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DEVELOPING CAPABILITIES, NOT ENTREPRENEURS: A NEW THEORY FOR COMMUNITY ECONOMIC DEVELOPMENT

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James V. Rowan*

This Article presents a contemporary and compelling American context in which entrepreneurship is not a good solution. Despite the enormous potential that entrepreneurship seems to hold for community economic development, it has thus far failed as a framework for widespread and reliable local economic development and poverty alleviation. The reasons for this failure are grounded both in theory and empirical data. This Article takes up the theoretical question. It examines why entrepreneurship theory is a weak foundation for the work of community economic development practitioners. Arguing that the important work of these practitioners is best understood and measured using a theory grounded in poverty alleviation, this Article offers a modified version of the capabilities approach first developed by Nobel Prize-winning economist Amartya Sen. By relying on a theory that broadly conceptualizes poverty and social exclusion, community economic development practitioners can better evaluate the work that they are already doing. More importantly, the theory proposed here can and should guide practitioners to make straightforward changes with the potential for quite positive gains.

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I. INTRODUCTION

Entrepreneurship has been the rhetorical catchphrase of the new millennium. The ideal of an American-style entrepreneurialism has caught the imagination of politicians, lawmakers, and the public, creating a common space for new policies and new ventures. It is difficult to think of a more sure-fire way to increase the attractiveness of a program than to describe it as imbued with entrepreneurial spirit. Businesses sell products and services, from sandwiches to insurance, that are entrepreneurial in nature and approach. In any given public campaign, the more “entrepreneurial” solutions appear to often receive the most attention. Charitable foundations, too, have caught the spirit of entrepreneurialism, seeking out “social” entrepreneurs who are able to help others by means of truly innovative and sustainable enterprises.


Much good has come of this. It is unassailably clear that entrepreneurship contains a combination of creativity and drive capable of producing much that is new, exciting, and worthwhile.\(^5\) Entrepreneurship holds the potential for developing and disseminating important innovations to the public by means of ventures that are quick to act, direct, and flexible.\(^6\) It captures a spirit of individuality capable of exploiting market conditions for the benefit of both entrepreneur and consumer.\(^7\) In a country that has always prided itself on its economic and political frontiersmanship, it is a particularly engaging form of enterprise.

Perhaps not surprisingly, entrepreneurship has also caught the imagination of individuals and organizations involved in poverty alleviation efforts, both domestically and internationally.\(^8\) The fascination with social entrepreneurship is one example of this phenomenon, but so is the fervent aspiration expressed in the Clinton-era reforms to welfare at the end of the last millennium. Among other (important) things, Clinton’s “workfare” was an expression of the hope that poor people can be entrepreneurial too, and that low income need not be a dampener of entrepreneurial creativity and drive.\(^9\) Hence, the

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7. See The Inner City’s Fastest-Growing Companies, INITIATIVE FOR COMPETITIVE INNER CITY, http://www.icic.org/markets-and-opportunities/fast-growing-companies (last visited Apr. 11, 2014). The most recent list contains a number of examples, including Coyote Logistic in Chicago and Ace Exhibits in Los Angeles, which both specialize in event support, along with high technology companies, such as InGenesis in San Antonio and Neutron Interactive in Salt Lake City. See id.


9. Workfare began with a focus on supporting welfare recipients in developing the skills and values required to be an employee, but it also reflected an attraction to entrepreneurship development. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.) (making
sometimes clunky rhetorical connections between the mandate to work and the resulting spirit of enterprise.  

This Article examines a sweeping example of this phenomenon by assessing entrepreneurship as a tool of community economic development ("CED"). While the CED movement is about more than alleviating poverty, it does have that goal at its heart, and vast effort and wisdom have been expended in raising the standard of living of the targets of this largely urban movement. In addition to targeting income development, CED’s efforts have focused on creating long-term affordable housing and health care. But the centerpiece of CED’s income development efforts has been entrepreneurship.

As this Article will demonstrate, however, the relationship between entrepreneurship, economic development, and poverty alleviation is not an easy one. At the most basic level, economic development and poverty alleviation are social imperatives requiring a macroeconomic perspective focused on changes within and among groups of people. Both require the transition of many individuals, often identified in collective forms, out of poverty or into a more economically-developed state. The measurements of these two objectives evidence this treatment by focusing respectively on gross national or regional development and poverty “rates” or “levels.” By contrast, entrepreneurship is a deeply individualistic enterprise, requiring successful entrepreneurs to use their unique talents to exploit market conditions in exceptional ways.

work a priority for welfare recipients and permitting state experimentation with allowing recipients added income and resources when attempting to start new businesses).


II. Because of CED’s urban focus, the focus of this Article will be urban, too. See infra Parts II-III.

12. Recent federal legislation has reduced, but not eliminated, concern about health care insurance because additional assistance to small businesses to cover health care costs is available with more being contemplated. See Nat’l Econ. Council, Moving America’s Small Businesses & Entrepreneurs Forward 8-9 (2012), available at http://www.sba.gov/sites/default/files/files/small_business_report_final.pdf.

13. See infra text accompanying notes 57-66.


15. See Cline, supra note 14, at 42; Cypher & Dietz, supra note 14, at 31.


17. See Kirzner, supra note 5, at 94-95.
This and other disconnects between entrepreneurship on the one hand, and economic development and poverty alleviation on the other, manifest themselves in significant policy missteps and economic inefficiencies.

Most importantly for our purposes, despite the enormous potential that entrepreneurship seems to hold, it thus far has failed as a framework for widespread and reliable local economic development and poverty relief. 18 Hence, the somewhat euphemistic description of many such programs as producing “mixed results.” 19 Despite important examples of social entrepreneurship within the inner city and sometimes by individuals below the poverty line, it has not produced innovations that systematically transition failing markets into successful ones. 20 Instead, quite regularly, the best innovations of social entrepreneurs have been captured by individuals and groups above the poverty line and often outside of the inner city. 21 More heartbreakingly, while examples of low-income people acting with motivation and entrepreneurial spirit recur, their Herculean efforts regularly do not succeed in breaking them out of the cycle of poverty that they seek to escape. 22

This Article begins the difficult process of explaining why. Although a substantial literature now exists on the CED movement, its agenda, 23 theoretical foundations, 24 and contributions, 25 one important

18. See infra Part II.C.

19. See, e.g., WILLIAM H. SIMON, THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT 220 (2001) (“Even heavily subsidized home or business ownership is not a plausible option for most poor people. Many of them cannot benefit substantially from job training and placement without vastly more extensive support—whether in terms of therapy, basic education, child care, or transportation—than current programs contemplate.”); Ayse Can Talen et al., The Future of Microfinance in the United States: Research, Practice, and Policy Perspectives, in REPLICATING MICROFINANCE IN THE UNITED STATES 331, 341 (James H. Carr & Zhong Yi Tong eds., 2002); see also Business Survival Rates by Age Cohort of Business, U.S. SMALL BUS. ADMIN., http://archive.sba.gov/advo/research/rs122.html (last updated June 11, 2001) (showing survival rates of small businesses by age of business and employment size, and finding that businesses with one to four employees had a thirty-one percent survival rate).


21. Inner City 100, supra note 6. Examples include gentrification, and as demonstrated by ICIC’s Inner City 100 Program, only some of these businesses employ inner city residents and do so at low market rates of pay. See id.; Inner City 100 15 Years Urban Entrepreneurship at Its Best, Initiative for Competitive Inner City, http://www.icic.org/eeUploads/pdf/Inner_City_100_Flyer.pdf (last visited Apr. 11, 2014).

22. KLEIN ET AL., supra note 10, at 35.

gap in this literature is an evaluation of entrepreneurship as a tool of poverty alleviation within this movement. While empirical evaluations of this effort are crucial, the gap is also theoretical in nature. Specifically, as a theoretical matter, it is not clear how or why entrepreneurship makes sense as an appropriate poverty alleviation tool. Leaving a quantitative evaluation for future efforts, this Article undertakes a theoretical evaluation of this phenomenon. In particular, it examines the theories animating both entrepreneurship and poverty alleviation. The central claim of this Article is that entrepreneurship theory does not and cannot serve as a viable basis for systemic poverty alleviation. Stated bluntly, the reason is that individuals below the poverty line are not systematically in a position to exploit the market in the way that entrepreneurship theory demands. Instead, on the basis of the experiences of CED practitioners around the country, the Article argues that a different theory ought to animate the income development work of the CED movement. Indeed, this Article observes that fragments of this theoretical foundation do undergird many of these efforts, albeit implicitly. The theory cannot, however, have its greatest impact when relied upon only implicitly. This Article therefore argues for the explicit adoption of a new, better-suited theory for the important ongoing work of community development practitioners supporting income development efforts around the country.

This Article proceeds as follows: Part II argues that a fundamental conflict exists between entrepreneurship and poverty alleviation, which

more recent effort to set the agenda for government assistance for small businesses, describing in particular the Startup America Initiative).


CED practitioners generally fail to acknowledge explicitly.\textsuperscript{33} The conflict exists at the level of both theory and application. At the theoretical level, entrepreneurship theory expects entrepreneurs to exploit malfunctioning markets, in particular by leveraging market uncertainty as a means both of correcting those markets and of creating value where it previously did not exist.\textsuperscript{34} In application, studies by the U.S. Small Business Administration ("SBA") and many others confirm that successful entrepreneurs must be able to identify and take advantage of risks as a means of creating new markets and value that previously did not exist.\textsuperscript{35} Impoverished people, however, are systemically ill positioned to exploit uncertainty in the ways entrepreneurship theory demands, a conclusion that is again confirmed by empirical studies.\textsuperscript{36} Although poor people may be every bit as motivated, creative, and driven as those who are systemically more likely to succeed as entrepreneurs, they cannot afford to take the risks demanded for successful entrepreneurship. In this and other critical respects, it is deeply misguided to create programs that depend on individualistic entrepreneurial efforts as a means of systemic poverty alleviation. Entrepreneurship, as a program for individualized development, carries within it no obvious connection to the broader, more systemic agenda for development and poverty relief. It contains no obvious means of systematic expansion or even replicability.

Part III approaches the conflict from the angle of poverty alleviation practice.\textsuperscript{37} Noting that those CED practitioners who focus on income development take as imperative the goal of poverty alleviation, this Part describes a pattern of CED work in which poverty alleviation takes priority over entrepreneurship, at least as the latter is defined and measured by entrepreneurship theory.\textsuperscript{38} On the ground, CED practitioners have been supporting business development for the purpose of systemic poverty relief.\textsuperscript{39} What is important to note here is that such efforts do indeed follow a pattern, though not necessarily a theory. It is a pattern in which CED practitioners look for ways in which to build the capacity of individual business owners to enhance their own

\begin{itemize}
  \item \textsuperscript{33} See infra Part II.
  \item \textsuperscript{34} See infra Part II.A.2.
  \item \textsuperscript{36} See infra Part II.B.
  \item \textsuperscript{37} See infra Part III.
  \item \textsuperscript{38} See infra Part III.A.
  \item \textsuperscript{39} See infra Part III.A.
\end{itemize}
capabilities—as well as those of their employees—so that each individual involved in a business enterprise is able to flourish more fully. This is a markedly different effort than that identified by entrepreneurship theory. Curiously enough, it is nevertheless described by many of the practitioners engaged in this practice as "entrepreneurship" development.\(^{40}\)

Part IV argues that CED practitioners engaged in income development efforts are, by and large—and often implicitly—operating within a different theoretical framework than that of entrepreneurship theory.\(^{41}\) This Part identifies the different framework as the so-called "capabilities approach," developed by Professor Amartya Sen, in which poverty is defined as the absence of the conditions necessary for human beings to be able to fully flourish.\(^{42}\) As Part IV argues, this poverty-focused theory is a far better theoretical foundation for income development efforts within the CED movement, both because it better fits the pattern of experiences that actually work in practice, and because it is a more systemic approach to a problem that is quite clearly systemic.\(^{43}\) By relying on a theory developed to measure and evaluate the main systemic problem targeted by CED, practitioners would be much better positioned to evaluate and develop the best programs for income development.\(^{44}\) The challenge, as this Part argues, is for those engaged in poverty alleviation efforts to take full advantage of the theory offered by Sen.\(^{45}\) This Part concludes with an analysis of how to do just that.\(^{46}\)

II. ENTREPRENEURSHIP AND COMMUNITY ECONOMIC DEVELOPMENT

There is a fundamental conflict between entrepreneurship and CED that public interest lawyers who support low-income entrepreneurs are not explicitly acknowledging. The problem is exacerbated by the fact

\(^{40}\) See infra Part III.A.

\(^{41}\) See infra Part IV.

\(^{42}\) See infra Part IV.A. While the capabilities approach originated with Sen, Professor Martha Nussbaum has worked closely with him in developing it. See Amartya Sen, Capability and Well-Being, in THE QUALITY OF LIFE 30, 40-42 & n.32 (Martha C. Nussbaum & Amartya Sen eds., 1993) [hereinafter Sen, Capability and Well-Being]; see also JOHN M. ALEXANDER, CAPABILITIES AND SOCIAL JUSTICE: THE POLITICAL PHILOSOPHY OF AMARTYA SEN AND MARTHA NUSBAUM 125-27 (2008); Martha C. Nussbaum, Poverty and Human Functioning: Capabilities as Fundamental Entitlements, in POVERTY AND INEQUALITY 47, 47-50 (David B. Grusky & Ravi Kanbur eds., 2006).

\(^{43}\) See infra Part IV.A–B.

\(^{44}\) See infra Part IV.C.

\(^{45}\) See infra Part IV.C.

\(^{46}\) See infra Part IV.C.
that prominent sources of funding for the cause of entrepreneurship as a means of poverty alleviation also fail to recognize this conflict. Indeed, many of these funders rely on the rhetoric of entrepreneurship as a basis for continued support for the cause, despite the mixed results that it has thus far produced. The purpose of this Part is to examine the conflict in detail. This Part begins by considering the theory that connects entrepreneurship and CED, providing both an understanding of why entrepreneurship theory has so engrossed the CED movement, and a theoretical explanation for why entrepreneurship is a uniquely bad strategy for poverty alleviation. 47 This Part then reinforces this theoretical analysis with a discussion of the empirical data about what leads to entrepreneurial success. 48

A. Entrepreneurship Theory and Its Potential Below the Poverty Line

1. Entrepreneurship and Community Economic Development: Why the Attraction?

The term "community economic development"—and the movement that surrounds it—is an amorphous one in which multiple definitions converge on a few common elements of this particular form of economic development. Rather than defining economic development in the prototypically macroeconomic terms used in discussions of national economic development, 49 proponents of CED focus on the notion of local or neighborhood development, as measured by increases in housing stock, jobs, health, and access to credit. 50

47. See infra Part II.A.
48. See infra Part II.B.
49. "Economic development" has typically been thought of as a matter of national development, where increases in gross domestic product and in per capita income are typical measures. CYPER & DIETZ, supra note 14, at 31-36.
Moreover, poverty alleviation plays a more central role in CED than it does in broader definitions of economic development. It is true that poverty relief has become more of a focal point, at least rhetorically, in economic development efforts and measures with entities, such as the World Bank, stating that economic development cannot occur without a robust plan for lifting the poorest in a given system. The United Nations, with its Millennium Development Goals, has contributed particularly to this effort. On the other hand, CED was a movement founded on the imperative of poverty alleviation. Without that goal, the movement itself might not exist. As described by Professor Scott Cummings, what makes CED unique is its claim that market forces can be managed for the purpose of creating systemic benefits for the poor.

Definitions of CED exemplify the differences unique to this particular form of development. For example, in 2001, William Simon provided an early and influential “core” definition of CED as embracing: “(1) efforts to develop housing, jobs, or business opportunities for low-income people, (2) in which a leading role is played by non-profit, nongovernmental organizations (3) that are accountable to residentially defined communities.”

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54. Id. at 438-41.

55. SIMON, supra note 19, at 3.
Similarly, in 2009, Susan Jones and Roger Clay, while acknowledging that there is no standard definition of CED, highlighted the “creation and expansion of neighborhood businesses” as well as larger commercial enterprises, the development of affordable housing and health care, and a focus on “community building.” Thus, CED has always been conceptualized as encompassing a number of different kinds of programs focusing on poverty alleviation, of which income development is only one part.

When it comes to defining the income development piece, however, the CED movement has been increasingly precise as the new millennium has progressed. Currently, it would not be an exaggeration to describe the CED movement’s income development efforts as focused on the support of entrepreneurship for low-income people. For example, the vast majority of law school clinics involved in the income development aspect of CED’s mission support entrepreneurship rather than job training and workforce development efforts. The same appears to be true for pro bono attorneys, though there is less nationwide information about their efforts. Using the city of Boston as an example, there are several coordinated and well-developed programs supporting entrepreneurship, while no identifiable programs appear to exist to provide legal support for workforce development efforts.

56. Clay & Jones, supra note 50, at 3 (quoting Lauren Breen et al., An Annotated Bibliography of Affordable Housing and Community Development Law, 13 J. AFFORDABLE HOUSING & COMMUNITY DEV. 334, 335 (2004)).

