the financial protections and benefits offered to White homeowners, hindering their ability to become and remain property owners.

Highway and city planning, along with eminent domain use, have also been used to exclude and displace low-income[31] and minority groups under the umbrella of "urban renewal."[32] Eminent domain is a governmental power by which property of private owners may be acquired for "public use," so long as there is "just compensation."[33] As such, consent of the private party is not required.[34] The use of eminent domain for urban renewal, or "redevelopment of blighted territory" and the "prevention, reduction, and elimination of blighting factors or causes of blight,"[35] was upheld as constitutional in 1954.[36] Urban renewal efforts supported by the federal government "empowered local governments and private developers to use eminent domain to seize the homes of poor people of color with little payment and no relocation assistance."[37]

28. *Id.* at 64–65.

29. The FHA *Underwriting Manual* that was created to guide appraisers stated, "older properties . . . have a tendency to accelerate the rate of transition to lower class occupancy." *Id.* at 65.

30. *Id.* at 66.

31. The U.S. Department of Housing and Urban Development defines the low-income limit as 80% of the median income and very low-income limit as 50% of median income, and releases yearly income limits to determine public housing eligibility based on local statistics. *See HUD's Public Housing Program*, U.S. DEPT. OF HOUS. AND URB, DEV., https://www.hud.gov/topics/rental_assistance/phprog (last visited Mar. 14, 2024). This Note uses low-income to include households below 80% of median income, without differentiating based on lower limits.

32. Deborah N. Archer, *White Men's Roads through Black Men's Homes: Advancing Racial Equity though Highway Reconstruction*, 73 VAND. L. REV. 1259, 1276–77 (2020) (stating that "[t]he language of urban renewal" was "the promise to clear 'blighted areas' and 'slums'").

33. *See* U.S. CONST. amend. V.

34. *See id.*

35. Berman v. Parker, 348 U.S. 26, 29 (1954).

36. *Id.* at 36.

37. Archer, *supra* note 32, at 1276.

Highway planning has been used to create physical separation between segregated areas and as a tool to displace minorities.[38] In *Garrett v. City of Hamtramck*,[39] federal funds were used to displace Black neighborhoods to make room for an automobile manufacturing plant and a highway leading to the plant. The district court stated that "[t]he record supports a finding that [the U.S. Department of Housing and Urban Development] must have known of the discriminatory practices which pervaded the private housing market and the indications of overt prejudice among some of the persons involved in carrying out the urban renewal projects of the City."[40]

Courts have worked to define the term "public use" with regard to eminent domain use, and in 2005, the U.S. Supreme Court handed down a controversial decision in *Kelo v. City of New London*,[41] which greatly expanded its limits, and produced fiery dissents.[42] The Court held that taking private property to sell for private development to further a comprehensive economic development plan was a constitutional "public use."[43] In her passionate dissent, Justice Sandra Day O'Connor stated, "Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random," noting that "for the victims, the government now has license to transfer property from those with fewer resources to those with more."[44]

In a 2007 study, the Institute for Justice sought to determine if the impacts of losses had fallen "disproportionately on poor communities," as Justice Clarence Thomas predicted in his dissent.[45] The study sought to "discern the demographic profiles of those living in areas targeted by the type of

38. ROTHSTEIN, *supra* note 22, at 127–29 ("An important influence on national legislation and administration of the highway system was the Urban Land Institute, whose 1957 newsletter recommended that city governments survey the 'extent to which lighted areas may provide suitable highway routes.'").

39. 394 F. Supp. 1151 (E.D. Mich. 1975).

40. *Id.* at 1152; *see also* ROTHSTEIN, *supra* note 22, at 128–29 (discussing the Hamtramck case and the holding of the federal appeals court).

41. 545 U.S. 469 (2005).

42. *Id.* at 485 ("Clearly, there is no basis for exempting economic development from our traditionally broad understanding of public purpose.").

43. *Id.* at 489.

44. *Id.* at 505 (O'Connor, J., dissenting).

45. *See id.* at 521 (Thomas, J., dissenting), *see also* DICK M. CARPENTER II & JOHN K. ROSS, VICTIMIZING THE VULNERABLE: THE DEMOGRAPHICS OF EMINENT DOMAIN ABUSE 6 (2007) ("[Using] data from the 2000 census to examine the characteristics of 184 areas targeted by eminent domain for private development . . . to compare them to their surrounding communities.").

redevelopment and eminent domain at the center of the Kelo case,"[46] and found that "more residents in areas targeted by eminent domain—as compared to those in surrounding communities—are ethnic or racial minorities, have completed significantly less education, live on significantly less income, and significantly more of them live at or below the federal poverty line."[47] In the years since the *Kelo* decision, over forty states have "enacted legislation or constitutional amendments restricting the use of eminent domain," in response to the broad expansion.[48] Nevertheless, the historical use of eminent domain to displace and exclude low-income and minority communities, and its use expanded by the Supreme Court, has impacted the retention of property ownership in these communities.

2. Importance of Ownership to Build Generational Wealth

The impact of property ownership compounds over time, and the heightened difficulty to acquire and keep property in historically marginalized communities reverberates throughout generations. The inability to receive favorable lending terms in the 1940s, resulting in the inability to purchase and keep property, impacted not only the wealth of the immediate minority household, but also what that household was able to pass on to future generations.[49] At the same time, White households were able to take advantage of numerous benefits, and see their properties appreciate in value.[50] The passive, illiquid, easily transferable, and sustainable or predictable aspects of real estate make it a favorable

46. CARPENTER II & ROSS, *supra* note 45, at 6–7 ("Eminent domain project areas include a significantly greater percentage of minority residents (58%) compared to their surrounding communities (45%). Median incomes in project areas are significantly less ($18,935.71) than the surrounding communities ($23,113.46), and a significantly greater percentage of those in project areas (25%) live at or below poverty levels compared to surrounding cities (16%). Residents of project areas are significantly less educated than those living in the surrounding communities. A greater percentage of those in project areas (34%) hold less than a high school diploma as compared to the surrounding cities (24%), and a consistently greater percentage of those in surrounding communities hold various levels of college degrees compared to the project areas. Finally, a significantly greater percentage of residents in project areas rent their homes (58%) compared to residents in surrounding cities (45%).").

47. *Id.* at 2.

48. Andrew P. Morriss, *Symbol or Substance? An Empirical Assessment of State Responses to* Kelo, 17 SUP. CT. ECON. REV. 237, 240 (2009).

49. *See* ROTHSTEIN, *supra* note 22, at 181–86.

50. *See id.* at 181–83.

investment for building generational wealth.[51] Once the investment in real estate has been made, it does not require full time upkeep and is also somewhat insulated from volatility due to the effort required to liquidate it.[52] Real estate is also a relatively easy asset to pass on to future generations and an investment that has proved itself to consistently increase in value.[53]

B. *Gentrification*

Gentrification is "the process by which central urban neighborhoods that have undergone disinvestments and economic decline experience a reversal, reinvestment, and in-migration of a well off middle- and upper-middle-class population."[54] It is a biproduct of economic development that typically harms low-income and marginalized communities and is a sharp example of the power differentials at play in the economic development arena.[55] When previously undesirable areas in which communities of color made their home begin to increase in desirability, they fall victim to heightened rents, increased property taxes, and developers looking to buy property for an investment that will not benefit the impacted community.[56] This act of gentrification feels particularly egregious when neighborhoods of color are priced out of the areas they were historically forced into as a result of racist housing policies.

