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The Legacy of Civil Rights and the Opportunity for Transactional Law Clinics

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The Legacy of Civil Rights and the Opportunity for Transactional Law Clinics

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INTRODUCTION

At the end of the historic march from Selma to Montgomery in 1965, Reverend Dr. Martin Luther King Jr. famously paraphrased abolitionist and Unitarian minister Theodore Parker stating, “the arc of the moral universe is long, but it bends towards justice.”¹ The implication of the phrase is that the social justice goals of the Civil Rights Movement would eventually be achieved. His prayer was that servants of justice would be rewarded in due time. In other words, that the goals of the Civil Rights Movement would be achievable at some point in the future. President Obama resurrected the phrase throughout his presidential campaign and throughout his presidency. The President was so taken with the phrase that he even had the quote woven into the presidential rug in the Oval Office during his tenure in the White House.²

This year marks the fiftieth anniversary of the assassination of Dr. King on April 4, 1968, a date that marks the effective end to the Civil Rights Movement. Anniversaries of major events are nearly irresistible opportunities to reflect on the past, often with the hope that there has been some progress. However, fifty years after the Civil Rights Movement, the sentiment of the quote seems less prophetic and almost mocking in its promise and optimism. While Dr. King’s life has been rightfully celebrated in the latter half of the twentieth century,³ the reflection focuses mainly on his achievements and his legacy to the point of nostalgia, not on his death or the efficacy of the Movement. Such nostalgia devalues the impact of his death on the greater economic justice movement and obscures the history of the Civil Rights Movement.

¹ Martin Luther King, Jr., Address at the Conclusion of the Selma to Montgomery March (March 25, 1965).

² Dan Amira, *President Obama Installs Appropriately Less Optimistic Rug in the Oval Office*, DAILY INTELLIGENCER (Aug. 31, 2010), http://nymag.com/daily/intelligencer/2010/08/president_obama_gives_oval_off.html.

³ See Susan R. Jones, *Dr. Martin Luther King, Jr.’s Legacy: An Economic Justice Imperative*, 19 WASH. U. J. L. & POL’Y 39, 39 (2005) (describing the Reverend Dr. Martin Luther King, Jr. as “a philosopher, theologian, orator, essayist, author, civil rights leader, advocate of worldwide social justice, recipient of the Nobel Peace Prize, prophet of his people, and American hero. He inspired and sustained the struggle for racial freedom, nonviolence and interracial unity”).

It has been 50 years since Dr. King was assassinated and, in many ways, it does not necessarily seem as though much has changed. Racial disparities persist, despite the passage of civil rights legislation. The country has not become the place described in Dr. King's dream.⁴ There exists still the centuries long crisis about the way black lives have been treated in this country since before its founding.⁵ Despite eight years of a Black presidency in Barack Obama, recent events and political rhetoric makes it seem as though we are on a continuum that is not sloping upward. Black people, workers, and people of color are still demanding justice and equality. The current protests and demonstrations and political arguments occurring today eerily seem to callback to 1968.

Dr. King was murdered in Memphis Tennessee, standing on the balcony of the Lorraine Hotel.⁶ Dr. King's work was reaching a turning point at the time of his assassination, in that he was increasingly focused on economic justice in his rhetoric and his steering of the Movement. He was in Memphis to support the city's Black sanitation workers, who were striking due to unsafe conditions, poor treatment and low wages. Today's activists often connect their concerns to those of King and the Memphis sanitation workers. On the evening of April 3, 1968, he gave what was to be his last speech: "I've Been to the Mountaintop."⁷ The substance of which indicate that he knew that more work needed to be done but that he might not be around to see it through, stating:

Well, I don't know what will happen now. We've got some difficult days ahead. But it really doesn't matter with me now, because I've been to the mountaintop. And I don't mind. Like anybody, I would like to live a long life. Longevity has its place. But I'm not concerned about that now. I just want to do God's will. And He's allowed me to go up to the mountain. And I've looked over. And I've seen the Promised Land. I may not get there with you. But I want you to know tonight, that we, as a people, will get to the promised land! And so I'm happy, tonight. I'm not worried about anything. I'm not fearing any man! Mine eyes have seen the glory of the coming of the Lord!⁸

Less than 24 hours later, Dr. Martin Luther King, Jr. would be shot by James Earl Ray. The way we think about and commemorate Dr. King and his legacy is important as we think

⁴ Martin Luther King Jr., "I Have a Dream," (August 28, 1963) (In the speech he famously described his dream of freedom and equality in a land with a legacy of bigotry and prejudice, stating "I have a dream that one day this nation will rise up and live out the true meaning of its creed" "We hold these truths to be self-evident, that all men are created equal.").