57. See John Foster-Bey, Workforce Development, in BUILDING HEALTHY COMMUNITIES: A GUIDE TO COMMUNITY ECONOMIC DEVELOPMENT FOR ADVOCATES, LAWYERS, AND POLICYMAKERS, supra note 50, at 251, 256; see also ANTHONY J. LUPPINO, CAN DO: TRAINING LAWYERS TO BE EFFECTIVE COUNSELORS TO ENTREPRENEURS 19-22 (2008).

58. There are a few programs that stem from private firms conducting pro bono work in the area of community development and the rest comes from programs that provide free legal services. All of these programs focus on developing entrepreneurs and small businesses over supporting employees involved in wage labor. See, e.g., Press Release, Goodwin Procter, Goodwin Procter Provides Pro Bono Community Outreach Through Neighborhood Business Initiative (Dec. 15, 2011), available at http://www.goodwinprocter.com/News/Press-Releases/2011/Goodwin-Procter-Provides-Pro-Bono-Community-Outreach-through-Neighborhood-Business-Initiative.aspx (describing prestigious firm Goodwin Procter’s Neighborhood Business Initiative that provides pro bono legal services to low-income entrepreneurs); see also LAW. COMM. FOR CIVIL RIGHTS UNDER LAW, MOVING AMERICA TOWARD JUSTICE 9 (2013), available at http://www.lawyerscommittee.org/admin/site/documents/files/TowardsJustice_Brochure_webready.pdf; About Us, LAW. CLEARINGHOUSE, http://www.lawyersclearinghouse.org/about (last visited Apr. 11, 2014). Several of the local universities in Boston have created clinics specifically for community development legal services. Like the legal services programs, these clinics focus on entrepreneurs and small businesses rather than individual employees. See Community Business Clinic, NORTHEASTERN U. SCH. L., http://www.northeastern.edu/law/academics/clinics/business.html (last visited Apr. 11, 2014); The Community Enterprise Project, HARV. L. SCH., http://www.law.harvard.edu/academics/clinical/tle/index.html (last updated Oct. 9, 2013); In House: Clinical Programs, B.C. L. SCH., http://www.bc.edu/schools/law/services/academic/programs/
legal assistance, other forms of technical assistance to support job training and workforce development do exist in Boston, but the numbers are heavily skewed towards support of entrepreneurship. 59

CED’s rhetoric about income development reveals a similar narrowing of focus. In the early part of the millennium, Simon’s discussions of income generation gave far more prominence to job training and placement efforts than is evident in more recent discussions. 60 At that point, welfare reform efforts were more explicitly connected to the efforts of community-based nonprofits to effectively train and position low-income workers in the job market. 61 Today, that kind of analysis has been replaced with exhaustive discussions about how community organizations can support entrepreneurship. These discussions range from analyses of educational programs for entrepreneurs, 62 to inquiries about appropriate forms of entity for new businesses started by low-income individuals, 63 and from political action in support of entrepreneurship, 64 to studies of the effect of entrepreneurship on local and regional economies. 65


60. SIMON, supra note 19, at 34-36.

61. Id. at 35-36.


63. Specifically, there has been some discourse on the development of worker cooperatives to support entrepreneurship below the poverty line. See, e.g., Scott L. Cummings, Developing Cooperatives as a Job Creation Strategy for Low-Income Workers, 25 N.Y.U. REV. L. & SOC. CHANGE 181, 189-90 (1999) [hereinafter Cummings, Developing Cooperatives] (underlining how worker-owned cooperatives can be used as a job creation strategy for low-income workers); Carmen Huertas-Noble, Promoting Worker-Owned Cooperatives as a CED Empowerment Strategy: A Case Study of Colors and Lawyering in Support of Participatory Decision-Making and Meaningful Social Change, 17 CLINICAL L. REV. 255, 269-71 (2010) (providing concrete examples of worker-owned cooperatives as a successful CED model with the support of lawyers); Peter Pitegoff, Organizing Worker Cooperatives, 7 LAW & POL’Y 45, 46 (1985) [hereinafter Pitegoff, Organizing].


65. See SCOTT A. SHANE, THE ILLUSIONS OF ENTREPRENEURSHIP 162-63 (2008); MICHAEL
CED is so singularly drawn to entrepreneurship for a variety of reasons that can be categorized into two imperatives that track CED’s twin goals of poverty alleviation and local economic development. First, is the imperative that entrepreneurship can, over time, lift individuals out of poverty in significant enough numbers to present a viable alternative to welfare and other income replacement programs. This expectation relies primarily on the assumption that some number of businesses founded by inner-city entrepreneurs will be high-growth engines of innovation that will link into the regional and even national economy by producing products or services in high demand. Though there may be very few such successful innovation enterprises, they will nevertheless successfully reduce poverty by providing stable jobs for poor people living in the neighborhoods where the businesses are located.


66. See, e.g., SIMON, supra note 19, at 37-38 (discussing discontent with welfare and its association with increased interest in efforts to expand work and business opportunities). Since Simon wrote his book in 2001, the emphasis on small business development has grown. See NANCY C. JURIK, BOOTSTRAP DREAMS: U.S. MICROENTERPRISE DEVELOPMENT IN AN ERA OF WELFARE REFORM 10, 76 (2005) (discussing various reports which find significant gains for low income people resulting from microenterprise development programs including, “gains in household income, some large enough to move clients out of poverty”); Clay & Jones, supra note 50, at 11 (discussing the contemporary CED movement’s focus on market-based principles to remedy poverty by promoting “local business development as a way to create jobs for low-income people”).


68. See id. at 61. This is the model developed by Initiative for a Competitive Inner City, the highly successful organization founded by Harvard Business School Professor Michael Porter. Who We Are, supra note 6 (explaining that “ICIC strengthens inner-city economies by providing businesses, governments and investors with the most comprehensive and actionable information in the field about urban market opportunities. . . . ICIC research awakened major retailers to a billion dollar market opportunity” in America’s inner cities, where income density is eight times greater than in the suburbs); see also Tim Lohrentz, Inclusive Business Practices, in BUILDING HEALTHY COMMUNITIES: A GUIDE TO COMMUNITY ECONOMIC DEVELOPMENT FOR ADVOCATES, LAWYERS, AND POLICYMAKERS, supra note 50, at 357-58 (“The connection between small business development and inner-city employment is demonstrated by Initiative for a Competitive Inner City data: the 519 companies that have been recognized by the Inner City 100 between 1998 and 2008.
CED's second imperative expects entrepreneurship below the poverty line to fulfill local and perhaps even regional economic development. According to this reasoning, the infusion of jobs from high-growth enterprises will produce a virtuous cycle of investment in the community, including better infrastructure, such as schools and public transportation, and better housing. The hope even appears to be that the jobs produced by these businesses will be stable enough to provide the accessories, such as health care, that middle-class employees typically take for granted. Moreover, because the products and services offered by these businesses will be sufficiently innovative to break into the regional economy, there is an expectation that such enterprises could contribute to economic development as defined in macroeconomic terms.

Although rarely explicitly stated, there often appears to be an implicit sense that entrepreneurship is such an attractive project because it holds out the possibility of a positive-sum game rather than a zero-sum game. Because the products and services developed by inner-city entrepreneurs would be truly new, they would not be displacing the products and services already provided by, and within, the local and regional economy. In this respect, entrepreneurship would increase the size of the economic pie rather than simply reallocating pieces of the pie to different members of the local economy. An important built-in assumption in this line of reasoning is that the more affluent and established members of the local economy would therefore not be called on to give up any of their own resources. Entrepreneurship holds out the tantalizing promise that low-income businesspeople could bootstrap themselves into successful enterprises that would contribute new resources to the economy without draining many resources in the process of starting up.

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69. See Lohrentz, supra note 68, at 373 (discussing the impact of small businesses beyond their economic importance, extending to their importance in cultural, political, and social realms).

70. But see Shane, supra note 65, at 156. Currently, as Scott Shane and others point out, health insurance is less available for employees of small businesses than of larger ones. Id.; Richard J. Pierce, Jr., Small Is Not Beautiful: The Case Against Special Regulatory Treatment of Small Firms, 50 ADMIN. L. REV. 537, 560-61 (1998).


72. But see generally Joseph A. Schumpeter, Capitalism, Socialism, and Democracy (1942) (describing entrepreneurship as a process of "creative destruction," in which new firms open new markets in goods and services by at times using new means of production).

73. See JuriK, supra note 66, at 21, 38; Servon, supra note 62, at 42.
Finally, a cluster of expectations about entrepreneurship below the poverty line centers on its ability to “fix” problems in inner-city markets. Scholars, such as David Dante Troutt, have presented a gripping picture of the failures within inner-city markets, including pervasive information and coordination problems. These problems have resulted in vicious cycles of disinvestment and poverty. Proponents of inner-city entrepreneurship argue that such entrepreneurs develop businesses that are more flexible and opportunistic, which allows them either to avoid some of the market failures within the inner city or to exploit those failures in such a way as to develop wealth where it previously did not exist.

2. Entrepreneurship Theory: What It Claims to Deliver

Indeed, entrepreneurship theory supports this latter set of assumptions, though as the Article discusses, it does not provide nearly as much support for the primary imperatives of poverty alleviation and economic development that are so cherished by the CED movement. While neoclassical economics does not dwell much on entrepreneurship, the work of institutional economists and others provides a compelling explanation for entrepreneurship, positing that it exists only where markets are malfunctioning and, indeed, developed to exploit bad markets.

By contrast, the “steady-state” economy, modeled by neoclassical economics, is generally within the realm of firms operating under relatively stable and well-functioning market conditions. In these models, market actors have reasonably equal access to information and other resources required to participate in the market, and there is little

75. See id. at 466-68.
76. Simon, supra note 19, at 50.
77. See infra Part II.C.
78. For partial summaries of the literature, see generally David B. Audretsch et al., Entrepreneurship and Economic Growth (2006); Entrepreneurship, Innovation, and the Growth Mechanism of the Free-Enterprise Economies (Eytan Sheshinski et al. eds., 2007).
79. See, e.g., Casson, supra note 5, at 9; Frank H. Knight, Risk, Uncertainty and Profit 197-232 (Harper & Row 1965) (1921). Explaining the “extreme assumptions” of neoclassical models, Mark Casson argues:

Simple neoclassical models assume that everyone has free access to all the information they require for taking decisions. This assumption reduces decision making to the mechanical application of mathematical rules for optimization. It trivializes decision making, and makes it impossible to analyse the role of entrepreneurs in taking decisions of a particular kind.

Casson, supra note 5, at 9.
opportunity to exploit information asymmetries and other market imperfections.\footnote{Casson, supra note 5, at 13.} For the same reasons, there is generally less risk, at least of the unknowable sort.\footnote{Stephen F. LeRoy & Larry D. Singell, Jr., Knight on Risk and Uncertainty, 95 J. POL. ECON. 394, 401 (1987).} Within the neoclassical tradition, there is some limited support for entrepreneurial behavior from Milton Friedman, who celebrates the freedom of individuals to choose how, and under what conditions, to participate in the market.\footnote{See Milton Friedman & Rose D. Friedman, Free to Choose: A Personal Statement 9-11 (1980).} In this world view, the best course of action to alleviate poverty is to give resources to those individuals best positioned to exploit them on behalf of society, a familiar refrain in neoclassical analysis.\footnote{Id. at 9-23.} As Cummings has described, one of the reasons that the CED movement won such broad-based support was its emphasis on individual choice and the potential of poor people to bootstrap themselves into wealth, Friedman-style.\footnote{Cummings, Progressive Politics, supra note 50, at 437-41.}

However, the more sophisticated theoretical foundation for CED's reliance on entrepreneurship is provided by a number of economists, regularly described as early institutional economists. These economists focused on the ways in which entrepreneurs, as distinguished from firms operating in the steady-state economy, exploit imperfect market conditions.\footnote{See infra text accompanying notes 88-101.} This Article focuses on the contributions of these early thinkers and those who built directly on their work in developing entrepreneurship theory, because such a focus demonstrates the disconnect between entrepreneurship and CED.\footnote{See infra text accompanying notes 88-101.} It is important to acknowledge here, however, that our focus provides a very incomplete picture of entrepreneurship theory more broadly, which has developed substantially since the early contributions of these pioneers. Thus, for example, analyses, such as Professor Robin Paul Malloy's, on the importance of creativity substantially add to the contemporary understanding of entrepreneurship.\footnote{See Robin Paul Malloy, Law and Market Economy: Reinterpreting the Values of Law and Economics 79-81 (2000); see also Robin Paul Malloy, Law in a Market Context: An Introduction to Market Concepts in Legal Reasoning 80-82 (2004).}

While we believe that Malloy's analysis of creativity and other studies may well add support to our claims, we limit our focus in this Article for the purpose of making a narrower point.

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80. See Casson, supra note 5, at 13.
82. See Milton Friedman & Rose D. Friedman, Free to Choose: A Personal Statement 9-11 (1980).
83. Id. at 9-23.
84. Cummings, Progressive Politics, supra note 50, at 437-41.
85. See infra text accompanying notes 88-101.
86. See infra text accompanying notes 88-101.
Focusing on this narrow group of economists, Frank Knight described the entrepreneur as creating wealth by bearing market uncertainty.88 Israel Kirzner similarly emphasized the entrepreneur’s important quality of “alertness to the existence of opportunities that have been overlooked,” and ability to exploit such opportunities sufficiently to provide new resources and wealth for herself and those whom she employed.89 According to Mark Casson, innovation emerges from the entrepreneur’s ability to access and leverage imperfect information that might not be available to others.90 By this means, and ultimately by means of “coordinat[ion] of scarce resources,” the entrepreneur could produce economic value.91 Early institutional economists also waxed poetic about the character traits required for successful entrepreneurship. According to Max Weber, for example, entrepreneurs must have energy, “clarity of vision,” and certain outstanding “ethical qualities.”92 Joseph Schumpeter waxed poetic about the entrepreneur’s “joy of creating” and “energy and ingenuity.”93 Jean-Baptiste Say pinpointed motivation.94 Kirzner focused on the relevance of “freedom” to the entrepreneur, especially the freedom to choose.95

Mapping this theory of entrepreneur as exploiter of market failure onto the inner-city economy described by scholars such as Troutt, Simon, and Cummings suggests a compelling fit. As Simon, Cummings, and others have discussed,96 to the extent it is possible to find actors within the inner city97 to take on the role of entrepreneur, entrepreneurship seems a potent way in which to solve the failing urban economies in which many poor people seem mired.98 By this reasoning, where certain market actors understand the market needs of those living in the inner city, and where those needs are opaque to firms outside the inner city, the insiders should be able to exploit information asymmetries and risk for the purpose of creating new products, services, and,
ultimately, wealth. Moreover, as recent and compelling anecdotes of hardworking and ingenious inner-city entrepreneurs make plain, those below the poverty line are every bit as capable of exhibiting vigor, boldness, motivation, persistence, and outstanding ethics. 99

Underlying, and perhaps necessitating, these character traits, however, is the basic imperative on the entrepreneur to accept losses that others are not able, willing, or comfortable to bear. To leverage information asymmetries and uncertainties, the entrepreneur must accept the possibility that such uncertainties will result in loss rather than gain. 100 It is commonplace in investment ideology that the majority of investments in entrepreneurial ventures will result in a loss of the investment, leaving investors to profit from a very small number of (highly profitable) enterprises. 101 For the entrepreneurs involved in the failing ventures, as distinguished from the investors, diversification of portfolios may not be an option.

The critical question left unanswered by entrepreneurship theory, then, is what, besides these few key personality traits, does it take for an entrepreneur to successfully leverage risk when that risk is associated with potentially monumental losses?

B. Entrepreneurship as an Empirical Matter: What the Data Shows

Turning from theory to data, the most extensive and reliable empirical studies of American entrepreneurs begin to answer that question. They reveal a picture that overlaps in some compelling ways with the theoretical picture provided by the institutional economists, but that also goes beyond the more mystical understanding of entrepreneurship shared by the institutional economists.

Perhaps the most convincing studies are those based on the Panel Study of Entrepreneurial Dynamics ("PSED" or "Study") dataset sponsored by the Entrepreneurial Research Consortium, a group of thirty-four entities including the SBA Office of Advocacy and the Ewing Marion Kauffman Foundation. 102 The PSED dataset is particularly robust for a number of reasons. Perhaps most importantly, it is extremely detailed, encompassing 5000 variables ranging from characterological to aspirational, from information about the businesses to details about their

100. KNIGHT, supra note 79, at 276-78.
founders. Among the more nuanced set of factors included in the PSED are those defining success or failure in the start-up process. The PSED dataset is also such a valuable source because of the length of longitudinal study involved, spanning more than seven years, as well as the national scope of data collection.