Gentrification as it pertains to the concept of justice is a topic often evaluated by theorists from a "top-down approach" in which "the analysis focuses on showing how the [theorist's] selected principle reveals when gentrification is unjust, without addressing the experience of gentrification's harms or its specific context."[57] Wider concerns, lived experience, and contributing factors may fail to be fully examined when the theorists approach limits "the harmful consequences of gentrification to those most clearly violating the theorist's

51. *See* Andrew Lanoie, *Why Real Estate is One Asset that Builds Generational Wealth*, FORBES (Jan. 7, 2021), https://www.forbes.com/sites/forbesrealestatecouncil/2021/01/07/why-real-estate-is-one-asset-that-builds-generational-wealth/?sh=73891f1a1f68.

52. *See id.*

53. *See id.*

54. Schnake-Mahl et al., *supra* note 15, at 2.

55. *See* Joe Hoover, *The Injustice of Gentrification*, 51 POL. THEORY 925, 927 (2023), *see also* Schnake-Mahl et al., *supra* note 15, at 2 ("In contrast to previous decades, twenty-first-century gentrification has become faster and more widespread, creating more extreme neighborhood change in a greater number of neighborhoods and impacting many low-income communities of color.").

56. *See generally* Schnake-Mahl et al., *supra* note 15, at 2 (explaining the concept of gentrification and the surrounding context).

57. Hoover, *supra* note 55, at 928–29.

selected ideal principle."[58] This emphasis on theory has the potential to hinder understanding and pursuit of equity.[59] However, in a journal article discussing the injustice of gentrification, author Joe Hoover noted that failing to engage with the harms and experience of gentrification on impacted communities does a disservice to those communities by "denying individuals and communities of meaningful control over their lives and liming their democratic voice in the wider life of the city."[60] Hoover argues that "gentrification is a profound and distinctive injustice . . . [whose] success must be judged, in part, on its acceptability to those experiencing gentrification's harms."[61] This centering of the impacted community is crucial for engaging the concept of gentrification for the purpose of mitigating the harmful effects. The injustice of gentrification is not limited to displacement but is rooted in inequality that reaches far beyond.[62] In addressing the injustice of gentrification, inequality must be acknowledged, the economic power of low-income and marginalized individuals must be increased, and the impacted community must direct the solution. Cooperative use is an appropriate equitable development tool to meet these needs when considered through a movement lawyering lens.

58. *Id.* at 929 (stating that this approach "assumes the existing distribution of power in cities is acceptable and the actions of those with economic and political power are justified, so long as they do not violate the theorist's chose principle").

59. *See id.* ("The theorist's privileged perspective inhibits their understanding, while also importing unarticulated ideological presumptions about which concerns should be prioritised and how the injustice identified should be addressed.").

60. *Id.* at 931; *see also id.* at 927 ("Examining a fuller range of gentrification's negative effects reveals a distinctive and profound urban injustice rooted in inequalities of power. . . .").

61. *Id.* at 931.

62. *See id.* at 946 ("The injustice of gentrification is found, most fundamentally, in the unequal power to make decisions in our cities, determining who gets to live where, whose community is valued, and whose lives get priority. Too much power lies with owners, landlords, developers, banks, governments, and financers, such that their interests and priorities determine what happens in cities over and above the residents.").

II. HISTORICAL BACKGROUND OF COOPERATIVES AND MOVEMENT LAWYERING IN THE UNITED STATES

Cooperatives are an entity structure that is unfamiliar to many Americans and the term "movement lawyering" may be even more so,[63] yet the values of both closely align to make movement lawyering an appropriate lens through which to view cooperatives as an equitable development tool. By understanding the structure and values of cooperatives, along with past historical use, one can better understand how the cooperative structure can be used as a tool to improve the current inequity communities face all over the United States. Applying the movement lawyering lens to this tool will help keep the impacted community grounded at the center of the decision-making and discussion, without devolving *too* far into esoteric legal theory divorced from sensitivity and awareness of human experience. In advocating for equitable tools, the lived experience of impacted communities is of vital importance.

A. *What are Cooperatives?*

Cooperatives are alternative entity structures to more commonly used structures such as limited liability companies (LLCs) and C or S corporations, both allowing freedom from the traditional profit-driven obligations to LLC members or corporation shareholders and leadership in accordance with a set of agreed upon values and goals.[64] Cooperatives have often formed out of group needs that may not be traditionally profitable or are viewed as too risky by outside business owners.[65] Rather than being owned by a few members, such as with LLCs, or by shareholders like corporations, cooperatives are "user-owned" and "user-controlled."[66] Therefore, a group pools their resources to establish businesses that are primarily concerned with need fulfillment rather than profit

63. *See* David Thorpe, *People Love Co-ops, But They Don't Really Know What They Are*, FORBES (Aug. 16, 2019), https://www.forbes.com/sites/devinthorpe/2019/08/16/people-love-co-ops-but-dont-really-know-what-they-are/?sh=5c7038525648; Jeena Shah, *Professor Jeena Shah on Movement Lawyering and Building Power Through Organizing*, CUNY SCH. OF L. (Feb. 17, 2021), https://www.law.cuny.edu/newsroom_post/professor-jeena-shah-on-movement-lawyering-and-building-power-through-organizing/; *see also infra* Section II.C. (discussing movement lawyering).

64. *See* ZEULI & CROPP, *supra* note 6, at 39.

65. *See id.* at 32.

66. *See id.* at 1 (explaining that "[t]he 'user-owned' principle implies that the people who use the co-op (members) help finance the co-op and therefore, own the co-op" and "[t]he 'user-controlled' concept means that members of the co-op govern the business directly by voting on significant and long-term business decisions and indirectly through their representatives on the board of directors").

maximization. For example, where companies did not believe it would be profitable to extend electricity and telephone services in rural areas, communities established utility cooperatives focused on providing needed utilities to members rather than maximizing profit.[67] Cooperative members were not concerned with using the cooperative to generate their income, but rather fulfilling a need that was not being met.[68] Cooperatives are generally known to proportionally distribute benefits based on member use or input.[69] As entities, cooperatives have an ownership structure and a purpose that are unique from those of LLCs and traditional corporations which, in addition to tax implications and liability factors, need to be considered in the formation of the entity.[70] Though this entity form differs in many respects from more traditionally used entities, namely, by decentering the primary focus on profit, cooperatives do no "contradict the goals of capitalism," but instead provide an alternative model of business and ownership to prioritize community needs within the dominant economic system of the United States.[71]

1. Principles of Cooperatives

The core principles and values of cooperatives are part of what make them so different from a more traditional entity structure as well as a unique tool for equitable development. The seven core principles of cooperatives are: (1) voluntary and open membership; (2) democratic member control; (3) member economic participation; (4) autonomy and independence; (5) education, training, and information; (6) cooperation among cooperatives; and (7) concern for community.[72] Not all principles are used in every cooperative, but they provide a strong basis for defining what makes cooperatives unique. It is crucial that membership in the cooperative is voluntary; if people are compelled or coerced into participation, the values are undermined, and benefits will not reach full potential.[73] Cooperatives are often open to whomever wishes to join, though some newer forms of cooperatives have closed membership to best serve their

67. *Id.* at 32.