⁵ See Sheryll Cashin, *Shall We Overcome? "Post-Racialism" and Inclusion in the 21st Century*, 1 ALA. C.R. & C.L.L. REV. 31, 38-39 (2011) ("More importantly, the African-American experience in this country has been defined by a nearly four-hundred-year struggle to be accorded the same legal and social rights accorded to white Americans.").

⁶ Edith G. Osman, *President's Page: Southern Comfort*, 74 FLA. BAR J. 6, 8 (2000).

⁷ Martin Luther King, Jr., "I've Been to the Mountaintop," (April 3, 1968).

⁸ *Id.*

about the current political climate in the wake of the election of Donald Trump. Dr. King is a symbol of the Civil Rights Movement. Yet he died like so many other Black men. Violently gunned down by a white man. We celebrate his birth by celebrating the achievements of the Civil Rights Movement; the passing of the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968 are without a doubt a monumental part of Dr. King's legacy. This essay reflects on economic justice in the last fifty years, given today's political and economic climate, contemplating the context of Dr. King's assassination and the work he referenced that was yet to be done and the tools used to bring about change. For those that concern themselves with justice, it is necessary to ask what Dr. King died for and assess whether present ideas around the fight for equality will have impact. If we do not examine the government's role in policies that affect race and economic justice today, we forego any opportunity to consider new policies to bring about structural change. Part I describes the trajectory from the Civil Rights Movements to the modern-day wealth gap, describing how discriminatory policies implemented in the past, although prohibited by landmark civil rights legislation, continues to live on in the form of the wealth gap. Part II examines entrepreneurship as a viable means towards economic equity and then ends Part III, which outlines a role for transactional law clinics in contributing toward economic justice.

I. FROM CIVIL RIGHTS TO THE MODERN-DAY WEALTH GAP

Between 1865, the date that ended the Civil War and 1968, the date of the end of the Civil Rights Movement, there was legal discrimination under the Jim Crow regime. The Civil Rights Act of 1964, which prohibited forced segregation of public places and prohibited employment discrimination on the basis of race, color, religion, sex or national origin ended Jim Crow. Congress passed additional legislation soon after, such as the Voting Rights Act of 1965⁹ and the Fair Housing Act of 1968.¹⁰ Certainly, the Civil Rights movement is celebrated for the massive legislative achievements such as those mentioned above and the relative shift in the nation's consciousness about race. Yet even with these historic legislative victories in the latter part of the sixties, history shows that the Civil Rights Movement was not as effective with respect to changing the landscape for economic justice, despite the focus on these issues by civil rights activists. For example, Dr. King and the organization that he led, the Southern Christian Leadership Conference began the Poor Peoples Campaign, an economic justice strategy to address economic disadvantage.¹¹ The Poor Peoples Campaign included an economic bill of rights, including rights to full employment, fair wages, and housing¹². The assassination of Dr. King cut short his advocacy on behalf of economic rights.

His death also dealt a huge blow to the Poor People's Campaign and undercut its effectiveness. Economic justice was central to the activists involved in the Poor People's

⁹ The Voting Rights Act prohibited racial discrimination in voting at the state and local levels.

¹⁰ The Fair Housing Act prohibited discrimination on the basis of race, religion, national origin or sex, in connection with the sale, rental or financings of housing.

¹¹ Roger A. Clay Jr. & Susan R. Jones, *A Brief History of Community Economic Development*, 18 J. AFFORDABLE HOUSING & CMTY. DEV. L. 257, 260 (2009).

¹² *Id.*

Campaign. The narrative of economic justice as part of the story of the Civil Rights Movement has largely been omitted from popular discourse. In the popular recounting of the Civil Rights Movement in books, memoirs, films and articles, nostalgia for the era and the movements leads to a recount that focuses on the movement as the fight for a color-blind society, which it was not, rather than a movement for civil, economic and racial justice. At the core of the nostalgia is a yearning for the end of racism and a yearning for a color-blind society. The collective memory creates a fictional almost fairytale accounting, where once there was racism and then Dr. King marched through the South, slaying the racists and as a result America became a less racist, race-less society.¹³ But that narrative in the collective memory is just not true. Such nostalgia distorts the reality of the movement by ignoring that it was also a movement for economic justice. To remember the Civil Rights movement without an economic justice focus is a misleading narrative. A narrative that selectively ignores history and fetishizes a raceless society without focusing on the ways in which our past history, with respect to government sanctioned discrimination based on race, has vast consequences for the future.

The March on Washington—where Dr. King delivered the incomparable “I Have a Dream” speech—was not just about ending racism as the march itself was named the “March on Washington for Jobs and Freedom.” Reverend Jesse Jackson has said “that the speech was not about a dream . . . the heart of the speech was about economic justice, a fair distribution of resources.”¹⁴ The March was and remains the largest political rally for civil rights in the United States. The protesters were calling for both civil *and* economic rights for Black people. Although the March is easily characterized as an iconic moment in civil rights history where Dr. King delivered his speech, the participants were there to demand jobs and freedom from state-sanctioned discrimination.