In their detailed analysis of the PSED data, the co-principal investigators of the Study begin with the same basic set of premises held by the institutional economists. They take as a given that entrepreneurs bear "some risk or uncertainty," and that this may require a unique "entrepreneurial personality," though they point out that research has thus far failed to develop any stable empirical concept of what exactly that personality is. They appear to view the PSED, however, as removing the mysticism from entrepreneurship. As they put it: "A key question that follows relates to the types of individual behavior that lead to the creation of these new ventures." One implicit message of their analysis is that it is not satisfactory to simply conclude that entrepreneurs can solve puzzles in a manner that leads to new wealth. The entrepreneurial process, they claim, can be better understood and more specifically nurtured to produce more successful entrepreneurship and thereby greater wealth. Their drive for certainty helps to clarify what exactly is required for an entrepreneur to bear uncertainty successfully.

In describing the factors that most contribute to the likelihood that a nascent enterprise will develop successfully into a more stable new firm, which they describe as a key indicator of entrepreneurial success, the PSED authors part ways to some extent with the institutional economists by concluding that the data suggests that personality is less important than what an entrepreneur does in a critical and compressed period of time during the start-up phase. True, certain personal traits, namely "locus of control," "response to pressure by doing better," "economic sophistication," and "social confidence," do have "some impact." So, too, do being Caucasian or Hispanic, and being in more rural areas where competition among businesses is lower.

103. Id. at 165.
104. Id. at 210-13.
105. Id. at 178-79.
106. Id. at 168.
107. Id. at 169 (internal quotation marks omitted).
108. Id.
109. Id. at 222-24.
110. Id. at 212-13.
111. Id. at 212.
112. Id.
But while casual readings of "top-ten" books about secrets to successful entrepreneurship would suggest these are the characteristics most predictive of success, Paul Reynolds and Richard Curtin argue that the most important factors are not personality based. Rather, the factors include: business experience, especially in the same industry, financial investments by the entrepreneur and her "startup team," activity focused on production of the goods or services, marketing of the new venture, and development of organizational and financial structures for the business—especially during a compressed period of time at the start-up phase. 113 Reynolds and Curtin point out that, despite their predictive value, these factors still can be poor investments overall for individual entrepreneurs and especially for their families, because the failure rate of new businesses is so high. 114

Nevertheless, their point is clear: "It is what an entrepreneur does, not who the entrepreneur is, that counts." 115 Moreover, in important respects, what the entrepreneur does in order to leverage uncertainty effectively is not at all mysterious. 116 What is required is experience in the trade, financial inputs, and a great deal of time spent on a few obvious activities. 117 To Reynolds and Curtin, this is good news because it should be quite possible to increase the success rate of new businesses by providing appropriate skills development and technical assistance to them. 118

Although the Reynolds and Curtin's dogmatic tone sometimes suggests otherwise, they do not appear to be suggesting that these six factors replace the ability to leverage uncertainty and create something out of failing markets. 119 This remains the ultimate ingredient in entrepreneurial success. Without it, no amount of time, financial input, or hard work might suffice. But such analyses do add critical information about why many current attempts at entrepreneurship fail. Both the creative genius, and the more basic knowledge, financial contribution, and time inputs, are necessary to make a successful venture.

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113. Id. at 211.
114. Id. at 216-17.
115. Id. at 213.
116. See id. at 210-13. One wonders, also, whether the American commitment to principles of equality drive claims of this sort. At some level, the hope appears to be that everyone can be an entrepreneur, a view that is manifested in university programs that provide training and degrees in entrepreneurship.
117. Id.
118. Id. at 213.
119. Id. at 168-69.
Reynolds and Curtin’s conclusions are echoed by other empirical studies, most notably the meta-analysis conducted by a team headed by James Barth, and the qualitative work of Scott Shane, as discussed in his book, The Illusions of Entrepreneurship. For the most part, both analyses make similar empirically-based observations. In analyzing why women- and minority-owned businesses in particular fail at a higher rate, Shane emphasizes the vicious cycle that results from inadequate start-up financing. Barth and his coauthors also focus on inadequate financing as the critical hurdle to entrepreneurial success, a hurdle which they blame on extensive discrimination. In contrast to Reynolds and Curtin, however, the conclusions Shane draws from the data are a good deal more pessimistic. Shane argues that the high-failure rates of small businesses counsel against providing governmental and private resources to support the vast majority of new entrepreneurs in developing small businesses. Most of the time, such resources are wasted. Instead, he argues that governmental and other providers of technical and financial assistance to small businesses should apply the same extraordinarily rigorous standards that venture capitalists use in determining whether to invest in businesses. While this would mean investing in many fewer small businesses, Shane argues that the result would, and should, be investing in the creation of better and more permanent jobs with larger, more established businesses.

C. Entrepreneurship and Poverty: Where Is the Nexus?

This more precise view of theory and data about entrepreneurship provides a clearer basis for understanding why, as a systemic matter, entrepreneurship has failed to alleviate poverty in U.S. inner cities. Simply put, poor people are in a uniquely bad position to be entrepreneurs, at least to the extent that entrepreneurship is defined and supported in the tradition of the institutional economists and the policy initiatives of Clinton’s workfare and follow-on programs. Both as a matter of theory and as a matter of data (what little there is), people...
below the poverty line are ill positioned to take the risks that the institutional economists posit are imperative to entrepreneurial success and that the PSED Study claims must be backed up by significant investments of time and money.

To begin with the theory, Casson and others emphasized the entrepreneur’s gift for making productive use of information asymmetries.\textsuperscript{128} If the entrepreneur can use her unique knowledge of a market, she might be able to create valuable new products and services that would otherwise be unavailable due to a widespread ignorance of market needs, preferences, or both.\textsuperscript{129} To this point, the aspirations of Troutt and others seem supported by the theory.\textsuperscript{130} It ought to be the case that those who live in the inner city know best what products and services are most in demand. As the consumers are within a precise cultural, spatial, and historical tradition, local entrepreneurs ought to be able to exploit this knowledge.\textsuperscript{131}

As Knight recognized, however, making good on such an asymmetrical advantage requires the entrepreneur to accept and manipulate market uncertainty—that is, market risk of a type that cannot be limited by means of insurance.\textsuperscript{132} It is this very uncertainty, due to changing consumer tastes or the novelty of the products or services provided, for example, that is the basis for entrepreneurial gain.\textsuperscript{133} The entrepreneur lacks information as well.\textsuperscript{134} Moreover, she lacks the reliability of repetitive market behaviors to serve as a basis for future prediction.\textsuperscript{135}

The empirical studies fill in the picture about what is required for an entrepreneur to be able to accept such a level of uncertainty. To the extent that these studies point to attitude, or even desire to accept and leverage risk, there is no reason to believe that those below the poverty line are any less motivated, persistent, or imaginative in their entrepreneurial instincts than those above it.\textsuperscript{136} But these studies point even more to the ability of successful entrepreneurs (and their friends and families) to risk significant amounts of time and money, and to

\textsuperscript{128.  CASSON, supra note 5, at 201; KIRZNER, supra note 5, at 110.  
129. KIRZNER, supra note 5, at 110.  
130. Troutt, supra note 74, at 488.  
131. DAVID A. HARPER, FOUNDATIONS OF ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT 21 (2003); see also McFarlane, supra note 50, at 305-07.  
132. KNIGHT, supra note 79, at 251, 282-83.  
133. Id. at 281-85.  
134. Id. at 281, 285.  
135. Id. at 281-82.  
136. Indeed, Sudhir Alladi Venkatesh, in his numerous anecdotes, suggests quite the contrary. See VENKATESH, supra note 99, at 101.
survive when the returns from their risk taking are net losses (sometimes monumental ones) rather than gains.\textsuperscript{137} This is one of the points at which the social phenomenon of poverty collides with the more microeconomic image of the entrepreneur. It is simply unreasonable to expect that those below the poverty line could survive the losses that invariably accompany entrepreneurial endeavors. At a certain level of poverty, the choice is between feeding one’s family and nurturing a business investment, and it is untenable to expect an entrepreneur to make a decision that results in a loss of food for her family. Similarly, it is untenable to expect a low-income entrepreneur to set aside the demands of caring for her children to invest the extraordinary number of hours in a compressed period during the start-up phase that Reynolds and Curtin identify as one of the primary criteria for entrepreneurial success.\textsuperscript{138}

Moreover, for those below the poverty line, we could expect to see the inability to accept risk exacerbated by two further limitations. First, it would be unreasonable to expect low-income entrepreneurs to be able to hedge against risk by means of developing and maintaining diverse assets. For example, while developing new and untested products, a well-established entrepreneur would likely secure her position in the marketplace, as well as her financial security, by choosing a desirable business location and a handsome piece of real estate in which to do business.\textsuperscript{139} But, while it is a key ingredient to business success, location is much more difficult to control below the poverty line. The same could be said of personal assets, or of financing sources for the business.\textsuperscript{140} A second limitation for a low-income entrepreneur that could well follow from the more limited financial inputs to the business would be a more restricted upside. In other words, the poverty of financing likely limits the size of the market that is accessible to low-income entrepreneurs.

The implications of business risk for low-income entrepreneurs give rise to a second systemic collision between entrepreneurship and poverty: as a matter of policy, it seems particularly wrong to invest in a program that relies on such risk taking as a systemic means of poverty alleviation. It is one thing to support low-income individuals who willingly, even enthusiastically, embrace risk as a means of escaping poverty and finding a fulfilling means of income development. It is quite another to require it. Such a policy is even more problematic when it

\begin{itemize}
  \item \textsuperscript{137} Reynolds & Curtin, \textit{supra} note 101, at 216-17.
  \item \textsuperscript{138} Id. at 211.
  \item \textsuperscript{139} THOMAS W. ZIMMERER & NORMAN M. SCARBOROUGH, \textit{ESSENTIALS OF ENTREPRENEURSHIP AND SMALL BUSINESS MANAGEMENT} 367 (4th ed. 2005) ("For many businesses, choosing the right location is a key success factor.").
  \item \textsuperscript{140} SHANE, \textit{supra} note 65, at 80-83; Barth et al., \textit{supra} note 120, at 104-05.
\end{itemize}
embraces entrepreneurship to the exclusion of other income development opportunities, as has been more emphatically the case since Clinton's workfare programs began to embrace entrepreneurship. 141

Moving to the level of data, in contrast to the wealth of studies that exist about entrepreneurship by individuals above the poverty line, there is much less data about entrepreneurship below the poverty line. Although the PSED and other datasets include data about low-income entrepreneurs, the data is not separated in such a way as to allow for ease of comparison by income level. 142 Thus, what we are left with is more qualitative data than quantitative, and the focus of the qualitative studies is on so-called "microenterprise." One particularly good example of such studies is Bootstrap Dreams, which describes the experiences of a microenterprise support program operating in a large western metropolitan area. 144

This study's description of the experiences of the low-income entrepreneurs supported by the program, most of whom were women, 145 is strikingly consistent with the theoretical gaps previously identified. As hoped, a number of the entrepreneurs, perhaps thanks to the support of the program, were able to identify niche markets for which to develop unique products and services, such as culturally specific cuisine or art. 146 Their deeper knowledge of their target audience did seem to allow them to develop new products and services that were not previously available from the vendors already located in their neighborhoods. 147 Moreover, a study by Nancy Jurik and another compelling recent study both provide countless riveting examples of the strength of character and devotion exhibited by the entrepreneurs who worked to bootstrap their businesses into viability. 148 Finally, it is apparent from both studies that many of the entrepreneurs also managed to devote an extraordinary number of hours

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141. See Clay & Jones, supra note 50, at 10.
144. See generally JURIK, supra note 66.
145. Id. at 121-22.
146. Id. at 120, 138.
147. Id. at 157-58.
148. Id. at 138, 155. Sudhir Alladi Venkatesh details his research on "the underground activity in one urban community, Maquis Park. . . . roughly from 1995 to 2003." VENKATESH, supra note 99, at 13-14. He observes that "[s]ome entrepreneurial women sell foodstuffs, homemade clothing, counseling and psychic services, social security cards, hairstyling and hair-care products, pirated movies, and kitchen supplies . . . . Some have computers and prepare resumes, others offer tax preparation or basic accounting services." Id. at 32.
to their businesses, despite the responsibilities of child care, caring for sick relatives, health problems, and other difficulties.

But it is also apparent from both studies that the imposition of managing these difficulties derailed the start-up efforts of low-income entrepreneurs to a greater extent than for entrepreneurs above the poverty line. These were important structural barriers that the microenterprise support program did not, at first, address as such. The diversion of resources required in these circumstances took the form of time and money, both of which are critical components—identified by Reynolds and Curtin and many others—in leveraging uncertainty for entrepreneurial gain. Not surprisingly, the anecdotal studies fully substantiate the prediction that a low-income entrepreneur, with no alternatives for day care or other supports for her family, will divert her attention away from her business to address her family’s needs. Similarly, many studies have confirmed the existence of additional structural barriers resulting from a lack of options concerning business location, financing, and target market. Finally, important additional

149. JURIK, supra note 66, at 154-55, 157; VENKATESH, supra note 99, at 39. On Maquis Park, Venkatesh remarked:

Any day brings the urgent need to make rent payments and put food on the table, ensure that winter clothes are purchased and that children reach school. There are other adults who live with them and who depend on them to make good decisions in the home.... And for a few women... who take a greater role in public affairs, such as pressuring police to patrol parks or close down abandoned buildings where drugs are sold, stabilizing the home environment reaches beyond the domicile.

VENKATESH, supra note 99, at 39.

150. JURIK, supra note 66, at 155.

151. Id. at 140.

152. VENKATESH, supra note 99, at 34 (detailing the impact of multiple challenges to low income business owners, and noting that one of the study participant’s businesses needed to close down for one month each year due to “a variety of circumstances, including family trips to Arkansas, hospitalization, arrest and conviction of a relative or family member”).

153. See JURIK, supra note 66, at 155. Jurik gives compelling examples. In the case of a homeless woman in training sessions to support entrepreneurs starting home-based businesses, the woman appropriately asked how she could start such a business when she did not even have a home. Id. at 140. In another case, a woman who was having some success running a clothing manufacturing business had to close the business when her father became ill and began living with her. Id. at 155. Her family responsibilities led her to switch to an in-home daycare business. Id. Jurik also gives numerous examples in which “competitive disadvantages” led to failure to thrive, and in some cases, the closing of operations. Id.; see also VENKATESH, supra note 99, at 34-35.

154. JURIK, supra note 66, at 138-39.

155. See Reynolds & Curtin, supra note 101, at 211.

156. JURIK, supra note 66, at 138-58; Nitin Bhatt et al., The Challenges of Outreach and Sustainability for U.S. Microcredit Programs, in REPLICATING MICROFINANCE IN THE UNITED STATES, supra note 19, at 191, 210-11. Venkatesh points out the structural barriers facing the entrepreneurs of Maquis Park, stating that:

At a quick glance, the legitimate entrepreneurs of Maquis Park look as if stuck in a rut or, at best, economically immobile.... A few may expand their business, move to
structural barriers were the racism and sexism experienced by the entrepreneurs in the course of establishing their businesses—barriers for which, again, there was no targeted support. 157

What is important to note about these structural barriers is their effect on the capacity of small businesses to retain the features that define them as “entrepreneurial.” Prominent among those criteria are nimbleness, dexterity in responding to changing consumer tastes and new information, and, in general, the ability to take advantage of unpredictability in the market. 158 When a small business lacks options for avoiding and minimizing these barriers, it literally loses the attributes of entrepreneurial advantage. It does not have the capacity to manage risk. Moreover, while it is much more speculative to consider the connection between these barriers and that almost magical spark of creativity described by the early institutional economists, it is reasonable to assume that creativity is also dampened by the structural barriers described in these studies, an effect that such programs are not really able to counteract.

To date, programs such as the one described by Jurik have made heroic efforts to minimize the effects of the structural barriers that inhibit entrepreneurial gain. For example, the program in Jurik’s study focused on lending circles in order to leverage the knowledge and middle-class neighborhoods, and so on, but this is rare. Over time, most do not seem to leave the physical area and its residents, irrespective of their stability and solvency. Their webs of exchange, composed largely of other local, ghetto-bound individuals and businesses struggling to survive, do not seem to afford much room for entrepreneurial growth. So, for the entrepreneur, commerce is not as the textbooks read, namely, the continuous pursuit of opportunities to improve one’s economic position.

VENKATESH, supra note 99, at 103.

157. JURIK, supra note 66, at 139. Venkatesh also highlights the racism and sexism faced by Maquis Park entrepreneurs, noting that:

[Commercial success is a product of a stable local customer base and sustained levels of consumer capacity in the surrounding area; safe, hospitable, and attractive business climates that have active police surveillance and decent city services; and a municipal commitment to make sure trash is picked up, cars are towed, and city development and economic funds are allocated to community businesses.

Not only do predominantly African American inner-city neighborhoods lack these amenities, but African Americans differ from whites because they have never had the luxury of moving out of their community to develop new business opportunities when the local area runs dry. The high levels of hostility they have faced when trying to outreach to white neighborhoods, win citywide contracts, enter white-dominated union trades, and participate generally in mainstream economies is staggering. And this discrimination still exists, despite the great strides African Americans have made. In this historic context, we should not find it surprising that the merchants of Maquis Park embrace their locally based social networks and turn primarily to each other to support their respective commercial pursuits.