68. *Id.*

69. *See id.* at 1.

70. *See* NEMBHARD, COLLECTIVE COURAGE, *supra* note 8, at 6 (see table 1.1) (demonstrating the many differences between entity structures).

71. ZEULI & CROPP, *supra* note 6, at 3.

72. *See Cooperative Identity, Values & Principles*, *supra* note 1.

73. *See* ZEULI & CROPP*, supra* note 6, at 1 ("[F]orced collectives prevalent in the former Soviet Union . . . were not true cooperatives.").

members' needs.[74] Democratic control is a vital aspect of cooperatives, where voting power is tied not to use or investment, but to membership.[75] Generally, one member gets one vote, regardless of other circumstances.[76] Though voting rights are based on membership, financial benefits are usually distributed on the basis of use or investment.[77] Members also have a say in what happens with the capital held by their cooperative, and promote group autonomy and independence when making those economic decisions.[78] Cooperative use often offers support to members through education, and by providing training and information that will benefit both the cooperative now and members in the future.[79] Another principle of cooperatives is the act of supporting other cooperatives where possible, which can be done through partnership, coordination, and communication.[80] Finally, cooperatives are formed and continued based on concern for the community.[81] Cooperatives are often created to meet needs that have not been met due to market failure, some type of economic crisis, or systemic injustice.[82] The International Cooperative Alliance expands on the main seven principles and notes that cooperatives are based on the values of "self-help, self-responsibility, equality, equity, and solidarity."[83] These unique features differentiate cooperatives from other business entity structures and provide opportunities for collective problem-solving, growth, and solution-based action.

2. Types of Cooperatives

Cooperatives can generally be separated into the broad categories of "production, marketing, purchasing, consumer, or service," and have been applied in various forms to accomplish communities' desired goals, such as providing employment opportunities, grocery stores, utilities, financing, affordable housing, or agricultural support.[84] For example, in the United States, "farmers have banded together to organize relatively large operations to achieve greater profits and to add value to their products," through agricultural

74. *See id.* at 36 (stating that new generation cooperatives (NGCs) often have "limited or closed membership").
75. *See id.* at 2.
76. *Id.*
77. *See id.*
78. *See Cooperative Identity, Values & Principles*, *supra* note 1.
79. *See id.*
80. *See id.*
81. *See id.*
82. *See id.*
83. *See id.*
84. *See* ZEULI & CROPP, *supra* note 6, at 27; Zeuli & Radel, *supra* note 11, at 43.

production cooperatives.[85] In contrast, marketing cooperatives are formed to forward members' marketing needs, improve bargaining power, or to "grade, process, package, label, store, distribute, and merchandise products."[86] Marketing cooperatives are perhaps most notable in agricultural industries, where consumers may be familiar with the cooperative brands Land O'Lakes, Ocean Spray, Blue Diamond, Sun-Maid, and Sunsweet, without having realized that they are cooperatives.[87] Purchasing cooperatives are formed to allow businesses to buy products they will either use or eventually sell themselves at a lower price point.[88]

While purchasing cooperatives are present in the agriculture industry, they are also used by independent retailers, such as hardware stores, whose increased size as a result of forming a cooperative allows them to purchase their inventory at lower prices and stay competitive with larger companies.[89] Restaurants such as "Burger King, Dairy Queen, Kentucky Fried Chicken, and Taco Bell have all organized purchasing cooperatives" to supply their franchises with supplies they need by taking advantage of their collective scale.[90] Consumer cooperatives in the form of grocery stores are "America's quintessential consumer cooperative," providing food and household items to member-owners at lower prices than those available at singularly profit driven businesses.[91] Consumer cooperatives have provided lower-cost alternatives in times of economic downturn and been implemented to provide items that are desired by community consumers but not provided, at least to the desired extent, through traditional means.[92] Consumer cooperatives extend beyond providing grocery items, and include businesses such as outdoor recreation retailers.[93] Cooperatives have also been formed to provide services unfulfilled through other avenues.[94] Service cooperatives are again popular in the agriculture industry, but also formed to provide finance options by way of credit unions, utilities to rural communities, affordable

85. ZEULI & CROPP, *supra* note 6, at 27.

86. *Id.* at 28.

87. *See id.* at 28, 30.

88. *See id.* at 30–31.

89. *See id.*

90. *See id.* at 31.

91. *See id.*

92. *See id.* ("Many food co-ops were organized during the Great Depression, when people everywhere were trying to save money on household expenses. Many of these food co-ops still exist. Today, however, food cooperatives are more commonly associated with supplying natural or organic products.").

93. *See id.* (stating that "Recreation Equipment Inc. or REI, is the largest consumer-owned co-op in the United States").

94. *See id.* at 32–33.

housing, insurance options, and health care.[95] Cooperatives in all industries have arisen to meet needs within communities that have not been addressed through traditional methods. They have been used as a tool of resilience by marginalized communities and as a solution to systemic economic inequality.

B. *Cooperatives as a Historical Tool of Black Resilience*

Black communities have used cooperative models as tools for survival and economic independence throughout American history. While the documentation and study of Black cooperative economics is not extensive, its use is recorded in newspaper articles, archives, newsletters, articles of incorporation, and memoirs of Black activists.[96] Jessica Gordon Nembhard's book *Collective Courage: A History of African American Cooperative Economic Thought and Practice* utilizes these sources, as well as economic theory and analysis, to showcase the important role cooperatives played as an economic strategy for the survival and success of Black communities. [97]

The communal values of cooperatives were present in African American communities during enslavement to coordinate the rescue of fugitive slaves and to create mutual aid societies designed to ensure the fulfilment of needs for members of the community.[98] They created networks, which allowed them to organize resistance and pool money, when possible, to purchase freedom.[99] In an economic system that did not recognize them as willing participants, African Americans found methods to subvert the system in pursuit of liberation.

In the late nineteenth century, the Colored Farmers' National Alliance and Co-operative Union (CFNACU) created a network of organizations that shared agricultural practices among members and encouraged independence from the practice of sharecropping.[100] CFNACU used collective action to force change and disseminated valuable information to members.[101] As African Americans continued to face extensive barriers following the Civil War and Reconstruction, they found alternative economic solutions out of necessity.[102] Black cooperatives

95. *See id.* at 30–31.

96. *See* Nembhard, *African American Cooperatives*, *supra* note 7, at 354.

97. *See id.* at 354–55.

98. *See id.* at 356.

99. *Id.*

100. NEMBHARD, COLLECTIVE COURAGE, *supra* note 8, at 55–56.

101. *Id.* at 56 (stating that CFNACU boycotted "stores owned by planters" while creating their own cooperative stores "designed to pool African American resources, "communicated though branch newspapers to provide information about discriminatory legislation[,] . . . and the latest initiatives of the organization such as cooperative exchange projects, lobbying efforts, credit programs, and cost-saving measure").