The March on Washington for Jobs and Freedom was intended to call out segregationist government policies that included redlining, discriminatory lending, racist zoning laws, and housing laws. Results of these policies implicate (1) the limits to access to capital for certain groups (often minority business owners); (2) limits to education; and (3) high unemployment, the combination of which results in wealth disparities in the United States, disparities that have grown dramatically to this day. The policies that were protested in the sixties implicate the current disparities today. Such disparities are attributable to the fact of Jim Crow and the legacy of slavery.¹⁵

The enforcement of Jim Crow regimes, which was in no way limited to the American South, affected all areas of Black life—education, housing, criminal justice, and economic justice. The policies of redlining, blockbusting, and the creation of “Sundown Towns,” in which White towns and communities prevented entry for Black people after dark, all fall under

¹³ An example of this phenomenon is how the line often quoted from the ‘I Have a Dream’ speech is “I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.”

¹⁴ Gary Dorsey, *King Speech Shook American 40 Years Ago*, CHICAGO TRIB. (Aug. 28, 2003), <http://www.chicagotribune.com/sns-kingspeech-story.html>.

¹⁵ Robert E. Suggs, *Racial Discrimination in Business Transactions*, 42 HASTINGS L.J. 1257, 1261–62 (1991).

the umbrella of Jim Crow.¹⁶ These policies affected agency and choice for Black Americans. Jim Crow and other forms of discrimination limited economic security and self-determination in the Black community and caused disparities in employment, poverty, housing, and education. The major consequence of the government policies is the lingering effect that Jim Crow had on the economic prospects and therefore the restrictions on the wealth building opportunities for Black Americans and other people of color in this country to this day. While the civil rights legislation prohibited future discrimination with respect to housing, voting, and education, it did nothing to reverse how the legacy of Jim Crow would come to bear out on the economic prospects of those affected.¹⁷ The challenges raised by the Civil Rights movement still exist today so that despite the Civil Rights achievements, the centuries long discriminatory government action would become the cause of the modern-day wealth gap.¹⁸

A. DEFINING THE WEALTH GAP: THE HOUSING MARKET

Distinct from income, which is earned by employment, wealth is attained by the transfer of resources from generation to generation.¹⁹ Black families have lower wealth levels than White families.²⁰ With respect to wealth the racial differences have not dissipated over time because of the effects of legal discriminatory government policies that perpetuate the circumstances of the wealth gap. Culture writer Ta-Nehisi Coates wrote that the wealth gap “puts a number on something we feel but cannot say—that American prosperity was ill-gotten and selective in its distribution.”²¹ The racialized government policies, which entrenched racial inequity, are by no means historical anomalies without modern consequences or relevance.²² If there were a single indicator to measure the low socio-economic status of Black Americans, compared to their white counterparts, it would be the wealth gap. White Americans with a college degree are on average three times as wealthy as Black Americans with the same credential,²³ and in families whose head of the household is employed, white families have ten

¹⁶ Richard Rothstein, *The Making of Ferguson: Public Policies at the Root of its Troubles*, ECON. POLICY INST. (Oct. 15, 2014).

¹⁷ *Id.*

¹⁸ Signe-Mary McKiernan et al., *Nine Charts about Wealth Inequality in America*, URBAN INST. (2017), <http://apps.urban.org/features/wealth-inequality-charts/> (The gap in wealth between races remains large—even times greater than the gap in income.).

¹⁹ Janelle Jones, *The Racial Wealth Gap: How African-Americans have been Shortchanged out of the Materials to Build Wealth*, ECON. POL’Y INST. (Feb. 13, 2017), <https://www.epi.org/blog/the-racial-wealth-gap-how-african-americans-have-been-shortchanged-out-of-the-materials-to-build-wealth/>.

²⁰ *Id.*

²¹ See Ta-Nehisi-Coates, *The Case for Reparations*, ATLANTIC (May 24, 2014), <http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/>.