VENKATESH, supra note 99, at 118 (footnote omitted).

158. See supra text accompanying notes 87-95.
support of fellow entrepreneurs to avoid some of the informational and resource shortcomings of their clients. 159 Many programs have followed suit, providing more financial support for the businesses, as well as far more sophisticated and targeted training and technical assistance. 160 Other programs have stepped in to provide support with child care, housing, and domestic violence and other forms of abuse. 161 But, both a lack of funding for these programs and the breadth of the challenges contribute to a sense that such efforts cannot ultimately suffice to equalize the footing for low-income entrepreneurs.

And, indeed, the survival rates, profit levels, and other measures of success of these small businesses support this sense that low-income entrepreneurs are losing ground rather than gaining it. As Shane describes in detail, the success rates of small businesses in general are much lower than larger, more established businesses. 162 But for lower-income and minority-owned enterprises, the numbers are even starker. For example, in his study of one inner-city neighborhood, Sudhir Alladi Venkatesh found that the average tenure of a small business was three to five years, at which point the business either filed for bankruptcy or was sold. 163 Using a much broader dataset, Barth, and his colleagues Glenn Yago and Betsy Zeidman, found “a striking imbalance in distribution” of “firms, receipts, employees, and payroll” among small businesses depending on the gender, race, ethnicity, and income level of those businesses’ owners. 164

Viewed as a story about regional or even local economic development, these kinds of statistics are discouraging because they

159. JURIK, supra note 66, at 140-54.
160. See, e.g., Lisa J. Servon, Fulfilling the Potential of the U.S. Microenterprise Strategy, in REPLICATING MICROFINANCE IN THE UNITED STATES, supra note 19, at 169, 177 (“Nearly all U.S. microenterprise programs include a training component, which in many cases dominates the lending activity.”); Talen et al., supra note 19, at 333.
161. Cummings, Developing Cooperatives, supra note 63, at 187 & n.35, 192.
162. See SHANE, supra note 65, at 147.
163. VENKATESH, supra note 99, at 123. Describing the difficulties of conducting business in a “ghetto,” Venkatesh asserts that:

Maquis Park, like many other inner-city neighborhoods, simply suffers from the lack of a community that consistently spends money. . . . [T]he customer base wavers, usually declining over time. These shifts lead to expected outcomes for businesses that cater to local populations. . . . The histories of many of the retail businesses on the street show a cycle of bankruptcy, sale of property to a friend or relative, and subsequent revival of commercial activity under a new name. There is considerable turnover at the level of small businesses, particularly retail establishments. Only 9 percent of the stores on the street have been in existence for longer than ten years. The average tenure appears to be three to five years, at which point the owner declares bankruptcy or sells the store.

Id.
164. Barth et al., supra note 120, at 73.
suggest that the programmatic turn to entrepreneurship has not produced what seemed possible in theory. It simply has not been the case that governmental and private investment have thus far been able to discover and nurture small numbers of marginalized entrepreneurs to the point where they produce large numbers of jobs and contribute meaningfully to economic development. Entrepreneurship programs have not been able to make systematic use of a program of targeted support for a few small businesses with high-growth potential.

Viewed as a story about individual poverty alleviation, the statistics are even more striking. They depict a system in which governmental and private agencies assist low-income individuals in investing vast amounts of time, money, credit, and other resources to develop small businesses with no guarantees of success for the business or a stable source of income at the end of the process. In fact, the vast majority of the time, the resulting businesses do fail, and their proprietors are left with fewer resources than they had when they began their start-up activities. By this measure, as a system of poverty alleviation, entrepreneurship support programs are arguably failing.

III. POVERTY ALLEVIATION AND COMMUNITY ECONOMIC DEVELOPMENT

This Part turns from theory (and data) to practice by describing what CED practitioners are, in fact, doing to support small business development in the name of poverty alleviation. In addition to providing snapshots of the work of CED practitioners nationwide in this area, this Part also presents a case study of the legal services provided to a single client by Northeastern University School of Law’s Community Business Clinic (“Clinic”). Briefly stated, this analysis reveals that, while approaches, and even basic goals, vary widely among practitioners, their work nonetheless follows a pattern. Crucially, this pattern is not consistent with the types of assistance that entrepreneurship theory would argue in favor of supporting. This is so despite the fact that many CED practitioners claim to be guided by some of the core principles of entrepreneurship theory. Instead, as this Part discusses in considerable detail, the pattern supports a different theory—one that relates not to entrepreneurship, but to poverty alleviation.
A. In Practice: Two Distinct Approaches to Income Development

What is noteworthy about CED practitioners is that, as diverse as their practices are, and as much of a range as they cover, none of them really provides services that would be most consistent with entrepreneurship theory. None focuses exclusively on nurturing a few promising small businesses with high-growth potential. Given the disturbing implications of using a mode of poverty alleviation that targets only a "chosen few," this is not surprising. Instead, these practitioners focus on the question of how best to alleviate poverty and produce local economic development by creating a means of sustainable income for people below the poverty line. However, the common goal of poverty alleviation does not resolve the question of what are the means to that end. Practitioners are drawn in different directions.

The definition of CED introduced earlier includes three core elements: outcomes measured in such terms as jobs and business opportunities; facilitators, such as non-governmental organizations; and accountability to residentially-defined communities. This definition contains a tension captured by some commentators using the following shorthand for the three components of CED: an economic, profit-driven approach (E); an institutional development approach (ED); and a community empowerment approach (Ed). This shorthand goes to the heart of distinct practices of poverty alleviation. In this Subpart, we describe the two main approaches adopted by CED practitioners engaged in income development programs: interventions focused on individual businesses and practices driven by community goals. Both center their efforts on small business development, but each camp does so for seemingly different reasons and for the purpose of accomplishing quite distinct goals. We conclude this discussion by considering whether there is any basis for unifying the work of the two camps.

One consistent strategy in CED is to think, at the most pragmatic level, about how to increase income and build careers for low-income people, individual-by-individual. The most well-known representative of this approach is the early work of Jones at the George Washington University Law School Economic Development Clinic, one of the first...
community economic development clinics in the United States. According to this pragmatic perspective, low-income people often seek to start businesses out of necessity. Lack of education and criminal records can make paid employment a virtual impossibility, and drive those so-constrained to self-employment. When welfare recipients try self-employment, it is a choice frequently mandated by the need to control the hours and conditions of employment in order to deal with competing demands on their time. For some, starting a business is a choice that allows them to leverage local knowledge for individual advantage and to avoid the imposition of educational and experiential prerequisites of paid work.

The George Washington University Small Business Clinic ("GW Clinic") began operating in 1977 with SBA funding to help "caterers, vintage stores, antique dealers and consignment shops, computer consultants, barbers, massage therapists, beauticians, book publishers, and other entrepreneurs." Jones described the early-stage entrepreneurs who made use of the GW Clinic as building the social and human capital necessary to achieve business success. She recalled experiences of helping clients gain financial literacy and self-esteem as crucial interventions in her work supporting business people. Interestingly, she described these services as "human development and economic development." Jones observed that business clients sought a

172. Jones, Small Business, supra note 50, at 211.
173. Id. at 217, 222-23 (describing a client's party planning business, which she developed as she recovered from drug addiction).
176. Id. at 208.
177. Id. at 214-17; see also William H. Mellor & Patricia H. Lee, Institute for Justice Clinic on Entrepreneurship: A Real World Model in Stimulating Private Enterprise in the Inner City, 5 J. SMALL & EMERGING BUS. L. 71, 76, 85-86 (2001) (instructing students to help inexperienced entrepreneurs to identify and fill missing personal and interpersonal skills in order to achieve success at the Institute for Justice Clinic on Entrepreneurship at the University of Chicago Law School).
179. Susan R. Jones & Amanda Spratley, How Microenterprise Development Contributes to
sense of purpose, self-sufficiency, or simply support in learning how to avoid disputes with customers. Jones’s approach was to respond to these diverse needs by supporting the businesses through which those needs were expressed.

A second, and quite distinct, approach to income development was embodied by the National Economic Development Law Project, which began offering support to nascent Community Development Corporations (“CDCs”) in the 1970s. This approach evidenced a suspicion that individual businesses, however successful, do not build strong communities, and will fail to result in more than marginal poverty alleviation. Practitioners adopting this approach see their work with individuals as serving a broader community agenda, and sometimes choose to focus on organizational clients or on policy matters in an effort to build stronger communities. The National Economic Development Law Project involved lawyers by encouraging legal services offices to get involved in technical assistance largely aimed at CDCs.

The goals of the CDCs were responsive to broad community needs. The activities undertaken were ambitious and diverse, involving the development of everything from needed retail businesses, to community banks and credit unions, real estate management, and even manufacturing and commercial services. In the forty plus years since

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181. Id. at 226.

182. Id. at 221.

183. SUSAN R. JONES, LEGAL GUIDE TO MICROENTERPRISE DEVELOPMENT 11-14 (2004) [hereinafter JONES, LEGAL GUIDE]. By the time of this publication, Jones wrote eloquently of a nuanced approach to development that includes much about human capital, “including self-esteem, confidence, and the drive to obtain financial self-sufficiency,” as an essential constituent of development. Id. at 13.

184. See, e.g., Arthur I. Blaustein, *National Housing and Economic Development Law Project: Community Economic Development*, 4 CLEARINGHOUSE REV. 301, 301-02 (1970) (discussing economic development projects that have been successful with the initiative of attorneys who went beyond the traditional attorneys’ role, including a community-owned shopping center and a consumer cooperative); see also Anderson, supra note 174, at 929-30 (describing a group of women in Las Vegas who successfully formed a CDC with the assistance of a legal services organization); Arthur I. Blaustein, *Community Economic Development: A Critical Role for Legal Services Attorneys*, 13 CLEARINGHOUSE REV. 748, 752-54 (1980) [hereinafter Blaustein, A Critical Role] (discussing the necessity of a shift in strategy for legal services attorneys in order to assist in various community-based projects such as health centers, housing projects, and credit unions).


187. NAT’L HOUS. & ECON. DEV. LAW PROJECT, supra note 185, at 22.

188. See Blaustein, *A Critical Role*, supra note 184, at 753-54. An example of a diverse, early
those initial efforts, interest has waxed and waned for support of this form of economic development, but some level of continued support for such efforts has persisted. 189

Each of these approaches has received scholarly attention. Cummings has leveled a provocative critique of the individualized approach adopted by some CED practitioners. 190 In a series of articles, Cummings challenges such work because it inadequately redresses poverty, privileges local incrementalism over broad structural change, and impedes the formation of cross-racial alliances. 191 He concludes that market-driven community development has not altered the entrenched patterns of poverty. 192 Michael Diamond makes many of the same points, contending that change comes only when power can be developed and exercised. 193 He points out that economic development has meant various things, including the creation and expansion of businesses, the creation of jobs, and the building of institutions. 194 Each of these would call for different mechanisms to bring them to fruition, but will have lasting impact only to the extent that the community changes. 195 Sameer Ashar critiques public interest lawyers who pursue rights-based analysis rather than building a resistance movement. 196

The criticism of the failure to make political impact as a necessary prerequisite for poverty alleviation reflects a long standing point of contention between those who focus on providing an individual service

use of the CDC is the Harlem Commonwealth Council in New York City, which at one point owned two manufacturing companies and developed a land banking program. See John T. Baker, Community Development Corporations: A Legal Analysis, 13 VAL. U. L. REV. 33, 51 (1978). Another example is the Hough Area Development Corporation, which created the Martin Luther King Shopping Plaza, in Cleveland, Ohio. Id. at 51-52. The plaza provided housing for low-income families and boasted a shopping area with seventeen businesses. Id. at 52. Similarly, Zion Investments Associates at one time had a housing development, a shopping center, an aerospace components company, and a garment manufacturing company. See Nels J. Ackerson et al., Note, Community Development Corporations: Operations and Financing, 83 HARV. L. REV. 1558, 1564-65 (1970); see also CHRISTOPHER WALKER, COMMUNITY DEVELOPMENT CORPORATIONS AND THEIR CHANGING SUPPORT SYSTEMS 13 (2002) (listing a broad range of activities carried out by CDCs as reported by a 1999 Urban Institute survey—examples include commercial developments, homeownership programs, and greenway management).

189. SIMON, supra note 19, at 7.
191. Id. at 455-58; see also Scott L. Cummings, Between Markets and Politics: A Response to Porter’s Competitive Advantage Thesis, 82 OR. L. REV. 901, 910-18 (2003); Cummings & Volz, supra note 24, at 159-60.
193. Diamond, supra note 50, at 163.
194. Id. at 163-64.
195. Id. at 164-65.

http://scholarlycommons.law.hofstra.edu/hlr/vol42/iss3/5
and those who concentrate on systemic change, as though those were two distinct ways of conducting legal work. The political critique of individual service provision rests on an assumption that meaningful change cannot be gained or sustained without mobilizing large groups of people and keeping them organized to wrest power from those who have it. While it is true that lasting change requires power realignment, the insight can be misapplied to create an unnecessary tension between work focused on individuals and work designed to implement large-scale objectives. Individual interventions provide the concrete experiences that can form a solid foundation for broader change.

B. A Case Study

In this Subpart, we supplement our review of the work of CED practitioners around the country by presenting a case study describing our work for a client of our Clinic. As is the case with other CED practitioners, it is quite clear that our work could not be described as consistent with entrepreneurship theory. Instead, we too, have provided services that emphasize and support the pursuit of sustainable income for each of the individuals involved in our client’s business.

Our Clinic represents the Boston Association for Childbirth Education & Nursing Mothers’ Council (“BACE-NMC”), which began training women to teach childbirth classes in 1953. In 2009, when our representation began, the Board saw an opportunity to create a multicultural cadre of childbirth educators to provide evidence-based classes about birth in many languages and in culturally sensitive ways. The changing demographics in Boston left immigrant women without targeted childbirth education. BACE-NMC was uniquely positioned to recognize the need and how to fill it. The educators were recruited from groups of previously trained labor coaches—doulas—who had been


198. See Carol Sakala & Maureen P. Corry, Evidence-Based Maternity Care: What It Is and What It Can Achieve 21 (2008), available at http://www.childbirthconnection.org/pdfs/evidence-based-maternity-care.pdf (stating that evidence-based childbirth education encourages women to understand natural childbirth and to avoid unneeded medical interventions). In beginning our representation, we took seriously the suggestions offered by Paul Tremblay. See Paul R. Tremblay, Counseling Community Groups, 17 CLINICAL L. REV. 389, 436-37 (2010). Tremblay cautioned that representation not be undertaken until assurance that the group identifies as a group with a clear membership and decision-making process. Id. This advice is invaluable in getting the relationship firmly grounded from the start.

educated and mentored over the years by the new director of BACE-NMC and who were interested in new growth and improved income opportunities. Trained doulas earn fifteen dollars an hour, while childbirth educators earn triple that rate.

The obstacles to implementing the new program were significant. The move from being a caring and compassionate labor coach to being an informed and stimulating educator involves a transformation in knowledge and confidence. Making that transformation requires the individuals to undertake prolonged training while managing other demanding obligations, which means providing them with other legal supports to prevent diversion or distraction. To remain in the program, the women needed help in a variety of areas including negotiating skills, family law matters, immigration questions, and domestic violence counseling.

The original cadres of doulas were recruited by seeking out women in immigrant communities with an interest in birth and infant care. For

200. Id.
201. See id. Our recent experience with BACE-NMC tracked an earlier effort when we had provided the legal support to a series of worker owned co-operatives instigated by Cooperative Economics for Women ("CEW"). In this instance, immigrant women took on increasingly sophisticated business management roles as they grew in confidence and learned financial management along with the analytical and political skills that they wanted and needed to grow the businesses that were giving them new independence. See Hope Lewis, Women (Under)Development: The Relevance of "The Right to Development" to Poor Women of Color in the United States, 18 LAW & POL’Y 281, 294 (1996) (discussing CEW as a model for understanding the potential significance of right to development in an urban setting in the United States, and where the lead organizer of CEW, Rebecca Johnson, also relied on popular education as the critical methodology for moving the women from reticence to participation and from individual concerns to social effectiveness).

202. See BACE Childbirth Educator Training Program, BOSTON ASS’N FOR CHILDBIRTH EDUC. & NURSING MOTHERS’ COUNCIL, http://www.bace-nmc.org/#/become-a-childbirth-educator/4568183865 (last visited Apr. 11, 2014) (discussing how BACE-NMC certification allows the holder to teach for the largest private childbirth education provider (Isis Maternity) as well as to collect insurance payments from Network Health, the insurer of many of the most vulnerable of the population); Childbirth Educator, ISIS PARENTING, http://www.isisparenting.com/page/careerchildbirtheducator (last visited Apr. 11, 2014) (requiring childbirth educators to be knowledgeable in current evidence-based childbirth practices, to have a current childbirth education certificate, and to be comfortable speaking in groups); see also Get Certified as a Childbirth Educator, CHILDBIRTH & POSTPARTUM PROF. ASS’N, http://www.cappa.net/get-certified.php?childbirth-educator (last visited Apr. 11, 2014) (giving an overview of an alternative childbirth education certificate provider and its high standard of training, support, and encouragement).