102. *See id.* at 31–32.

were active across the country in the 1930s, and cooperative economics was discussed in magazines, newspapers, and journals.[103] While low-income earners were receptive of and excited by cooperatives, their limited financial resources hindered the success of cooperatives "launched with insufficient capital."[104] Gordon Nembhard noted that "this continues to be an issue, particularly for low-income and low wealth cooperatives" as "[c]ooperatives tend to be more successful when well capitalized."[105] In the late 1930s and early 1940s, there was "a significant number of cooperatives" located in Harlem that were "supported and sponsored" by Black organizations within New York City.[106]

Later, facing constant threats and intense discrimination during the Civil Rights era, Black workers needed new employment opportunities and used cooperatives "to declare economic independence and facilitate the continuation of the freedom movement." [107] Cooperatives were a self-determined solution to an acute need felt among the Black community and often "a direct response to the powerlessness black people felt within an economic system dominated by White racists."[108] Cooperatives provided one way in which Black individuals could become employers themselves and address the deficiencies they experienced within their communities.

The repeated resilience to pave an alternative path to economic survival and success is important to recognize. This history and the power dynamics impacting low-income and marginalized communities make movement lawyering a beneficial lens through which to view equitable community development.

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103. *Id.* at 127 ("Examples of African American co-ops during this period include the Consumers' Cooperative Trading Company (Gary, Indiana), the Red Circle Cooperative (Richmond, Virginia), the People's Consumer Cooperative, Inc. (Chicago), and Cooperative Industries of Washington. D.C."); *see also id.* at 131 (stating that the National Negro Business League "supported [founder Booker T.] Washington's notion of Black self-help and development of Black capitalism" and wrote about the increase of cooperatives "among Negro retailers" in 1929).

104. *Id.* at 130 (stating that although "low-wage earners were one of the groups that had readily embraced consumer cooperation, they had limited capital to invest in co-op shares").

105. *Id.*

106. Cooperatives in Harlem in the 1930s and after included Harlem's Own Cooperative, a milk distributor; the Paul Laurence Dunbar Apartments, a housing cooperative for Black individuals; Harlem's Pure Food Co-operative Grocery Stores, a grocery store; Harm Consumers' Cooperative Council, also a milk distributor that later merged with Harlem's Own Cooperative; Modern Cooperative Association, a grocery store; and The Harlem River Consumer's Cooperative, a grocery store; and 137th Street Housing Corporation, a cooperatively owned housing unit. *See id.* at 132–39.

107. GRETA DE JONG, YOU CAN'T EAT FREEDOM: SOUTHERNERS AND SOCIAL JUSTICE AFTER THE CIVIL RIGHTS MOVEMENT 89 (2016).

108. *Id.* at 92.

C. *What is Movement Lawyering?*

Social movement lawyering as a practice centers the client or movement's decision-making and autonomy.[109] Movement layering is done, in part, by acknowledging an organizer's contribution to said movement and underscoring that a lawyer's work may help forward a movement but is not the hero of the given social movement.[110] Movement lawyering emphasizes the power differential between the legal system and justice movements, acknowledging that lawyers often work "in spaces where the voices of directly impacted people are not represented."[111] Its mark can be seen in the Civil Rights Movement and continues to be an important ideal for the legal field to follow.[112]

Movement lawyering is done in recognition of the value that "clients bring to the table", and the wealth of knowledge they possess that may elude legal professionals, such as the intricacies of lived injustice, understanding of particular group dynamics, familiarity with the most pressing needs, and knowledge of the reason(s) certain proposed solutions will fall short.[113] Movement lawyering champions the organizers' input and upholds their position as the ultimate decision-makers in a movement's goals and direction. Movement lawyers use their skill set to assist organizers in pursuit of equity and closing the existing gap, even just by a little.[114] Operating through a movement lawyering lens encourages legal professionals to critically consider historical legal barriers, power differentials, and the importance of community agency.

D. *Movement Lawyering Applied to Equitable Development*

Aligned with the principles of cooperatives and mindful of power dynamics, movement lawyering serves as an appropriate lens through which to view cooperatives as an equitable development tool. Movement lawyering recognizes the existing space between "the ideals of justice and the practice of law," and can hold the tension of ongoing progress toward economic equity.[115] The values of movement lawyering revolve around relational connection, which aligns with the

109. *See* Carle, *supra* note 9, at 19.

110. *See* Tifanei Ressl-Moyer, Pilar Gonzalez Morales & Jaqueline Aranda Osorno, *Movement Lawyering During a Crisis: How the Legal System Exploits the Labor of Activists and Undermines Movements*, 24 CUNY L. REV. 91, 99 (2021).

111. Shahshahani, *supra* note 9, at 51.

112. *See id.* at 45.

113. *See* Ressl-Moyer et al., *supra* note 110, at 99 ("We fail to consider the invaluable information that specific clients bring to the table if that information does not fit within the restrictive confines of our legal framework.").

114. Quigley, *supra* note 9, at 29.

115. *Id.*

basic communal nature of cooperatives.[116] The decisions made and solutions implemented will impact communities long after legal assistance has been given, and the members are the ones who will live with the consequences. Legal professionals can better maintain perspective of their involvement and the long-lasting impacts of development decisions on communities by keeping movement lawyering tenets centered in their practice. Rather than focusing in on a narrow legal question to solve, the lawyer serves the community organizers by listening to the goals of the organization beyond their immediate needs to ensure that legal intervention does not end up hindering the organizations progress and momentum. Additionally, this lens offers lawyers pause to consider the legal barriers and negative associations of law experienced by low-income and marginalized individuals.[117]

Using movement lawyering to view equitable development also helps shift the decision-making of development to the directly impacted groups, upholding the agency of the communities in implementing solutions for themselves. A goal of cooperatives that movement lawyering can support is the achievement of sustainable, equitable economic outcomes that further the self-sufficiency of affected communities.[118] One way in which lawyers can practice movement lawyering is by sharing their resources with community organizers.[119] One of the key skills lawyers learn while they are in law school, and must continue to strengthen in practice, is solid research and the ability to exhaust available resources. Lawyers often have access to resources and knowledge of how to obtain helpful information that community organizers may lack, and can work to even the power differential by sharing information with clients or even teach organizers how to request and obtain information themselves.[120] This might, for example, look like a lawyer showing community organizers how to use and navigate online property records and zoning maps, or pointing them toward reputable scholarly websites to fill in organizer-expressed informational gaps. Lawyers also often develop a strong network of professionals while in law school, and in practice those networks could be vital connections for community organizers. Introductions to certified public accountants and tax lawyers whom

116. *See id.* at 24 ("Movement lawyering is about being in a relationship with a community of people who are building power.").

117. Shahshahani, *supra* note 9, at 49 (stating that "contemporary movement lawyers emphasize questioning who the legal system was designed for and how identity impacts one's interaction with the legal system").

118. Zeuli & Radel, *supra* note 11, at 50 ("Cooperatives are often developed in response to a small town or urban neighborhood's desire for self-sufficiency.").

119. Ressl-Moyer et al., *supra* note 110, at 105.

120. *See id.* ("In sharing information, lawyers can begin to cede control over narratives, resulting in greater client and community agency and increased trust between lawyers and communities.").

the current lawyer trusts or personally knows, for example, can be incredibly useful to public organizers.

III. COOPERATIVES AS A COMMUNITY ECONOMIC DEVELOPMENT TOOL

Implementing the use of cooperatives will support the needs and goals of communities and protect against the disadvantages of economic development measures that low-income and marginalized communities often experience. By viewing solutions of inequitable development through a movement lawyering lens, the priorities of the impacted community and their agency are promoted against competing considerations. The cooperative structure allows the organization to democratically agree on the goals and priorities pursued, extending beyond a single-minded profit focus to meet the community's most pressing needs or desired ends.

A. *Cooperatives as a Tool to Address Inequitable Economic Development*

Cooperatives can narrow the racial wealth gap as an investment tool to build wealth, while remaining in line with communities' values. While this Note highlights cooperative use broadly and advocates for real estate investment cooperatives specifically as a development tool, it is far from the only option. Community benefit agreements, community land trusts, land banks, and tax credits are a few of the other equitable development tools communities may choose to address their concerns.[121] Those tools differ in their approach and specific goals but all focus on empowering and preserving disadvantaged communities and neighborhoods. This Note does not aim to discredit any of the above, but instead advocates for an additional, lesser used tool for communities to consider when deciding what best fits their needs. Cooperative use has a rooted history of resilience in the United States[122] and real estate investment cooperatives can capture the economic benefits of development while maintaining democratic control, promoting community agency, and furthering agreed upon goals.

Beyond meeting immediate community needs, cooperative use can "nurture local leaders," encourage sustainable economic aid, increase member's "confidence in their own abilities," and foster economic engagement.[123] If a struggling community implements cooperative use, untapped skills can be both used and developed. The training and development will provide opportunities for members to foster local growth and for yields to be realized within the

121. Hidalgo, *supra* note 15, at 134, 137.

122. *See* Nembhard, *African American Cooperatives*, *supra* note 7, at 354–55.

123. DE JONG, *supra* note 107, at 90–91.

community.[124] This may help combat issues of local talent and skill being outsourced to areas where the results are divorced from the member's neighborhood. By creating the space for local skill, talent and giftings to thrive, members are encouraged to participate and engage in their primary spaces. Due to the communal nature of cooperatives, members can strengthen relationships and the social fabrics of their communities. In an increasingly individualistic and divided society, opportunities to connect, interact, and communicate will become more vital for community and human wellness.[125] Cooperative structures offer these opportunities to come together and work through difference to preserve and empower local communities.

B. *Historical Use by Marginalized Communities*

The historical use of cooperatives by marginalized communities reinforces its use as a current equitable development tool able to address issues presently faced by low-income and marginalized communities. Just as cooperatives have been implemented in the past to provide independence from sharecropping,[126] generate work for those who lost jobs for voting,[127] create needed access to grocery stores,[128] and organize credit unions to lend to those ignored by traditional lending systems,[129] they can be used to address issues that low-income and marginalized communities currently face. Specifically, the cooperative structure can be used and tailored to increase property ownership and combat gentrification.

When legal professionals step in to assist communities who implement equitable development tools, it is imperative that they are aware of the long history of inequality tied to the development of cities and neighborhoods. The

124. *See* ZEULI & CROPP, *supra* note 6, at 45 (listing the seven cooperative principles, including the fifth principle of education, training, and information).

125. *See* U.S. PUB. HEALTH SERV., OUR EPIDEMIC OF LONELINESS AND ISOLATION: THE U.S. SURGEON GENERAL'S ADVISORY ON THE HEALING EFFECTS OF SOCIAL CONNECTION AND COMMUNITY 12–13 (2023).

126. NEMBHARD, COLLECTIVE COURAGE, *supra* note 8, at 56 ("The [Colored Farmers' National Alliance and Co-operative Union] urged members to improve their farming methods and learn new techniques, purchase their own land and homes . . . .").

127. *See* DE JONG, *supra* note 107, at 93–94 ("[I]n the mid-1960s, a coalition of church groups and civil rights organization formed the Selma Inter-Religious Project" which "focused on providing assistance to African Americans who suffered economic reprisals for exercising their right to vote" and "helped set up the Freedom Quilting Bee," a cooperative "that produced quits, baskets and pottery.").

128. Nembhard, *African American Cooperatives*, *supra* note 7, at 358.

129. *Id.* at 360 (stating that in 1939, a credit union was started by twenty-five neighbors, and by "the first year membership increased to 187, and the credit union started a student savings account program").

legal barriers and ingrained inequity discussed above may understandably make communities and organizers wary of legal involvement.[130] Equally, it is vital for legal professionals to be humble in their difference in lived experience to the people they are assisting, while remaining aware that they are assisting, and not driving, the movement toward equitable development. Legal professionals have a skill set that is incredibly valuable in the work of establishing cooperative entities, drafting bylaws, researching state securities laws, and ensuring that the cooperative can achieve the goals set out by the community. That importance is not diminished by movement lawyering principles. Rather, it is put into a perspective that extends beyond tangible actions of a legal professional to center the people driving the movement.

IV. REAL ESTATE INVESTMENT COOPERATIVES

To address present economic issues faced by low-income and marginalized communities, historical cooperative use can be adapted to enable individuals to build wealth through investment while increasing democratic engagement, upholding agency, and ensuring benefits are realized across the wider community. While homeownership is often the first form of property ownership associated with wealth building, commercial real estate creates billions in revenue annually, offering an additional avenue for real estate investment.[131] Real estate investment cooperatives (REIC) allow low-income and marginalized communities to pool their individually limited financial resources to create a pathway to ownership that might otherwise be unattainable.[132] At the same time, it will allow those communities to have agency in their own development, and further community goals alongside financial returns.[133] This model allows for the traditional benefits of a cooperative to be retained, while also prioritizing the economic return for its members.[134] This model has undeniable hurdles to overcome in order to be successful but offers a tool that has potential to significantly impact communities in a positive manner.

130. *See* Ressl-Moyer et al., *supra* note 110, at 112 ("[W]ithout an appropriate level of understanding of history and power, legal practitioners have and will continue to create legal strategies, litigation, and legislation that uphold various forms of bigotry and oppression.").

131. *See* Lyneir Richardson, Tracy Hadden Loh & Andre M. Perry, *Introducing the Buy Back the Block Lab: Building Black Wealth Through Community Real Estate Ownership*, BROOKINGS INST. (Nov. 8, 2023), https://www.brookings.edu/articles/introducing-the-buy-back-the-block-lab-building-black-wealth-through-community-real-estate-ownership/.

132. *See* Zeuli & Radel, *supra* note 11, at 49 ("Cooperatives help communities overcome a significant barrier to business development – lack of financial capital – by mobilizing and aggregating local financial capital.").

133. *See id.* at 49–50.

134. *Id.* at 49.

A. *Overview of Investment Cooperatives*

Forming investment cooperatives pairs the communal values, priority of agency, and need-fulfilment nature of cooperatives with the financial possibility accompanying economic development. The potential to capitalize on economic development is often realized by developers and investors who make decisions solely from a financial profit standpoint. In areas experiencing high levels of economic development, REICs could be established to invest in commercial property within the neighborhood, that the members would then own and decide what to do with it. If the members want to, they could renovate a building and rent it out to maximize financial returns to the members. Or they could buy buildings with the purpose to rent them to a specific kind of business the community needs in the neighborhood. Either way, it is the members' decision of what to do with the property the cooperative purchases. They retain the decision-making power for development that will directly impact them.