203. Interview with Lorenza Holt, supra note 199; see also Cummings, Developing Cooperatives, supra note 63, at 191-92 (noting that women working in a Los Angeles cooperative face extra barriers complicating their participation in the program, such as work schedules, child care, substance abuse, and domestic violence).

204. Interview with Lorenza Holt, supra note 199.

205. Id. Training for this first group of twenty doulas was delivered at Cambridge Hospital in
many of the recruits, the connection to the birth process was more of a passion than a mere interest. Most were given sixty hours of training in the anatomy, physiology, and psychology of pregnancy, birth, and post-partum care. Over the last decade, many of the more than one hundred trainees had only a high school education or less, and most had a history of low-wage work. Once trained, these doulas provided labor support to low-income women at hospitals and birth centers in metropolitan Boston. It was from this reservoir of talent that a much smaller number of women were selected for training as childbirth educators. These added trainings, like any good adult educational curriculum, included a variety of educational methods, ranging from lectures and films to role-plays and simulations resting on popular education methodology. Both the doula and the childbirth educator programs were enhanced with individual mentoring and supplemented with periodic in-service training.

In the background, legal advisors from our Clinic worked to ensure that the trainees were given accurate and appropriate information about legal issues related to their practice, from spotting child abuse and domestic violence, to the importance and limits of confidentiality. Doulas and childbirth educators met with lawyers to discuss available support and training programs for their clients. They engaged in spotting legal problems and making crucial referrals. In short, they learned to use legal professionals in a way that permitted them to do their job more effectively.

1996. Id.
206. Id.
208. Interview with Lorenza Holt, supra note 199. Approximately fifty percent of recruits had high school degrees and history of work as housecleaners, restaurant workers, and factory workers, with a few employed as medical interpreters and medical outreach workers. Id.
209. Id. The doulas worked at community hospitals, Boston Medical Center, and Cambridge Health Alliance. Id.
210. Id. Some applied and others were recruited from the pool of doulas based on interest and ability. Id.
211. Id.; see also Memorandum from Lorenza Holt to authors, supra note 207.
212. Interview with Lorenza Holt, supra note 199; see also Memorandum from Lorenza Holt to authors, supra note 207.
213. Interview with Lorenza Holt, supra note 199.
214. Id.; see also Cummings, Developing Cooperatives, supra note 63, at 192 (discussing a legal services organization which helped a Los Angeles worker cooperative coordinate training sessions in ancillary skills such as business management, marketing, and accounting).
215. Interview with Lorenza Holt, supra note 199; see also Cummings, Developing Cooperatives, supra note 63, at 190.
216. Interview with Lorenza Holt, supra note 199; see also Cummings, Developing
The business of providing childbirth education raised significant issues. BACE-NMC had to be strengthened to assume its new mission. Two financial obstacles emerged with significant legal components. First, BACE-NMC needed funding to pay staff for the extensive training and mentoring program required to ready new childbirth educators.\textsuperscript{217} Second, even though BACE-NMC's model was for trainees to find placements with other organizations, BACE-NMC sought a source for ongoing payment for the educators to teach childbirth classes.\textsuperscript{218} In the absence of a ready solution, BACE-NMC opted to provide the training for free to prospective childbirth educators with the requisite language and cultural skills.\textsuperscript{219} Ongoing funding for these educators was available partly from insurance reimbursement that was arranged with one of the largest insurers of low-income patients.\textsuperscript{220} The legal work needed to address these problems arose organically in the course of discussions about the scope of representation. In addition, the privacy protections demanded by the federal Health Information Portability and Accountability Act\textsuperscript{221} had to be deciphered and put in place. While some of this work could have been undertaken independently by the legal team, the management had to learn and incorporate the lessons to integrate new procedures into BACE-NMC's ongoing existence.

The legal work evolved further over the years of representation as the lawyers learned more about the organization and the birth "industry," and the organization learned more about what lawyers could do to support the organization.\textsuperscript{222} To achieve livable levels of income, childbirth educators must have sufficient professional stature to hold

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\textfootnote{{\textit{Cooperatives, supra} note 63, at 192-94 (asserting that acting as a lawyer for a worker cooperative involves going beyond narrow legal consultation in order to promote economic empowerment); {\textit{Pitegoff, Organizing, supra} note 63, at 48 (arguing that progressive lawyers should use a broad, multidisciplinary approach to counseling in order to empower their clients).}}}
\textfootnote{{\textit{Id.}}}
\textfootnote{{\textit{Id.} The decision of the training committee of BACE-NMC elected to supply the training for free since alternative funding from government sources for the training program was explored and may still be pursued at a later date from the Department of Employment and Training, Commonwealth of Massachusetts. \textit{Id.}}}
\textfootnote{{\textit{Id.}}}
\textfootnote{{\textit{Id.}}}
\textfootnote{{\textit{Id.}}}
\textfootnote{{\textit{Jessica Mitford, \textit{The American Way of Birth} 222-23 (1992).}}}
\end{flushright}
their own in the medical industry. Childbirth and childbirth education have been increasingly based in hospitals (and within the province of medical doctors), and decreasingly dependent on midwives and natural methods. Frequently, hospital nurses provide childbirth classes to prospective obstetrical patients. BACE-NMC believes that the public health evidence supports a return to natural methods and midwifery services and that education is the key to advancing that message.

The movement to expand the role and status of community health workers provided another opportunity to accomplish added autonomy of childbirth educators. Community health workers provide a means to cut costs and increase the quality of patient services by creating a new member of the medical services team. The push for such recognition emerged from the people doing the work.

Creating career ladders for community members to climb to economic sufficiency and personal success also serves to improve health care by bringing it closer to the patients. For BACE-NMC to act on the insights it had gained, it required an understanding of the legal structures undergirding the healthcare system, and specifically, the new initiative to license community health care workers. To make the case for the new legislation, childbirth educators had to speak convincingly


225. Id. at 338, 340.

226. Interview with Lorenza Holt, *supra* note 199; see, e.g., Judy Norsigian et al., *The Boston Women’s Health Book Collective and Our Bodies, Ourselves: A Brief History and Reflection*, OUR BODIES OURSELVES, http://www.ourbodiesourselves.org/about/jamwa.asp (last visited Apr. 11, 2014) (explaining that this non-profit organization, founded in 1969, works together with the publishers of *Our Bodies, Ourselves* to empower women by providing information about health, sexuality, and reproduction).

227. **CMTY. HEALTH WORKERS ADVISORY COUNCIL, supra** note 223, at 33.

228. The effort was spearheaded by the Massachusetts Association of Community Health Workers (“MACHW”). See **MASS. ASS’N COMMUNITY HEALTH WORKERS, http://www.machw.org** (last visited Apr. 11, 2014).


230. Health care workers have been certified or licensed in Ohio and Texas. **OHIO REV. CODE ANN. § 4723.85** (West 2004); **TEXAS HEALTH & SAFETY CODE ANN. § 48.001** (West 2010). In Massachusetts, recent legislation authorizes the certification of community health workers. **MASS. GEN. LAWS ANN. ch. 13, §§ 9, 106** (West 2010 & Supp. 2013).
about how they could help improve health care outcomes. Lessons in lobbying led to questions about framing issues and making effective presentations.

The experience of working with the doulas who became childbirth educators mirrors our earlier experience with immigrant women starting worker-owned cooperatives in industrial cleaning, food service, and apparel production. It also mirrors the story that Cummings tells of working with a cleaning cooperative in Los Angeles. The women in these contexts took on leadership roles in the organization and in their communities.

Several lessons emerged from these experiences. Our early experience with cooperatives showed us the value of carefully structured, but participant-driven, education. It taught us the importance of understanding the industry to be able to adequately provide counsel. We learned how to help an organization utilize lawyers. Since we worked with talented community organizers, we learned how clients could participate actively in the political context of their undertakings. We also learned that we added value frequently by researching options, not by providing leadership. Perhaps most saliently, we learned that our legal work frequently provided the context and the room for clients to grow personally and professionally. We served as engineers for architecture designed by others. We had thought that the critical decision was selecting which clients to serve, but it became clear that how we served was more important than who we served.

C. Discerning a Pattern

In important respects, BACE-NMC manifests some of the characteristics deemed important by entrepreneurship theory. For example, by distilling the strengths of immigrant women to help them find rewarding work, BACE-NMC created new kinds of work and new markets that were previously underserved. In addition, BACE-NMC addressed an information shortfall by providing a feminist perspective on childbirth to communities where such information was lacking. The organization represents the clarity of vision and outstanding ethical qualities that are lauded by Weber. Surely BACE-NMC’s workers also fit the characteristics, cited by Reynolds and Curtin, in benefiting

231. CMTY. HEALTH WORKER ADVISORY COUNCIL, supra note 223, at 18-21, 32.
232. Cummings, Developing Cooperatives, supra note 63, at 190-94.
233. Interview with Lorenza Holt, supra note 199.
234. Id. BACE-NMC was founded by Norma Swanson, one of the founders of the Women’s Health Book Collective, which authored Our Bodies, Ourselves. Norsigian et al., supra note 226.
235. See WEBER, supra note 92, at 69-71.
from extended experience in the industry.\textsuperscript{236} At the organizational level, BACE-NMC developed many of the organizational and financial structures for the changes in its business.\textsuperscript{237} It also exemplified both CED practice and entrepreneurial behavior by finding ways in which to coordinate scarce resources.\textsuperscript{238} For example, BACE-NMC uses borrowed space at schools and hospitals for training, and it has long depended on its nonprofit structure as a way to obtain access to additional resources, such as talent and wealth.\textsuperscript{239}

Perhaps most notably, with the help of CED practitioners, BACE-NMC and other small businesses have been able to use unique knowledge and skills to take advantage of information asymmetries. BACE-NMC provides an example of putting various strands of information together in a fashion unlikely to occur to an outsider. Anyone looking at the national origin and linguistic background of perinatal families might recognize that a need exists for childbirth education for those with limited English proficiency. Knowing how to locate and train a workforce that could undertake childbirth education for that population, however, requires very specific knowledge of the field.\textsuperscript{240} Ascertaining how to get childbirth education classes reimbursed by insurance might be possible for someone focused on the question, but it would be unlikely to occur to someone simply surveying the childbirth education industry as an unexploited business opportunity.\textsuperscript{241}

\textsuperscript{236} See Reynolds & Curtin, supra note 101, at 216.
\textsuperscript{237} Interview with Lorenza Holt, supra note 199.
\textsuperscript{238} CASSON, supra note 5, at 24.
\textsuperscript{239} Interview with Lorenza Holt, supra note 199.
\textsuperscript{240} Id.; see also RAMON BORGES-MENDEZ ET AL., IMMIGRANT WORKERS IN THE MASSACHUSETTS HEALTH CARE INDUSTRY: A REPORT ON STATUS AND FUTURE PROSPECTS 16 (2009) (suggesting that major hospitals in urban centers should recruit immigrant nurses, but that hospitals must be able to train and educate these nurses); Catherine M. Sleezer & Dan Denny, Strategies for Developing a High-Skilled Workforce, PERFORMANCE IMPROVEMENT Q., Mar. 2004, at 41, 52-53.
\textsuperscript{241} Interview with Lorenza Holt, supra note 199. In Massachusetts, for example, the state government, federal government, and private insurers are all sources of reimbursement with different restrictions. See MASSACHUSETTS HEALTH AND HOSPITAL LAW MANUAL §§ 2.3–2.4 (Lawrence W. Vernaglia ed., 2d Supp. 2011) (outlining Massachusetts federal, state, and private sources of insurance reimbursement). Contract law governs private insurers, while state and federal insurers face additional regulations. See Gerald P. Dwyer, Jr., Claims Processing, in NEW APPLEMAN ON INSURANCE LAW § 4.02 (Jeffrey E. Thomas & Francis J. Mootz, III eds., library ed. 2013) (explaining the law governing private insurance contracts). State Medicaid offices can opt to define Community Health Workers as billable providers, allowing them to receive direct reimbursement. See CATHERINE DOWER ET AL., NAT’L FUND FOR MED. EDUC., ADVANCING COMMUNITY HEALTH WORKER PRACTICE AND UTILIZATION: THE FOCUS ON FINANCING 20-21 (2006) (charting potential funding sources for Community Health Workers). However, the state Medicaid office may enforce general education, training and certification, and fee chart requirements dictating reimbursement rates. \textit{Id.} at 20. Alternatively, states can obtain a waiver to
BACE-NMC effectively wove disparate threads of information together to create an unrecognized market. Of course, with this opportunity came market uncertainty and risk.\textsuperscript{242} In BACE-NMC's case, when no market solution to funding the training of the educators emerged, the organization supplied the training for free.\textsuperscript{243}

But, what is even more compelling about BACE-NMC's example, and those of many of the businesses served by CED practitioners, is the pattern of characteristics that transcend entrepreneurship theory and, at times, even the explicit goals of CED. These characteristics provide a quite specific sense of what entrepreneurship theory and CED have thus far failed to capture. While there are doubtless many others, our work with BACE-NMC has revealed the following characteristics. First, the more successful entrepreneurs are able to use cultural literacy for business success. Sometimes, this is for the purpose of providing special goods or services to culturally-defined communities. Sometimes, it is by means of "translating" between cultures. BACE-NMC relies on the cultural knowledge of its educators to make needed connections across cultures and provide an obvious linguistic bridge.\textsuperscript{244}

Second, it often appears that the more successful businesses are able to capitalize on knowledge that is shared within a community, with the result being that inequality is reduced within, and between, communities. The inequalities that plague the communities where our clients reside and do business frequently become the focus of business creativity. All of the sagging porches and chipping paint bring out the construction workers' plans to make things better.\textsuperscript{245} Schools and universities also need constant painting and can contract with minority providers.\textsuperscript{246} In BACE-NMC's case, the unequal access to education expand Medicaid services to Community Health Workers, or can apply to receive matching federal funding for the Community Health Workers' administrative costs. See Kristine Goodwin & Laura Tobler, \textit{Community Health Workers: Expanding the Scope of the Health Care Delivery System}, NAT'L CONF. ST. LEGISLATURES 6-7 (Apr. 2008), http://www.ncsl.org/print/health/chwbrief.pdf (noting the policies behind the new integration of community health workers into the healthcare system).

\textsuperscript{242.} See \textit{Knight}, supra note 79, at 265, 268.
\textsuperscript{243.} Interview with Lorenza Holt, supra note 199.
\textsuperscript{244.} \textit{Id.}; see also \textit{Borges-Menendez et al.}, supra note 240, at 17-20 (discussing the benefits of foreign-born health care workers and their unique cultural sensitivity to patients' needs); \textit{Jonathan Bowles \\& Tara Colton, Ctr. for an Urban Future, A World of Opportunity 23, 25 (David Jason Fischer ed., 2007) (observing that ethnic communities provide opportunities for small, immigrant-run businesses to use culture and language as an advantage)}; Porter, supra note 67, at 59 (noting that minority-owned businesses based in the inner city have a unique ability to address and understand their community's needs).
\textsuperscript{245.} Our earlier work in the Poverty Law Clinic put us in contact with a significant number of construction workers and contractors.
\textsuperscript{246.} See \textit{Painting}, N.E. U., http://northeastern.edu/facilities/painting.html (last visited Apr. 11,
about childbearing motivated BACE-NMC significantly.247 Each of the inequalities demands and justifies attention to be corrected, and CED finds much of its work motivated by addressing such inequalities.

The point is that the notion of exploiting information asymmetries does not fully or adequately capture the specific asymmetries that are exploited. The niche markets that CED’s clients target appear to be defined by the ability to capture and make use of a particular type of information, which responds both to cultural and community bonds and imperatives. The details are critical here, because they remove some of the mystery from the question of how these communities achieve success in small business development.

A third critical component for success is collective action, either within the business or with a network of similar businesses. When collective action produces success, an increase in power vests with the participants. The power that derives from successful collective action permeates the experience of CED. In some of the examples discussed earlier, the collective action was internal to the organization and occurred in the preparation and execution of a business plan.248 At BACE-NMC, the members learned their new skills as educators in a collaborative setting.249 Initial trainings were completed together, while the more advanced lessons required co-teaching and supervision to refine skills.250 These activities built on a history of working together as doulas and allowed for productive and informed support for each other’s growth.251

2014) (noting that Northeastern University’s painting unit consists of five firms, four of which are minority contractors).