One feature that differentiates REICs from other cooperatives is that the membership structure may limit the generally "open" membership nature based on certain parameters, such as location.[135] This would be to ensure that the decision-making power of the cooperative is comprised mainly of members of a particular community, rather than becoming overrun with outside members who may not share the same concerns and values as the impacted community.[136] Depending on the state cooperative laws, REICs may be able to be structured so that investment from higher-wealth investors can be paired with local members' smaller investments.[137] Investment cooperatives allow communities to pool their smaller-scale financial resources with higher financial capital investors; balancing profit with agreed upon community goals and retaining decision-making power to those impacted.[138] Voting rights can be structured to ensure that primary decision-making can be kept with the local members, who all have one vote, no matter the size of their investment.[139] This democratic system allows for the community to vote on decisions such as what property they want to buy, how they want to renovate it, or who they would like to rent it to.

135. *See Cooperative Identity, Values & Principles*, *supra* note 1; *see also* ZEULI & CROPP, *supra* note 6, at 22 (stating that while NGCs differ from traditional cooperative models in their need for upfront equity and focus on financial returns, they still incorporated many cooperative values and generated social returns).

136. *See e.g.*, *Membership*, NE. INV. COOP., https://www.neic.coop/membership (last visited Mar. 14, 2024) (showing that the NorthEast Investment Cooperative limits their members to residents of Minnesota) [hereinafter NorthEast *Membership*].

137. *See* WYO. STAT. ANN. § 17-10-222(e) (West 2024) (allowing cooperatives to issue non-patron membership interests).

138. *See* ZEULI & CROPP, *supra* note 6, at 37.

139. *See id.*

The model of allowing "non-patron" investors is a departure from traditional cooperatives in which membership was directly tied to patronage.[140] Wyoming was the first state, in 2001, to adopt a statute that "allows non-patronage (investor) members to have unlimited returns on their equity investment and voting rights."[141] The "[Wyoming Cooperative Model] allows two cases of members: patron members, those who use the cooperative, and investment members, those who do not use the cooperative but invest equity capital."[142] This model is more of an LLC-cooperative hybrid, and allows choice between "partnership, limited liability, or cooperative tax status" as the board decides is appropriate.[143] With the traditional financial return cap removed, cooperative investment becomes available and more attractive to investors. The Wyoming Cooperative Model has been followed by other states, leading to laws such as 308B in Minnesota.[144] Still, there remains a gap in what could be accomplished, and what statutes permit in states that have not yet adopted this model.[145] By allowing greater returns for investors, cooperatives increase their access to "larger pools of capital" that many need to succeed.[146] REICs offer an alternative path to ownership where ability to individually purchase property may not be feasible, and can also help combat the negative impacts of gentrification on communities by capturing financial benefits of broader economic development while ensuring community goals are being met.

B. *NorthEast Investment Cooperative*

The NorthEast Investment Cooperative (NEIC), founded in 2011, is "the first commercial-property investment cooperative" in the nation.[147] Located in northeast Minneapolis, "[the] NEIC looks for underutilized property in [the] community and raises capital from community members to buy and rehab commercial and residential property to improve [the] local economy." [148] Their mission is to "make[] long-term, stabilizing, and transformative investments for

140. *See* Zeuli & Radel, *supra* note 11, at 45.

141. ZEULI & CROPP, *supra* note 6, at 22.

142. *Id.* at 37.

143. *Id.*

144. *See* MINN. STAT. ANN. § 308B.001-.975 (West 2024).

145. *See* ZEULI & CROPP, *supra* note 6, at 22 ("This model opens the door to non-user ownership and non-user control, and to benefits distributed based on equity, not use.").

146. *See id.*

147. *Homepage*, NE. INV. COOP., https://www.neic.coop (last visited Mar. 14, 2024) [hereinafter NorthEast *Homepage*]; *Our Story*, NE. INV. COOP., https://www.neic.coop/our-story (last visited Apr. 4, 2024) [hereinafter NorthEast *Our Story*].

148. NorthEast *Homepage*, *supra* note 147.

the mutual benefit of our members and our community," and they use the seven cooperative values to "create multiple positive returns on investment."[149] The NEIC purchased a vacant building in 2012 and renovated it, before leasing the space to a brewery and a bakery.[150] The actions of the NEIC filled a vacant property, opened space for local businesses, provided jobs for the community, and saw returns on investment for its members.[151] The NEIC sells different share types, the initial A-share being $1,000, while the C- and D-shares are additional shares that are only available during active project fundraising, and cost $500 and $5,000 respectively.[152] Every member has one vote, no matter the amount of money invested, while the member's financial return is based on the amount of money invested.[153] The membership prices reflected by the NEIC may be above what many communities can afford, and thus the scale can be adjusted to fit what is doable for the community. It may be in the best interest of REICs to set up incremented membership payments rather than an up-front payment.

The NEIC has not been without its challenges, as they have dealt with difficulty finding tenants for one of their properties and learned throughout the process what businesses consider and need when selecting a property.[154] Despite the challenges faced by the NEIC, they have yielded positive financial returns for their members, in addition to the benefits provided to the community at-large through engagement and agency.[155] The NEIC offers just one example of what a real estate investment cooperative can look like and accomplish.[156]

C. *Benefits of the Real Estate Investment Cooperatives Model*

The REIC model allows for communities to have decision-making power and agency in the development of their own communities, while also offering

149. *Mission and Values*, NE. INV. COOP., https://www.neic.coop/mission-and-values# (last visited Mar. 16, 2024).

150. NorthEast *Our Story*, *supra* note 147.

151. *See id.*

152. *See* NorthEast *Membership*, *supra* note 136.

153. *Id.*

154. NorthEast *Our Story*, *supra* note 147.

155. *See Frequently Asked Questions*, NE. INV. COOP., https://www.neic.coop/faq (last visited Mar. 14, 2024) ("During the years 2015–2021, NEIC issued an average of 4.11% capital credit allocation on A-shares. During the same period, NEIC issued C-share and D-share dividends of 2% and 4%, respectively, in five out of seven years.").

156. *See* BECKON ET AL., *supra* note 13, at 25–27. The East Bay Permanent Real Estate Cooperative uses similar principles discussed in this Note with a heightened focus on creating affordable housing through "land liberation" rather than profit generation. *See Our Mission*, E. BAY PERMANENT REAL EST. COOP., (last visited Nov. 18, 2023) https://ebprec.org/mission-vision.

financial returns on their investment. Because of the cooperative's unique entity structure, the cooperative is not obligated to members or shareholders to pursue profit or growth alone but can integrate community goals at a level equal to financial returns. Additionally, the cooperative values of member economic participation, autonomy and independence, and education, training, and information generate additional positive outcomes within communities that can have far reaching impacts.[157]

Members of an REIC have an increased stake in the community, and thus increased incentive to participate broadly in their community. REICs allow individuals who do not have the financial capability to buy property through traditional means, to achieve shared ownership in property. Over time those individuals may continue to invest in the cooperative incrementally, building their equity in the cooperative and increasing their financial returns. For communities of color, this alternative form of property ownership creates opportunities to narrow the racial wealth gap that could otherwise be unavailable because of the capital restraints on traditional property ownership.