247. Interview with Lorenza Holt, supra note 199.

248. Id.; see also Ashar, Public Interest Lawyers, supra note 196, at 1911 (noting that the Restaurant Opportunity Center of New York (“ROC-NY”) relied on leadership from worker-members and an ability to retain the collective critical mass of workers needed to continue to effectively campaign for workers benefits); Cummings, Developing Cooperatives, supra note 63, at 190-94 (discussing a Los Angeles women’s domestic work cooperative that uses collective action in its business plan to demand higher wages and to create a marketing strategy aimed toward promoting socio-economic justice for low-income women); Huertas-Noble, supra note 63, at 271 (examining ROC-NY, a worker-owned cooperative that uses collective action in campaigning to improve the working conditions of marginalized restaurant workers).

249. Interview with Lorenza Holt, supra note 199.

250. Id.

251. Id.; see also Cummings, Developing Cooperatives, supra note 63, at 192 (describing the process by which a women’s cooperative created a business plan after working with a local community based organization to receive general business education, as well as with a neighborhood legal services organization to coordinate training sessions on marketing and accounting); Huertas-Noble, supra note 63, at 271 (describing how a restaurant cooperative created a space for training workers, increased opportunities for advancement at other restaurants, and strengthened the workers’ voice in the restaurant industry through access to industry information).
In other instances, the collective action comes from external interactions, as is true in the cooperative business model, which encourages such collaboration with other similar businesses and results in growth and power for all involved. The sequence is illustrated both in our experience and in the experience establishing the Restaurant Opportunity Center of New York (“ROC-NY”). Each example demonstrates reliance on the strength of the workers’ connections to broader community networks and the increase in power resulting from those connections. For BACE-NMC, the network of doulas provides new colleagues and, combined with the network of midwives, constitutes the largest referral source of new clients. BACE-NMC learned that increasing professional recognition of childbirth educators requires the involvement of other community health workers asserting power in political arenas. While many businesses use networks, the breadth and extent of network utilization and dependency in these communities goes beyond the mainstream. In effect, CED adds to the imperative of income development the relevance of community institutions, which support, invest in, and remain connected with local businesses.

As a theoretical matter, entrepreneurship is not really the notion that ties these characteristics together. The support of CED practitioners in nurturing these things includes the possibility that the businesses that manifest these characteristics will “make it big” by exploding into high growth. But these characteristics have much more to do with the systemic goal of promoting human flourishing among those involved with these local, urban business endeavors.

Indeed, what ties these different efforts together is the focus on the growth of human capacity. BACE-NMC and ROC-NY are such compelling stories due to the dramatic change in the participants. It is remarkable and admirable what participants in these organizations have accomplished. In different ways, the participants grew in their ability to better their lives on their own terms. Improved income frequently was

254. Interview with Lorenza Holt, supra note 199.
255. Id.
256. DANIEL ZWERDLING, WORKPLACE DEMOCRACY: A GUIDE TO WORKPLACE OWNERSHIP, PARTICIPATION, & SELF-MANAGEMENT EXPERIMENTS IN THE UNITED STATES AND EUROPE 111 (1980) (noting that, with the help of Central Coast Counties Development Corporation, organizers of a cooperative farm in Salinas Valley have achieved much financial success, with sales topping one million dollars).
critical, but even more so was control over hours, safety, and pace of work. \(^{257}\) Participants gained influence over the selection of new co-workers and in the evaluation of supervisors. \(^{258}\) To gain that added measure of control, the participants became more literate, both verbally and numerically. \(^{259}\) They became healthier because of improved understanding of preventive care learned at work, and increased access to medicine and doctors provided by their employer. \(^{260}\) These changes in work and working conditions impacted self-respect, and for many participants, that gain was the most significant change. \(^{261}\) Whether by doubling income, or avoiding having a latchkey child, this increased measure of control contributed to the expansion of the participants’ capabilities. What the vignettes do not illustrate is single-minded concern for rapid growth in size or profitability, nor the exclusive focus on the individual entrepreneur as the lynchpin of the enterprise—characteristics associated with entrepreneurship. What these vignettes do

\(^{257}\) Huertas-Noble, supra note 63, at 271; see also ZWERDLING, supra note 256, at 111 (examining a Salinas Valley farmworker cooperative where workers noted that their incomes had tripled or quadrupled after joining the cooperative ranch); Cummings, Developing Cooperatives, supra note 63, at 191 (discussing the participant-workers’ goal at a Los Angeles domestic worker cooperative to unify and improve their safety and access to health care due to their dangerous exposure to chemicals); Sara Tonnesen, Note, Stronger Together: Worker Cooperatives as a Community Economic Development Strategy, 20 GEO. J. ON POVERTY L. & POL’Y 187, 198-201 (2012) (investigating Cooperative Home Care Associates, Inc. (‘CHCA”), a cooperative of health care workers in the Bronx, New York, where workers are paid twenty percent more than average home health care workers and are guaranteed a minimum number of weekly hours).

\(^{258}\) Huertas-Noble, supra note 63, at 270; see also ZWERDLING, supra note 256, at 106 (recognizing that all fundamental decisions at a Salinas Valley farmworker cooperative were made by a board of directors elected by the field workers and by monthly votes of cooperative members); Laurie A. Morin, Legal Services Attorneys as Partners in Community Economic Development: Creating Wealth for Poor Communities Through Cooperative Economics, 5 UDC/DCL L. REV. 125, 139 (2000) (emphasizing that CHCA employs the democratic values needed to empower participant-workers); Tonnesen, supra note 257, at 200-01 (noting the opportunities available to CHCA’s employees to influence the organization, including purchasing a voting membership through equity stakes ownership, filling a position on CHCA’s Board of Directors, and serving on the cooperative’s Worker Council).

\(^{259}\) Huertas-Noble, supra note 63, at 271; see also Cummings, Developing Cooperatives, supra note 63, at 192 (exploring the intensive business, personal, and leadership worker development trainings involved in the creation of a Los Angeles cooperative); Morin, supra note 258, at 139 (observing that worker education is a key element of CHCA’s mission); Tonnesen, supra note 257, at 201 (explaining that CHCA augments its workers’ education through subsidizing workers enrolled in nursing programs and facilitating access to the best training in the industry).

\(^{260}\) Huertas-Noble, supra note 63, at 269.

\(^{261}\) Id. at 271; see also Cummings, Developing Cooperatives, supra note 63, at 192 (describing the cooperative’s worker meetings directed at improving self-confidence, which included “more intimate subjects, such as overcoming domestic violence and the negative self-images imposed by the Latin American culture of ‘machismo’”); Tonnesen, supra note 257, at 201 (revealing that CHCA’s workers gained intangible benefits from their involvement in the cooperative, “such as giving the women a voice, creating a sense of community, and fostering workers’ investment in the company”).
demonstrate is the extraordinary relevance of theory to practice: entrepreneurship theory is a deeply individualistic theory focused on self-interested market behavior, while a theoretical focus on human capacity and poverty alleviation is grounded in social welfare.

D. Practice Without a Theory; Goals Without Measure

In our work, we did not start with clear goals or an explicit theory for our client work, and it appears that may be true for others as well. We began the work hoping to increase the earnings of our clients and to create new jobs. We thought that the impact of our work might spill over into larger struggles in the communities that our clients served. We did not really even aim single-mindedly at poverty alleviation. We recognized that when thoughtful advocates engage clients in building new businesses, organizational and personal goals can be frustrated by externalities. If external funding pays the bills, the necessity to satisfy the funder may shape the articulation of the goals.

The goals that animate other CED practitioners seem almost as numerous as those undertaking the work, and the measure of success seems singularly undefined. There are the pragmatic and immediate goals of meeting expressed client needs (The Community Enterprise Project at Harvard Law School),262 and the offer of much needed legal advice to a segment of the small business community (GW Clinic).263 An elegantly simple goal would seek to have businesses be able to afford private counsel (Small Business Clinic at Western New England College School of Law and School of Business).264 Others have broader goals, such as achieving a significant impact on society.265 Some support change by encouraging sustainable agriculture, workers’ rights, and employment training for specific disadvantaged communities.

262. See The Community Enterprise Project, supra note 58.
263. See Jones, Small Business, supra note 50, at 209.
265. Praveen Kosuri, “Impact” in 3-D—Maximizing Impact Through Transactional Clinics, 18 CLINICAL L. REV. 1, 11-12 (2011); see also Luppino, supra note 57, at app. 5 (documenting Brooklyn Law School’s Community Development Clinic’s aim “to ensure that important, but smaller, voices are heard as Brooklyn communities are rethought, rezoned and redeveloped,” and illustrating Vanderbilt University Law School’s Community and Economic Development Clinic’s focus on representing small businesses with the goal of developing resources in underserved urban communities); Ashar, Law Clinics, supra note 64, at 391-94 (noting that the City University of New York School of Law Immigrant and Refugee Rights Clinic chooses cases that will fit into a broader campaign for reform); Jones, Small Business, supra note 50, at 209 (discussing George Washington University Law School’s Small Business and CED Clinics’ broad social justice goal to assist in the creation and survival of small businesses).
(University of Michigan). Cummings and Gregory Volz provide a different sort of quantifiable measure, citing the leverage accomplished by Neighborhood Legal Services of Lynn in spending $200,000 in program money, and gaining $35 million in community benefits.

Whatever the goal, it is clear that outcomes should be measurable. This observation was made starkly by Simon when he noted that the clinical movement “has not done much to improve our capacity to assess the efficacy of practice in terms of tangible goals.” His trenchant comment, coming after years of careful observation of CED, demands attention. Nor is his the only voice pushing in that direction. Increasingly, funders are expecting and demanding accountability in the form of measurable objectives and progress in terms of quantifiable movement.

Those clinics that aim at helping businesses secure profitability as a goal have the advantage of using a quantifiable measure of success. Numbers of hours worked, clients served, businesses formed, and consultations completed are all ways in which advocates can report on the services that they have rendered. These are significant facts but do little to prove movement toward a clear objective. Nor do such facts allow for assessment of the efficacy of the interventions. The multiplicity of objectives and the absence of a suitable theory create a question of whether the entrepreneurial objectives are in fundamental conflict with CED practice, or whether they could or should be harmonized.

IV. TOWARD A NEW THEORY OF SUSTAINABLE INCOME DEVELOPMENT

The purpose of this Part is to present the core argument for reorienting CED practitioners involved in income development work toward a modified “capabilities approach” as the new theoretical foundation for their work. As this Part argues, while it is entirely sensible for CED to spend at least some of its resources supporting small business development by those below the poverty line, it is sensible for a wholly different set of reasons than those propounded by entrepreneurship theory. Those reasons, and the values that underlie

269. See id.; see also Cummings & Volz, supra note 24, at 165-66.
270. See infra Part IV.A.
them, are perhaps best captured by Sen's definition of poverty as the absence of capabilities.271 After describing the "capabilities approach" to poverty measurement in Subpart A, Subpart B argues that, because poverty in U.S. inner cities is best described and measured by the capabilities approach, such an approach is the best theoretical foundation for the work of CED practitioners.272 The purpose of Subpart B is to make plain the reasons for adopting a theory of sustainable income development within CED that is grounded in poverty alleviation, rather than in economic theories of entrepreneurship.273 Subpart C follows this analysis by providing critical examples of the difference such a theoretical orientation would make on the ground, and, specifically, in the practice of lawyers supporting low-income small businesses.274

A. Capabilities as a Measurement of Poverty Alleviation

In the academic discourse on development and poverty alleviation, the capabilities approach has gained wide support. First articulated by Sen, the capabilities approach aims at evaluating people's well-being in terms of certain basic capabilities essential to human functioning.275 It posits that poverty alleviation depends on the expansion of the freedoms that people have to use their capacities in ways that satisfy their personal objectives.276 The approach broadens poverty measurement beyond income and wealth, which had earlier been used as the exclusive measures of poverty.277 Sen theorized that increasing income and wealth would not end poverty.278 A sole reliance on income also misses the importance of motivation in defining poverty and seeking its alleviation.279 Sen argued instead that quality of life and the freedoms associated with social justice were essential criteria to measure.280 In Sen's analysis, the list of critical capabilities requires local democratic
Sen has never elaborated a list of capabilities, believing that such an effort might inhibit local cultural norms and values. This approach has attracted support in the discourse on poverty alleviation because it has a solid theoretical foundation, utilizes available data in valid and reliable ways, and satisfies present policy directions. Sen and those who have built on his work begin with a rigorous critique of utilitarianism, incorporating many of the best recent philosophical theories of justice. While hardly without its critics, the resulting theory rests on a strong philosophical foundation. Meanwhile, the attraction to the capabilities approach for policy makers arises from both the noticed inadequacies of sole reliance on income and the attraction of measuring the growth in human capacity.

On the world stage, the capabilities approach has been simplified and applied by means of the Human Development Index (“HDI”), which has been used by the United Nations Development Programme (“UNDP”) and the World Bank since 1990 as a means of judging international development efforts. The HDI concentrates on three variables: a decent standard of living (measured by purchasing power parity); education (measured by adult literacy and gross enrollment in education); and living a long and healthy life (measured by life expectancy). Although it does not measure such critical variables as gender or income inequality, it provides a broadened prism for viewing human progress and the complex relationship between income and wellbeing. By the inclusion of education, health, and longevity, the HDI is

282. Sen, Conceptualizing, supra note 279, at 34-35.
283. See id. By contrast, Martha Nussbaum, Sen’s collaborator in developing the capabilities approach, has generated a list of ten basic capabilities. Martha Nussbaum, Human Rights and Human Capabilities, 20 HARV. HUM. RTS. J. 21 app. A at 23-24 (2007) [hereinafter Nussbaum, Human Rights] (listing the central human capabilities as: life, bodily health, bodily integrity, the development and expression of senses, imagination and thought, emotional health, practical reason, affiliation (both personal and political), relationships with other species and the world of nature, play, and control over one’s environment).
284. Our analysis by no means is intended to suggest that other measures and definitions of poverty, such as those focusing on asset creation or the absence of rights, are not convincing or apt. Rather, it is perhaps the dominance of the capabilities approach that attracts our attention more than anything else.
286. ALEXANDER, supra note 42, at 148-49; see also Alkire, supra note 276, at 127-30 (describing practical issues of using the capabilities approach with measurement and value conflicts).
287. See Grusky & Kanbur, supra note 277, at 9, 11-12.
the most prominent, specific embodiment of Sen’s relatively abstract notion that quality of life and freedom are important components of poverty analysis and measurement.\textsuperscript{290}

The incorporation of life expectancy and literacy enriches and grounds the analysis of poverty alleviation. Life expectancy serves as a gauge of living a long and healthy life.\textsuperscript{291} It can be shorthand for proper nutrition, decent housing, and adequate physical and psychological health care.\textsuperscript{292} Or life expectancy can be judged as a group of desired capabilities—such as those elaborated by Professor Martha Nussbaum—including obvious capabilities like bodily and emotional health, but also, more interestingly, control of one’s environment and play.\textsuperscript{293} Literacy has a similarly expansive reach and includes not just the ability to gain information, but to put that information to work in different contexts.\textsuperscript{294} Nussbaum’s capabilities of practical reason, development of expression, imagination, and thought would all be capacities embraced by the measure of literacy.\textsuperscript{295} Whether these variables are further specified and limited, as Nussbaum proposes, or left open textured, as Sen suggests,\textsuperscript{296} the inclusion of literacy and longevity allows for consideration of factors more significant for poverty alleviation and more representative of the outcomes of CED than income alone could ever be.

Various recent efforts have made the HDI both more attentive to issues of inequality\textsuperscript{297} and better able to incorporate additional variables.\textsuperscript{298} The Human Development Reports include three other

\textsuperscript{290} U.N. Dev. Programme, Composite Indices, \textit{supra} note 288.

\textsuperscript{291} See Nussbaum, \textit{Human Rights}, \textit{supra} note 283, app. A at 23.

\textsuperscript{292} \textit{Id.}

\textsuperscript{293} \textit{Id.} app. A at 23-24.

\textsuperscript{294} François Bourguignon, \textit{From Income to Endowments: The Difficult Task of Expanding the Income Poverty Paradigm}, in \textit{POVERTY AND INEQUALITY}, \textit{supra} note 42, at 76, 96-98.

\textsuperscript{295} Nussbaum, \textit{Human Rights}, \textit{supra} note 283, app. A at 23.

\textsuperscript{296} \textit{Id.} app. A at 23-24; Sen, \textit{Conceptualizing}, \textit{supra} note 279, at 34-35.