The use of REICs enables communities to maintain agency in the direction of their communities. As low-income neighborhoods gentrify, residents are often at the mercy of developers who have the capital to purchase building and homes and turn them into what will be most profitable. If new businesses are created by developers, they may provide some jobs to local residents, but are not likely to consider the impacted communities' needs or desires for their neighborhood.[158] Homes may be purchased by investors who flip them, displacing longtime residents. However, by using an REIC, members of the impacted community can purchase a building and decide, considering an array of factors, what would best meet their goals. In doing this, they capitalize on the current economic development and growth to create local financial returns, retain decision-making power on what businesses come into their neighborhood, and address additional community concerns in the process.

Commercial real estate investment is an area that generates billions in revenue annually, but the returns are seen mostly by already wealthy individuals, and at higher rates in White households than Black households.[159] REICs can

157. *See Cooperative Identity, Values & Principles*, *supra* note 1.

158. *See* DE JONG, *supra* note 107, at 89 (noting that traditional entities seek to "enrich individuals or shareholders by maximizing profits above all other concerns").

159. Richardson et al., *supra* note 131 ("Nonresidential [commercial real estate] includes neighborhood retail shops on Main Street, downtown offices, waterfront warehouses, and more. Ownership of these income-generating assets—the management of which also shapes the vibrancy of communities—is extraordinarily concentrated in the hands of a few. In fact, 81% of the value of nonresidential [commercial real estate] is owned by the top 1% of

help seize those benefits and allow communities to capture financial and social benefits from revenue generating real estate. The benefits of the REICs with respect to education, training, and information should not be understated. Members can learn about investment, participate in economic activity, and make decisions that will improve their neighborhoods.[160] Cooperatives can become incredible community resources, where members have access to financial literacy training, leadership development training, and business training.[161] The educational opportunities can empower members of the community and create positive, self-sustaining impacts.

D. *Limitations of the Real Estate Investment Cooperatives Model*

Though REICs should be considered for their potential impact as an equitable development tool, communities must consider the important limitations before adopting and implementing this model, because it will not be the best fit for every community. These limitations include capital requirements, level of community buy-in and bandwidth to coordinate the effort, and differing statutory limitations.[162]

REICs require significant up-front capital to purchase property. In communities already facing tight financial constraints, generating the necessary capital will likely be a greater challenge than for higher-wealth communities.[163] While outside investment may be an option, investors will likely be hesitant to invest in a model they are unfamiliar with. Finding investors who align with the mission and values of the REIC will be helpful, as the investors do give up a degree of control when their voice is not tied to the size of the investment as in traditional investment models. Larger support from towns and states in the form of tax breaks and other incentives can help with this issue. The more use and familiarity people have with this model, the more people will be comfortable the mechanics. Additionally, individuals with already limited financial resources may be hesitant to become members and financially contribute to the

households that own any. In comparison, for owner-occupied housing wealth, the top 1% owns only 16% of the value. . . . [N]onresidential [commercial real estate] generated $512 billion in revenue in 2020.").

160. *See* NEMBHARD, COLLECTIVE COURAGE, *supra* note 8, at 227 (explaining opportunities to involve community youth can "teach students business, math, research and communications skills, resourcefulness and problem solving, teamwork and facilitation skills needed to participate in democratic enterprises").

161. *See id.* at 233.

162. *See* Zeuli & Radel, *supra* note 11, at 51–52.

163. *Id.* at 52.

cooperative, even if there is a low threshold amount.[164] Educating the community at-large on the benefits and values behind the cooperative is vital to ensure active participation among community members.

Community buy-in can take time, as residents may be wary to trust the model, or even each other, to the extent required for successful cooperative outcomes.[165] Depending on the area and general length of time residents have been established, there may be a thriving network or an atmosphere of disengagement.[166] Community organizing and trusted community organizers who can champion the project are desirable as REICs must be a solution in which the community chooses to engage and participate. Areas with low social interaction and lack of established community leaders may not be ideal areas for REICs to be implemented. Cooperatives of this nature will take extensive coordination to execute and sustain,[167] and thus require bandwidth within the community and among organizers to carry out. If there is a lack of time or desire to manage and invest in the cooperative, it may struggle to get off the ground and create the returns that would benefit the community.

Differing state approaches to cooperatives and whether they have adopted some version or aspects of the Wyoming Cooperative Model will impact how the REIC can be structured. Research must be done by organizers, and the legal professionals who assist in equitable development work, on what their state allows, and if/how they can structure their cooperative to take advantage of and include non-patron investors. Additional organizer coordination with legal professionals and accountants will be required to determine optimal membership structure and taxation status based on state and federal law, to consider liability implications, and to ensure compliance with securities regulation. Because this is an intensive process, REICs may be one of the more involved equitable development tools but is designed to go beyond preservation of an existing community to increased engagement and wealth building.

164. *Id.* at 51 ("The opportunity costs associated with the human capital investment balanced against the returns provided by the co-op may tip the scale against a community member participating in the cooperative.").

165. *Id.* ("The willingness of people to cooperate and trust is a fundamental building block in a cooperative development strategy.").

166. *Id.*

167. This includes procedures for organization "[f]rom initial concept to the start of operations," which "typically takes . . . six months to two years." Steps include preliminary exploration, gauging broader interest, forming a steering committee, clarifying the purpose of the business, conducting a feasibility study, running a membership drive, developing a business plan, preparing legal documents, and initiating the early start-up phase. ZEULI & CROPP, *supra* note 6, at 69–74.

V. RECOMMENDATIONS

Though the inequity historically, and currently, faced by low-income and marginalized communities can feel like an overwhelming issue with too many factors to comprehensively address, actions steps can be taken to mitigate the inequity, and work toward a more just and equitable society. Due to inequity being woven into the fabric of established systems still impacting communities today, there is no single fix, and it will require various approaches, tackling specific areas. This Note advocates for one such tool that acknowledges the history and interconnected nature of economic inequity and aims to center the agency and decision making of the impacted community.

A. *Implementation of Movement Lawyering Principles in Community Development*

In furtherance of equitable community development goals, this Note recommends that legal professionals remain mindful of implementing movement lawyering principles.[168] Keeping the community as the primary decision-makers, legal professionals should ensure that they use their expertise to preserve the agency of the community, rather than to impose what they think is best. Upholding movement lawyering principles does not mean that a lawyer cannot do their job or must hold back the counsel they give. Rather, it is an acknowledgment that the lawyer only plays a small part in the larger movement of economic equity, and the community will keep working long after legal services have been delivered. Communities must be allowed to have the primary voice in creating solutions for problems with which they are intimately familiar and directly impact their lives.

Movement lawyering includes consciousness of power dynamics, which is especially essential when considering the history of disenfranchisement through land use regulation and divestment of areas comprised of low-income individuals and communities of color.[169] Understanding the history allows one to better understand the layers of injustice that have birthed the current inequitable economic development now seen across cities in America. Though explicit discriminatory policies have largely been eradicated,[170] their reverberations are

168. *See* discussion *supra* Sections II.C., D.

169. *See* discussion *supra* Section I.A.1.

170. *See, e.g.*, Shelley v. Kraemer, 334 U.S. 1, 20 (1948) (holding that judicial enforcement of racially restrictive covenants was a violation of the Equal Protection Clause of the Fourteenth Amendment); ROTHSTEIN, *supra* note 22, at 17 (stating that in 1968, the Fair Housing Act was passed, which "prohibited private discrimination in housing sales and rentals").

still felt, and inequitable impacts must still be considered in land use and policy regulations to mitigate disparate impacts to low-income communities and communities of color.

It is equally important for legal professionals not to take these ideas of equitable community development and think they can bestow these tools as new theories to fix an old problem. Communities of color, specifically, have been practicing alternative economic avenues and upholding communal values for years, at times for their very survival.[171] For legal professionals to change a few aspects of these practices, and hand it back like a gift would be paternalistic, insulting, and ineffective. This is why movement lawyering principles must stay front of mind, and legal professionals should remain conscious of the history and background, which influences the present. Legal professionals have a unique skill set that can be used to assist communities, without disregarding, downplaying, or overshadowing the work communities have made toward their own economic liberation.

B. *Use of Real Estate Investment Cooperatives*

This Note recommends REICs as a community development tool that can be implemented to promote equitable economic development in low-income and marginalized communities that have typically been disenfranchised by broad economic development efforts. REICs offer an alternative path to ownership where individually purchasing property may not be feasible, and thus can be one step in narrowing the racial wealth gap. REICs also address some of the negative impacts of gentrification by both preserving community agency and decision-making when it comes to the development of members' neighborhoods and allowing members to capture financial benefits while collectively furthering community goals.

REICs allow communities to pool their otherwise more limited financial resources with higher-wealth investors to purchase real estate in their neighborhoods. The structure of the cooperative then allows members to have an equal vote, no matter the financial investment, amplifying the voice of the impacted community.[172] Higher-wealth individuals may be encouraged to invest because of their alignment with the cooperative mission and any incentives that the city or state may be able to offer.[173] Once sufficient funds have been gathered,

171. *See* discussion *supra* Section II.B.

172. *See Cooperative Identity, Values & Principles*, *supra* note 1 (highlighting the principle of democratic member control and the "one member, one vote" standard).

173. Tax incentives similar to the New Markets Tax Credit could be designed specifically to pair with REICs and encourage private investment in community development.

the cooperative can vote on what land or buildings to purchase, and what to do with it while considering both financial profit and community goals. As the investment becomes profitable, likely propelled by the larger economic growth of a city, the community itself will receive financial returns. While the return may not be incredibly large, depending on the investment, the benefits of this model extend beyond the actual dollar amount being returned. Individuals will have opportunities to use their skills, abilities, and experiences to contribute to the cooperative and have a say in the direction of their communities, which is powerful in and of itself.[174] Cooperative use draws upon a history of economic resilience and cracks the door a little wider to sustained economic equity.[175]

Those wanting to implement REICs within their own community as a solution to combat gentrification and increase property ownership should consider the level of solidarity, presence of trustworthy and respected leaders, financial and time constraints, and desired goals of their community. Solidarity, as "a form of collective behavior and a networking activity based on trust," is a vital element of a successful cooperative.[176] Solidarity may be based on community identity, or shared need, race, or religion, but brings members together and fosters a sense of trust and cohesion.[177] Solidarity that extends beyond the local community will also help support a burgeoning cooperative, possibly through contributing finances, amplifying the message to those outside the community, or by sharing resources.[178] Solidarity overlaps with the need for strong community leaders who have the trust of the community. An REIC is a significant undertaking, and the backing of the community is imperative to its success. As such, having trusted leaders within the community leading the movement will make strides toward establishing community trust for the REIC. Community leaders should consider the time and financial obligations required in pursuing an REIC as an equitable development tool to determine if this project is feasible for their own community. Leaders who have a pulse on their neighborhoods and are known within the community are likely to have some idea

See New Markets Tax Credit Program, U.S. DEP'T OF TREASURY, https://www.cdfifund.gov/programs-training/programs/new-markets-tax-credit (last viewed Mar. 14. 2024) ("The NMTC Program incentivizes community development and economic growth through the use of tax credits that attract private investment to distressed communities.").

174. *See* NEMBHARD, COLLECTIVE COURAGE, *supra* note 8, at 191.

175. *See id.*

176. *Id.* at 214.

177. *See id.* (explaining that "[t]he cooperative movement among African Americans has also been strongly influenced by feelings of racial and community problems"); *see also id.* at 217 (highlighting the importance of "[s]olidarity and cultural/racial loyalty" in the development of cooperatives in the twentieth century).

178. *See id.* at 220–21.

whether those within would be receptive and participate in a cooperative. Similarly, they are likely to know what the greatest needs within the community are to ascertain whether an REIC is a desirable equitable development tool.[179]

For community leaders considering REICs, establishing a network and connecting with those in the cooperative world is a helpful step toward better understanding the intricacies of cooperative use and can create mutually beneficial relationships for the future.[180] Learning from the mistakes and successes of others in a similar situation can help organizers avoid pitfall experienced by others. Additionally, other cooperative leaders may have helpful recommendations for professionals, such as attorneys, accountants, and real estate agents—who will all be necessary as an REIC begins moving forward. Contacting an attorney early in the process will give clarity as to what local laws allow in terms of formation, financing, and structure.[181]

In a simplified overview of what an REIC could accomplish once it has been formed, obtained financing through member shares, and voted on a project (using the one member, one vote standard), the cooperative could then purchase a piece of property within the community. This might be an active, needed business within the community that can now afford to stay in business to serve the community members and pays rent to the cooperative. It may also be a vacant commercial building that the cooperative wants to renovate to sell for a profit or attract new businesses into the community, whose rent payments will generate income for the cooperative. As the cooperative becomes profitable, dividend payments will be made to investors based on their level of investment. Through cooperative membership, individuals are able to achieve an alternative form of property ownership and have influence over the direction of their local community.

REICs will not eliminate the racial wealth gap, and they will not mitigate all effects of gentrification, but it is one tool that can be implemented to work toward that goal. Implementing an REIC is, and the parameters within which one must operate are, jurisdiction specific and communities should consult their local municipal and state regulations to determine feasibility in light of their specific goals. There are other community development tools that may be a better fit for a community's needs. It is ideal to have various tools for a community to choose from, and the key is that the *community* is the one choosing which solutions to implement for their own development. REICs will not be the best tool to use in

179. Communities with low interest in cooperative engagement or which yield poor results after conducting a feasibility study may not be ideal for REIC implementation. *See* ZEULI & CROPP, *supra* note 6, at 69–71.

180. *See* NEMBHARD, COLLECTIVE COURAGE, *supra* note 8, at 221.

181. *See e.g.*, WIS. STAT. ANN. § 185.02 (West 2024) (specifying that banking and insurance are not lawful purposes under which a cooperative may be organized).

every community, it is simply one to consider that draws on a history of communal care and imagines how to address current economic hurdles to an equitable future. Regardless, REICs remain an exciting prospect for communities looking to combat negative effects of gentrification and increase local property ownership while retaining agency in the community development process.

CONCLUSION

It will take a multitude of solutions attacking from various angles to adequately address the inequitable development that low-income and marginalized communities face in the United States. Communities can implement REICs to mitigate the intersecting issues of the racial wealth gap and ongoing gentrification currently impacting inequitable development. In this way, community members' can direct the development of their neighborhoods, while seizing financial benefits from broad economic growth. This approach has both benefits and drawbacks to be considered as the impacted community decides what equitable development solution is right given their needs and constraints. Cooperative members can define the issues the entity is formed to address and both direct and participate in the solution. REICs allow members to use their skills, knowledge, and training to create a cooperative that serves their agreed upon needs and centers their community values.