\textsuperscript{298} Published for the first time in 2010, the Multidimensional Poverty Index ("MPI") uses the same three factors as the HDI, but breaks each of HDI’s variables into component pieces and replaces the Human Poverty Index, which had been in use from 1997 to 2009. See U.N. Dev. Programme, Human Dev. Rep., \textit{Why Is the MPI Better than the Human Poverty Index (HPI) Which Was Previously Used in the Human Development Reports?}, http://hdr.undp.org/en/content/why-mpi-better-human-poverty-index-hpi-which-was-previously-used-human-development-reports (last visited Apr. 11, 2014). In 2010, the GDI replaced the Gender Equality Measure and the Gender-
indices, namely the Inequality-adjusted HDI ("IHDI"), the Multidimensional Poverty Index ("MPI"), and the Gender Inequality Index ("GII").\(^{299}\) The IHDI adjusts the three HDI variables based on the levels of inequality within the country.\(^{300}\) The United States has a 0.910 HDI value, ranking fourth among developed nations, but when adjusted for inequality, the value falls dramatically to 0.771 behind Spain, Italy, and most of Western Europe.\(^{301}\) The MPI captures the level of human deprivation within a country by measuring longevity, literacy, standard of living, and long-term unemployment, but only ranks developing countries.\(^{302}\) The GII captures gender inequality.\(^{303}\) The GII uses the same variables as the HDI and adjusts for gender inequality in much the same way that the IHDI adjusts the HDI for inequality.\(^{304}\) Each of these variations allows for analysis of distinct facets of poverty and refinements in policy direction.\(^{305}\)

As Sen has observed, "[i]t is precisely the distinction between incomes, on the one hand, and well-being and the freedom of persons, on the other, that drives a wedge between income information and the evaluative foundations of justice and equity."\(^{306}\) None of this is to say that income is not relevant; it is a critical component, but only a component, and income inequality is a particularly significant measure in developed countries.\(^{307}\) While disputes exist as to the exact measures and variables that must be included, opinion has converged on the need for a multidimensional analysis. Consequently, development and poverty experts continue to invest much work in the HDI scales, both for measurement and for policy application.\(^{308}\)


\(^{300}\) Id. at 28, 135-38 tbl.3.

\(^{301}\) Id. at 127 tbl.1, 135 tbl.3; U.N. Dev. Programme, United States, supra note 289.

\(^{302}\) See Sabina Alkire & Maria Emma Santos, Multidimensional Poverty Index, OXFORD POVERTY & HUM. DEV. INITIATIVE 1-2 (July 2010), http://www.ophi.org.uk/wp-content/uploads/OPHI-MPI-Brief.pdf (describing the work at Oxford Poverty and Human Development Initiative in formulating the MPI).

\(^{303}\) See HUMAN DEVELOPMENT REPORT 2011, supra note 299, at 139-42 tbl.4.

\(^{304}\) See id. at 142 tbl.4.

\(^{305}\) Carmen Herrero et al., A Newer Human Development Index, 13 J. HUM. DEV. & CAPABILITIES 247, 255-56 (2012) (setting out the new dimensions of the HDI, which took effect in 2010).

\(^{306}\) Sen, Conceptualizing, supra note 279, at 34.

\(^{307}\) See id. at 36.

CED in the United States needs multidimensional analysis every bit as much as it is needed internationally. At a rudimentary level, CED requires some agreed measure of progress and success, as was demonstrated in Part II. To the extent that CED aims to alleviate poverty, it should measure its success based on an explicit and tested theory. The measure should use valid and reliable data about variables of proven worth. The capabilities approach, when quantified through one or more of the UNDP scales, provides the theoretical grounding and elaborates the data to be collected. The adoption of these measures puts CED practitioners in a community of like-minded development experts working to perfect measurement scales for use at home and abroad. It allows for micro and macro comparisons and the testing of different interventions. It escapes the trap of evaluating CED exclusively based on improvements to income, and allows for a focus on human development in terms of empowerment and equality. Such measures allow due attention to both the increase in personal autonomy and improvements in the commonweal.

However, the use of the HDI and related scales do not end the search for means of assessing progress in poverty alleviation. Measuring improvements in the HDI does not tell a researcher or policy maker how well a given intervention worked to reduce poverty. A rigorous assessment of that question requires a carefully constructed hypothesis with clearly defined variables. The hypothesis then must be subjected to randomized controlled trials. The problem of assessing anti-poverty initiatives has recently received increased and promising attention. The work of the Abdul Latif Jameel Poverty Action Lab (“J-PAL”) at the Massachusetts Institute of Technology (“MIT”), elaborated on in Poor Economics, illustrates such work. The lead researchers have demonstrated that policy ideas subjected to randomized controlled trials will yield valid and reliable results. They have tackled such questions as whether microfinance works, why the poor do not save more,

305, at 259-60.
309. See supra Part II.
311. See BANERJEE & DUFLO, supra note 310, at 85-86 (describing randomized controlled trial of teaching arithmetic and reading in Ghana, based on preliminary findings of success in short training for community members); id. at 170-71 (discussing a random controlled trial of microlending, finding no radical transformation).
312. Id. at 168-70 (discussing a randomized controlled trial on the impact of microlending, finding that it increased the purchase of durable goods but did little to empower women on any measureable scale).
313. Id. at 188 (describing a random sample demonstrating that women saved more when
how to teach arithmetic efficiently and effectively, and why the businesses of the poor fail. They have conceptualized and structured trials that have provided insight into these critical questions. The careful analysis, to which they have subjected various interventions, leads to a number of theories about how to craft government policy and non-governmental actions. But it is their approach to research that makes their work significant to CED practitioners. These researchers wrote:

"If we listen to poor people themselves and force ourselves to understand the logic of their choices; if we accept the possibility of error and subject every idea, including the most apparently commonsensical ones, to rigorous empirical testing, then we will be able . . . to construct a toolbox of effective policies . . . ."

This approach allows testing of the hypothesis at the heart of the capabilities approach and the refinement of each hypothesis. Randomized controlled trials, for example, could allow a proponent of worker-owned cooperatives to test their effectiveness in enhancing literacy in comparison to workers in a public stock company. Such testing involves time and expense, but plays an important role in the virtuous cycle of theory, practice, testing, and refinement.

Finally, there is one important respect in which the multidimensional scales of the HDI, and perhaps even the empirical research of J-PAL, do not suffice in capturing the phenomenon of poverty as it is experienced in the inner cities. Nor, therefore, do they provide an adequate means of assessing the extent to which any given program serves to alleviate poverty. Specifically, even the broader conceptions of income (as freedom), longevity, and literacy fail to recognize explicitly enough that poverty can have the effect of excluding groups of people from markets, political processes, cultural exchanges, and broadly from society. The HDI scales provide a much more nuanced picture of how poverty affects an individual who is unable to fulfill basic human needs, but they do not provide as much information about the effects of deprivation on entire communities or systems of individuals who are systematically unable to access resources necessary to human flourishing. David Brady has described the sociological perspective on this important failing in poverty measurement in his

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314. Id. at 84-86 (detailing the testing of a variety of techniques for improving both math and reading comprehension).

315. Id. at 171.

316. Id. at 272.

account of the move by some European sociologists to the notion of "social exclusion." According to Brady, "[t]he notion of social exclusion echoes Michael Harrington's classic concern that 'the poor are losing their links with the greater world.' . . . [S]ocial exclusion means incomplete citizenship and unequal access to the status, benefits, and experiences of typical citizens in society." 318

Thus, we are advocating that CED practitioners adopt a modified capabilities approach—one that would include a robust notion of social exclusion—as the theoretical foundation for its income development work. We are also arguing here that any evaluation tool for poverty alleviation must explicitly assess the impact of a given program on collective experiences of poverty and social exclusion. Stated differently, poverty alleviation tools must be evaluated partly on the question of how they contribute to the community. Without a more explicit assessment of poverty as social exclusion, neither the current U.S. measure of poverty, nor the capabilities approach, adequately captures the systemic impact of poverty.

B. The Nexus Between Capabilities and Community Economic Development

It may simply be enough justification for reorienting CED away from entrepreneurship theory toward a capabilities approach to argue that, since poverty alleviation is the primary goal of CED's income development efforts, CED practitioners ought to adopt what is now the prevailing international theory for understanding and measuring poverty and its alleviation. Indeed, this is our primary argument in favor of adopting the capabilities approach. In making this argument, we are more dedicated to a theoretical reliance on poverty theory than to the capabilities approach. Our analysis of the work of CED practitioners reveals extraordinary efforts that simply escape the scope and measurement capacity of entrepreneurship theory. 319 It is only by adopting a theory grounded in poverty measurement that such work can be properly understood, measured, and improved. Our reliance on the capabilities approach is somewhat more equivocal. By choosing this particular approach, we are neither arguing that no other means of measurement would be adequate to the task, nor that the capabilities approach cannot be improved. Rather, we advocate for it because it is a robust approach that has more currency than other approaches at this time. Thus, it is a powerful means of connecting CED with broader

318. Id. (citation omitted).
319. See supra Part II.A.
poverty alleviation efforts. In essence, we are arguing for adoption of a common language.

The main purpose of this Subpart, however, is to argue that there is an additional compelling basis for adopting a capabilities approach in the United States. The extensive experience that CED practitioners have gained from working in inner-city neighborhoods reveals that, just as Sen has theorized in his analysis of poverty in contexts outside the United States, poverty in the inner cities is also about more than lack of income or even lack of work. As CED's experience shows, what defines poverty in the United States is indeed a lack of capabilities, especially when the concept of social exclusion is added into that definition. There are many ways to show that the modified capabilities approach is a sound measure of inner-city American poverty, as is demonstrated by the rich and extensive work of poverty experts in the United States. By focusing on the work of CED practitioners, we seek to add modestly to the prior work by using the actions of these practitioners as one category of qualitative data. In short, we argue that, by addressing the multidimensionality of poverty, and, in particular, its harmful effects on income, longevity, literacy, and social inclusion, CED practitioners by their actions provide formidable evidence that poverty in U.S. inner cities is about these things. The best demonstration of this point is a brief comparison of the variables measured by the capabilities approach and the experience (and responses) of CED practitioners.

Consider, first, the conception of income as used by the U.N.'s HDI. Income means not only a monetary amount allowing for purchasing power; it also serves as an indicator of freedom. Once income surpasses the minimum needed for essential purchases, it allows for self-determination and the pursuit of goals beyond survival. This makes income an essential measure not just of the economic success of the individual and the community, but also of the capacity of both to develop, grow, and change. CED practitioners recognized this when they began to concentrate their efforts on developing affordable housing.

320. See Sen, Conceptualizing, supra note 279, at 35.
323. See SIMON, supra note 19, at 19-26.
The provision of stable shelter provides a direct supplement to income. The integration of such shelter with the rest of the community, public transportation sources, and commercial hubs allows for the expression of personal freedom. Individuals who are securely housed, who know and interact with their neighbors, and who have the opportunity to access their work and the resources they need to live a fulfilling life are exercising self-determination.

Longevity, as a capability, subsumes all that makes for a healthy and fulfilling life. Longevity gauges whether any obstacles stand in the way of being healthy enough to live to capacity, or to be able to engage with the world unencumbered by artificial limits to life. Environmental hazards, poor preventive care, inadequate police protections, dangerous products—any of these would adversely impact the longevity of participants. CED practitioners recognize this in the broad spectrum of their activities in support of neighborhood revitalization. Housing, which provides the shelter critical to living a long and healthy life, is just one of many examples. CED’s historic and continuing focus on individual and public health is another critical example. By reclaiming brownfields, improving community health, improving lighting and street activity, and demanding safer products, CED practitioners work with the community to enhance the longevity of its members.

Literacy is an essential capability and precondition to other capabilities. Verbal literacy aids in imagination and understanding of sense data. For many, literacy expands reason and pleasure. Mathematical literacy opens up another language and provides opportunities for understanding measures and relationships that are obscure without such competency. CED practitioners have recognized the relevance of literacy in a variety of ways. They have resisted the pressure to counsel people to take jobs with limited opportunity to enhance knowledge and life skills. They have sought to enhance

326. See id. at 94-95.
327. See SIMON, supra note 19, at 22-26.
328. See id. at 39-40.
329. Id. at 39-40, 43-44, 116-18.
331. Id.
332. Id.
333. SIMON, supra note 19, at 34-36.
financial literacy by not only seeking more access to banking services, but also by providing technical assistance to people who receive such services, so that they have the knowledge to create budgets and financial plans. 334 Similarly, they have worked to support the acquisition of information about individual health and long-term maintenance of health and well-being. 335

Finally, CED’s emphasis on integration in all facets of its work—housing, health care, banking and credit, job training and support—may well be the shining example of CED’s often implicit recognition of poverty as social exclusion. By tearing down public housing “projects” and creating integrated neighborhoods, 336 by lobbying for major banks to open branches in inner-city locations, 337 and by demanding a basic level of health care for all—regardless of their incomes—CED practitioners have demonstrated the importance of social inclusion. In sum, CED’s focus on a variety of development and poverty alleviation programs implicitly acknowledges the multidimensionality of poverty in U.S. inner cities. The moment has come, however, for CED to take on the task of explicitly acknowledging the relevance of these factors, and adopting a means of evaluating its work in addressing them.

Moving from the broad sweep of CED’s programmatic efforts to its flagship program for income development, a brief evaluation of CED’s small business development programs using these same four variables indicates that they are a good choice for addressing the multidimensionality of poverty. In short, it is apparent that small business development does indeed have the potential to increase capabilities. While “dead-end jobs” may well increase income (defined narrowly) just as much as ownership and management of one’s own small business, CED practitioners have recognized that small business development can be a highly-effective means of self-determination, growth, and change. 338 By being not just a worker, but also a manager and owner, a small business owner is potentially in the position of choosing which of her skills to develop into an income-generating activity, when and how to engage in such work, and what to do to make her business grow. 339 Either individually or collectively, she will make all decisions essential to the business’s success or failure.

334. SERVON, supra note 62, at 127.
335. SIMON, supra note 19, at 39-40.
337. See SIMON, supra note 19, at 28-31.
338. See Sen, Conceptualizing, supra note 279, at 35.
339. See SIMON, supra note 19, at 134.
An even more compelling case can be made in favor of small business development as a means of increasing literacy. There is a clear connection between personal finance and business finance, and the development of one can enhance the development of the other.\textsuperscript{340} Similarly, small business development can teach a person how to formulate the judgment necessary to carry on a venture in which she is deeply invested. More broadly, small business development is a means of connecting one's actions as an individual economic actor to the economic success of one's community. It is also a compelling way to teach life skills.\textsuperscript{341} In these respects, owning a small business likely provides a more comprehensive education than most wage labor could provide, at least where the employee is not involved in a worker-owned cooperative or labor union.

Qualitative studies such as those conducted by Jurik and Venkatesh provide innumerable examples of the ways in which small business development can contribute to longevity.\textsuperscript{342} Small businesses often are a basis for investing more than just one's financial well-being. It is not an exaggeration to describe many of the small business owners in these studies as having invested their souls in their businesses. These enterprises have the potential to be the vehicles for pursuing one's passion. It is hard to imagine a better means of enhancing one's longevity.

Finally, by joining the market as both worker and owner, as a producer of products or services that she markets as important to her community, a small business owner has a powerful mechanism for social inclusion. A small business owner must know her community sufficiently well in order to provide a product or service in which the community is interested.\textsuperscript{343} It is likely that her success will depend on her communication with members of her community.\textsuperscript{344} Thus, the development of a small business can lead to participation in the political and cultural life of the surrounding community more naturally than many other pursuits. Indeed, as Brady observes, the market is one of the most powerful mechanisms for both social exclusion and social inclusion.\textsuperscript{345}

It is critical to note that these potential means of using small business development to enhance income, longevity, literacy, and social

\begin{itemize}
\item \textsuperscript{340} SERVON, supra note 62, at 94.
\item \textsuperscript{341} Id. at 95; see also Bhatt & Tang, supra note 62, at 231, 237.
\item \textsuperscript{342} See JURIK, supra note 66, at 155-58; VENKATESH, supra note 99, at 170.
\item \textsuperscript{343} See VENKATESH, supra note 99, at 103-05.
\item \textsuperscript{344} ZIMMERER & SCARBOROUGH, supra note 139, at 365-68.
\item \textsuperscript{345} Brady, supra note 317, at 725.
\end{itemize}
inclusion are only realizable if, and to the extent that, the individuals involved receive targeted support for these purposes. Development along these measures is categorically not an automatic or inevitable result of small business creation. But it is also true that small business growth appears to be a highly promising means for such progress. This, perhaps, is what most distinguishes a capabilities approach to small business development from an approach grounded in entrepreneurship theory. It is not ultimately the radical expansion (or growth potential) of the business that defines its success, but rather its ability to serve as a vehicle for enhancement by each of these measures.

One final observation is appropriate here concerning the advisability of adopting a capabilities approach for future CED work on income development. It is both important and encouraging that the three characteristics that CED practitioners have, by their own actions, sought most to nurture would likely score quite high if measured using a capabilities approach enhanced by a social inclusion perspective. For example, by focusing on culturally and community specific products and services, or on those products and services that function to translate culture and community needs and benefits to broader communities, CED practitioners and their clients are quite deeply engaging the conditions for longevity. Likewise, the acknowledgment of the relevance of collective experiences is a highly pragmatic means of ensuring participation and social inclusion.

C. Capabilities as a Tool of Community Economic Development

While it may well be a satisfying exercise to identify a new theory for CED for the sake of greater theoretical acuity or for the sake of giving appropriate credit for the enormous progress achieved by CED practitioners thus far, the purpose of this Subpart is neither so academic nor so laudatory. Rather, this Subpart argues that if CED practitioners involved in income development—and their funders—embrace a capabilities approach in their support of small business development, their work will look meaningfully different than it does currently, given their theoretical focus on entrepreneurship. Stated simply, their efforts will not be limited to supporting the “firm” as it negotiates the challenges of achieving growth in a dysfunctional market.346 Instead, their work will seek to enhance the capabilities of the individuals, and groups of individuals, involved in those small firms to expand their lives, not just their incomes, in a systemically positive way. To

346. See CASSON, supra note 5, at 201.
understand this point, it is necessary to consider in detail the connection between theory and the work that CED practitioners do every day.

One paradigmatic example of what CED lawyers do to support new entrepreneurs below the poverty line is the provision of advice on which form of legal entity a new business should take. The basic question that these lawyers address is how to choose a form of business that will maximize the business’s ability to obtain financing and to operate in such a way as to remain nimble and flexible in rapidly changing market conditions, while minimizing risk and tax liability. Now that the choices have expanded well beyond sole proprietorships, general and limited partnerships, and corporations, such advice can be quite multidimensional. For example, without knowing the applicable law in a jurisdiction and a fair bit of detail about the financing scenarios and operational challenges of a given small business, it is not obvious whether a corporation or a limited liability company (“LLC”) will be the best choice for a given small business.

From the perspective of entrepreneurship theory, careful advice from a lawyer on this set of business formation questions is essential because it increases the likelihood that a given small business can achieve high growth, which entrepreneurship theory relies upon to show the entrepreneur’s contribution to economic development. Without the potential that some small number of businesses can explode into high growth, generating jobs, surplus, and demand, entrepreneurship cannot claim to make much of a contribution. In this view of CED’s work, it is thus essential to increase the chances that any given firm can achieve such high growth. Counseling on entity formation can support this objective in two particular ways. First, by minimizing the chances that the individuals involved in the business could face exorbitant or unlimited risk, a wise entity choice allows an entrepreneur to act more freely in leveraging uncertainty. If the entrepreneur knows that her exposure is limited to personal guarantees of some loans, and will not

347. See, e.g., Jones & Spratley, supra note 179, at 389-90 (discussing how “lawyers can also provide direct assistance to microentrepreneurs, who are often faced with a host of legal considerations—including entity formation, contract drafting, lease review, regulatory compliance, and so forth—that could appear daunting without specialized assistance”).


349. See id. §§ 2:10–2:11 (presenting a checklist of advantages and disadvantages for different business entity structures); see also ROBERT W. HAMILTON & RICHARD A. BOOTH, BUSINESS BASICS FOR LAW STUDENTS: ESSENTIAL CONCEPTS AND APPLICATIONS 250-75 (4th ed. 2006).

350. See CASSON, supra note 5, at 201; KIRZNER, supra note 5, at 110-11.

351. See supra text accompanying notes 83-89.

352. SHANE, supra note 65, at 162-63; Reynolds & Curtin, supra note 101, at 216-17.
extend to tort liability, for example, she might feel more free to make the decisions that can produce the necessary “spark” of growth. Second, a wise choice of entity can also allow the entrepreneur the freedom to make rapid and shrewd operational decisions, again enhancing her ability to take advantage of market opportunities.

Given this theoretical focus, the work of CED lawyers has been completely sensible and well advised. And, indeed, it has been essential not just from the perspective of theoretical consistency. It is indisputable that CED lawyers have saved their clients immeasurable dollar amounts, not to mention headaches, by advising them carefully on risk. But as we have seen, it has not often sufficed to create the entrepreneurial spark that is necessary for consistent development in these urban settings.

In recognition of this fact, and of the imperative of poverty alleviation in the CED movement, some lawyers have used the choice of entity issue to examine the possibility that even this basic legal inquiry might more directly address the challenge of poverty. They have done so by exploring with their clients the question whether worker-owned cooperatives could serve as a basis for raising income levels by giving the individuals involved in small businesses a better opportunity to capture the profits of those businesses. Worker cooperatives redirect profits to the employees of a business by giving the employees ownership rights. Either as shareholders of a cooperative corporation or as members of a cooperative limited liability cooperation, employee-owners are entitled to the “up-side” when a business succeeds. Cooperatives are a means of ensuring that all of the individuals involved in a new business achieve higher incomes, assuming that the business

353. HAMILTON & BOOTH, supra note 349, at 270-71.
356. See supra Part II.C.
357. See, e.g., Pitegoff, Worker Ownership, supra note 252, at 250-57 (describing three ventures that illustrate the effective application of worker ownership to community development); see also Cummings, Developing Cooperatives, supra note 63, at 195. Cummings has studied the role of the CED lawyer in the initial stages of structuring a worker cooperative by:
- analyzing the interplay between the legal and organizing components of cooperative formation. This analysis suggests that cooperative development—to a greater degree than more conventional business development strategies—has the potential to create jobs while promoting the type of client-controlled, grassroots community-building efforts that have often been depicted as the goal of successful CED work.

Id. at 185.
358. Cummings, Developing Cooperatives, supra note 63, at 186.
359. Pitegoff, Worker Ownership, supra note 252, at 247.
does well. Moreover, regardless of the business’s success in the marketplace, another advantage of such cooperatives is their commitment to democratic control by the employees. Although neither entrepreneurship theory nor income-based measures of poverty alleviation capture the benefits of democratic control, more nuanced understandings of poverty that incorporate the dimension of social exclusion certainly recognize the importance of democratic control in worker cooperatives. In these critical respects, lawyers working with and for worker cooperatives move beyond supporting just the firm to more actively supporting the individuals involved in the firm.

In addition to those lawyers supporting worker cooperatives, many more CED lawyers have responded to their own sense that advice on entity formation alone is inadequate by embracing a practice of providing legal advice in support of the enhancement of “life skills.” Thus, as we have discussed, there has been committed attention to removing the barriers that Jurik and others identified as uniquely constraining low-income entrepreneurs. The point of these efforts is to open the space for entrepreneurial inspiration to occur. Lawyers have sought temporary restraining orders for clients who have suffered domestic violence. They have worked to find educational opportunities, especially on issues of personal finance, for clients who have never made a budget or filed their own taxes. And, of course,
they look for opportunities to give clients a voice in managing their own lives (and businesses). 368 Despite the significant expansion of the scope of legal services provided, however, the ultimate goal that has been articulated by CED lawyers has stayed much the same. That is, despite the focus by CED lawyers on enhancing the needs of the individuals involved in starting the small businesses they serve, the goal is still to generate as many small businesses as possible (presumably with the hope that a few will make it big). 369 Lawyers continue to articulate their ultimate aim as that of supporting the businesses, not the individuals behind those businesses. 370 Not surprisingly, therefore, the ultimate measure of success for these lawyers (and for many funding sources) is the number of small businesses that are started as a result of the lawyers’ interventions. 371 If anything, this measure dilutes, rather than strengthens, the connection between theory and practice. Rather than considering the extent to which any of the businesses achieve high growth and contribute substantially to economic development, the focus appears to be on starting up as many small businesses as possible. The emphasis, in other words, is on small business development rather than on entrepreneurship development. 372 This is a quite distinctive difference because it has become less clear how such small businesses will contribute to either of CED’s paramount goals of local economic development and poverty alleviation.

The capabilities perspective provides a compelling and measurable basis for answering this question. By documenting the ways in which small business development can enhance the capabilities of the individuals involved in these efforts, the capabilities approach can provide empirical evidence to support the hunches that CED practitioners have played in increasingly providing services, like the formation of worker cooperatives and the enhancement of life skills. As Part III.B has demonstrated, there is a powerful substantive connection between the criteria encompassed within the capabilities approach and

368. Jones, Current Issues, supra note 363, at 465 (“[I]n assessing CED opportunities, the voice of the people whose lives are most keenly impacted must be heard in new ways.”); see also Jones & Gilmore, supra note 355, at 238 (“Community lawyers partner with communities and work to understand what they are and where they are. They strive for ‘an engaged presence.’”).

369. The programs focusing on formation of worker owned cooperatives are an obvious exception to this claim.

370. A very influential example is JONES, LEGAL GUIDE, supra note 183, at 12.

371. A paradigmatic example is a website maintained by the Aspen Institute, which tracks microenterprise organizations in the United States. See MICROTRACKER, http://micotrack.org (last visited Apr. 11, 2014).

372. We are grateful to Professor Robin Paul Malloy for this insight.
the characteristics that CED practitioners have evolved towards supporting.\textsuperscript{373} Explicit adoption of the capabilities approach would allow for a more complete documentation of this connection, as well as a more complete understanding of what services could contribute to poverty alleviation defined using capabilities measures. Ultimately, one important outcome that we could expect from the adoption of this theoretical approach would be empirical support that small business development is indeed a systemically sound way to alleviate poverty.

Returning to the example of entity formation, the most obvious way in which adoption of the capabilities approach would expand the services provided by CED lawyers is that we would explicitly serve the individuals involved in a start-up business in addition to (or, perhaps even instead of) the firm alone. Indeed, in contrast to the efforts of lawyers involved in the development of life skills, and even worker cooperatives, our role would be to support individuals not for the purpose of enhancing the stability and growth potential of the business, but rather for the purpose of developing the capacity of the individuals to earn a sustainable livelihood.

In practice, this might mean making choices about entity formation and other business decisions that would benefit the employees rather than the firm. Returning to the example of BACE-NMC, one critical question for the organization is whether to try to assemble the institutional and political structures to increase the pay of childbirth educators from an average of fifteen dollars per hour to forty-five dollars per hour.\textsuperscript{374} From the perspective of entrepreneurship theory or even small business development for the sake of generating more small businesses, the strongest arguments would likely favor a lower level of pay for childbirth educators with the hope that a viable market for childbirth education services could be created on the basis of greater demand for a bargain-priced service.\textsuperscript{375} This is particularly true given the reality that BACE-NMC's competitors pay childbirth educators wages on the lower end of the spectrum.\textsuperscript{376} From the perspective of market competition, it would not be sensible to pay more. From a capabilities perspective, however, raising wages may well be the most sensible way to support individual flourishing within this particular market. Doing so, in turn, would require a CED lawyer to undertake quite a different set of tasks than the classic tasks of entity formation and employment contract drafting. Instead, such a lawyer might need to lobby for a statutory

\textsuperscript{373} See supra Part III.B.

\textsuperscript{374} See Interview with Lorenza Holt, supra note 199.

\textsuperscript{375} ZIMMERER & SCARBOROUGH, supra note 139, at 360, 367-68.

\textsuperscript{376} Interview with Lorenza Holt, supra note 199.
scheme supporting the work of community health workers, such as childbirth educators, including the rights of those workers to earn a living wage.\footnote{See, e.g., Community Health Workers and Advocates Rally at MA State House, PARTNERS HEALTH (Mar. 21, 2102), http://www.pih.org/blog/community-health-workers-and-advocates-rally-at-ma-state-house (highlighting "the cost effectiveness of integrating [community health workers ("CHWs")] into routine medical care,... the important role the group could play in eliminating certain barriers to care," and recent lobbying efforts to improve funding for public health services and CHWs).} Moreover, such a lawyer may find it appropriate to counsel BACE-NMC about strategies in which the health and longevity of BACE-NMC, as a viable business, would give way to the individual opportunities available to its workers. In the current market, this might involve finding opportunities for the workers to join health organizations more capable of providing higher wages because of the availability of insurance reimbursements. Or it might mean combining the work of these educators with other health services that typically earn higher wages.\footnote{Support for Community Health Workers to Increase Health Access and to Reduce Health Inequities, AM. PUB. HEALTH ASS'N (Nov. 10, 2009), http://www.apha.org/advocacy/policy/policysearch/default.htm?id=1393. In discussing the lack of funding for CHWs, the American Public Health Association states that:

Most CHWs rely on categorical grant funding, either public or private, to support their services and salaries. This kind of funding creates persistently low wages, high turn over, and low job security. Currently, most health plans do not reimburse for CHW services or recognize CHWs as reimbursable providers, which gives little incentive for organizations to create stable CHW positions.}

More generally, such a focus on the individuals within a small business may well lead to legal counseling in support of planning career ladders for such individuals, rather than planning for high-growth development of the firm itself.\footnote{Professor Kenneth Casebeer presents a much more far-reaching and intriguing example of such a move in exploring the idea of "community syndicalism." See generally Kenneth Casebeer, Community Syndicalism for the United States: Preliminary Observations on Law and Globalization in Democratic Production (U. of Miami Sch. of Law, Research Paper No. 2011-36, 2011).} This would entail a qualitative difference in legal support because the two forms of planning may well conflict. To use a simple example, from the business’s perspective, it would be important to find ways to retain employees while maximizing profit from them.\footnote{3 STEVEN C. ALBERTY, ADVISING SMALL BUSINESSES § 38:22 (2013).} By contrast, from the employees’ perspective, it may well be sensible to use an employer, such as BACE-NMC, as a vehicle for training and developing a foundation for a career elsewhere.\footnote{Interview with Lorenza Holt, supra note 199.} In addition, such a focus could well open up space for representing collective interests by means other than through the vehicle of the firm or business. Thus, the collective interest captured by the
community health workers’ movement would take priority over the (at times) conflicting interests of the individual businesses employing such workers.

It is important to acknowledge here that such a conflict may well present a conflict of interest for the lawyer, at least as defined in the traditional terms governing client representation. Traditionally, CED lawyers view themselves as representing the business, not the individual entrepreneurs who created them. Our analysis argues in favor of turning tradition on its head in this respect: we argue in favor of representing the individuals within the firms. While we hope that this change would prompt CED lawyers to lead the charge in favor of careful examination of the ethical rules governing this kind of legal representation, a more immediate solution would be for law school clinics, pro bono attorneys, and other CED lawyers to more actively refer clients to each other. In this manner, one clinic could represent the individuals and another could represent the firm in any given business venture. Such an experiment would be particularly important in the world of clinical legal services, because such services are usually free. It would allow for exploration in the realm of service provision— to individuals versus organizations—without imposing the costs of the experiment on the businesses served. This solution would have the added benefit of promoting collaboration in CED lawyering of a kind that remains rare.

Finally, it is also critical to emphasize that one significant difference in the methods of CED practitioners relying on a capabilities approach would be the emphasis on continued and heavy investment in infrastructure. Without the educational and job training programs, public transportation, housing services, financial services, income support programs, and other sources of support and stability for inner-city neighborhoods, human flourishing can never be expected to occur in a widespread or systemic manner. Indeed, this may well be the most fundamental difference between the entrepreneurship and capabilities approaches. The capabilities approach would support small business development because it provides one, though by no means the only,

383. Jones & Gilmore, supra note 355, at 237. Professor Richard Marsico contrasts collaborative lawyering, the foundation upon which community lawyering is based with “facilitative lawyering,” by stating that “the facilitative lawyer steps back, does not become deeply involved in the client’s full range of activities, and instead seeks to provide the technical legal advice and assistance the client seeks.” Richard D. Marsico, Working for Social Change and Preserving Client Autonomy: Is There a Role for “Facilitative” Lawyering?, 1 CLINICAL L. REV. 639, 658 (1995). He further describes a facilitative lawyer as resembling “corporate counsel” because she “perform[s] important, supportive tasks, but leav[es] the client intact.” Id.
robust vehicle for developing capabilities. It would advocate supporting other forms of income development as well. Moreover, it would mandate against replacing investments in infrastructure because these would be essential as transitional devices, support structures, and fallbacks when a meaningful number of businesses inevitably failed.

This analysis of the practical impact of a different theoretical grounding ought to have demonstrated three points, which are all points of conclusion and points of beginning. First, even as they follow a template grounded in entrepreneurial theory, legal services providers have, for some time now, been modifying their services to support the development of human capabilities. Second, despite the trend in this direction, it is also clear that by explicitly acknowledging that the purpose of their work is to expand human capabilities, legal services providers can make radical changes in their programs. For example, by representing individuals and groups of individuals rather than businesses, lawyers can significantly improve the impact they have on enhancing freedom and human capacity. Indeed, while it may seem to some that we are arguing in favor of an overly expansive role for lawyers, our point is really that by focusing explicitly on capabilities, lawyers can deliberate more effectively on what legal steps to take on behalf of their clients. Finally, it remains an imposing but critical challenge for legal services providers—and CED more broadly—to develop an appropriate system for evaluating the work that they do in the name of enhancing capabilities. While we expect that the adoption of a new theory grounded in poverty alleviation will lead quite naturally to meaningful improvements in the practical efforts of lawyers and other CED practitioners, none of us can afford to continue on the basis of mere assumptions. The challenge going forward is to consider how to use, adapt, or find alternatives to programs, such as the empirical studies undertaken by the Poverty Action Lab at MIT. 384

V. CONCLUSION

Theory matters a great deal in the practical world of CED. Presently, however, CED is building its important income development work on the basis of the wrong theory. 385 By adopting a capabilities approach to poverty alleviation that robustly encompasses a concept of social inclusion, CED can produce greater—and more measurable—benefits for the communities it serves. 386

385. See supra Part III.
386. See supra Part IV.