²² *Id.*

²³ Tatjana Meschede, Joanna Taylor, Alexis Mann, & Thomas Shapiro, “*Family Achievements?*”: *How a College Degree Accumulates Wealth for Whites and Not For Blacks*, 99 FED. RES. BANK ST. LOUIS REV. 121–37 (2017), <https://iasp.brandeis.edu/pdfs/2017/Family%20Achievements-%20College%20Degree.pdf>.

times the wealth of black families.²⁴ In a joint report, the Institute for Policy Studies and the Corporation for Economic Development, found that over the last thirty years, the average wealth of white families has grown by eighty-four percent, 1.2 times the rate of growth for the Latino population and three times the rate of growth for the Black population.²⁵ If the rate of growth continues in such fashion without significant economic policy intervention, the average black household will need 228 years to accumulate as much wealth as their white counterparts and Latinos will need eighty-four years to achieve parity.²⁶

Housing is a powerful driver of wealth since home equity drives the majority of wealth in the United States.²⁷ “The empirically accurate American wealth narrative is not simply about individual hard work, discipline, and savings; notably it is also about structured homeownership opportunities, real estate markets, government programs encouraging homeownership, and residential segregation.”²⁸ Since homeownership is a major component of wealth in this country, examining the history of the housing market and historical practices is important to understanding how homeownership perpetuates the wealth gap.²⁹ Historically, the government played a large role in creating this phenomenon. As part of the New Deal, as the country was trying to pull itself out of the Great Depression and its aftermath, the U.S. government guaranteed mortgages for the population.³⁰ President Franklin Roosevelt rolled out the New Deal and established the Federal Housing Administration and used home ownership as a tool to stabilize the economy and create economic security for many, mostly white, Americans.³¹

The programs implemented by the federal government to save the economy transformed the housing market and paved the way for working class Americans to achieve homeownership, but these important government program created racial preferences.³² The FHA would not insure mortgages in “risky areas,” which was essentially code for mortgages in neighborhoods where a majority of Black Americans resided.³³ The FHA created maps and

²⁴ William Darity Jr., et al., *What We Get Wrong about Closing the Racial Wealth Gap*, SAMUEL DUBOIS COOK CTR. ON SOC. EQUITY & INSIGHT CTR. FOR COMM. ECON. DEV. (April 2018), <https://socialequity.duke.edu/sites/socialequity.duke.edu/files/site-images/FINAL%20COMPLETE%20REPORT.pdf>

²⁵ Dedrick Asante-Muhammed et al., *The Ever Growing Gap: Without Change African-American and Latino Families Won't Match White Wealth for Centuries*, INST. FOR POLICY STUDIES & CORP. FOR ECON. DEV. (2016), http://www.ips-dc.org/wp-content/uploads/2016/08/The-Ever-Growing-Gap-CFED_IPS-Final-1.pdf.

²⁶ *Id.*

²⁷ Tanvi Mirsa, *What Drives the Black-White Wealth Gap?*, CITYLAB (April 20, 2018), <https://www.citylab.com/equity/2018/04/does-homeownership-really-drive-the-black-white-wealth-gap/558410/>.

²⁸ Thomas Shapiro, *Race, Homeownership and Wealth*, 20 WASH. U. J. L. & POL'Y 53, 59 (2006).

²⁹ *Id.*

³⁰ Arnold R. Hirsch, “Containment” on the Home Front: Race and Federal Housing Policy from the New Deal to the Cold War, 26 J. URBAN HIST. 158, 183 (2000).

³¹ *Id.* at 159–60.

³² *Id.*

³³ *Id.*

drew red lines, known as redlining, indicating where the FHA would not insure loans.³⁴ Therefore, Black Americans were not able to access the mortgage guarantees promised by the FHA and the New Deal; Black Americans lost out on decades of growth and the opportunity to build wealth and pass the wealth on to the next generation unlike their white counterparts.³⁵ In most American cities, the maps used for redlining coincide with modern day segregation.³⁶

The combined history of Jim Crow and the FHA prevented Black Americans from building wealth through homeownership, a significant contributing factor to the modern wealth gap. Homeownership is still the greatest source of wealth in the United States.³⁷ Black homeownership lags behind White homeownership as only forty-one percent of Black Americans own their homes, compared with seventy-one percent of White Americans.³⁸ Black Americans not only build less wealth through a low rate of homeownership, but also because home values in segregated communities of color are lower than home values in White communities, resulting in Black homeowners earning a smaller return on their investment.³⁹

The enormous difference in wealth is due in large part to the effects of intergenerational wealth transfers that have occurred over time.⁴⁰ Wealth and real property, unlike income, accumulates in value and may be passed from generation to generation.⁴¹ Wealth transfers between generations contribute to the modern wealth gap because wealthy parents and grandparents can pass their wealth on to children and grandchildren through inheritance.⁴² “It is the unearned birthright of inheritance or other family transfers that has the greatest effect on wealth accumulation, and likewise is the largest factor erecting barriers to wealth accumulation

³⁴ *Id.* at 162.

³⁵ *Id.* See generally, IRA KATZNELSON, WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA 17 (2005).

³⁶ See Rothstein, *supra* note 16, at 2.

³⁷ Doug Ryan, *Homeownership Is Still Very Much an Asset-Building Strategy*, SHELTERFORCE (Aug. 12, 2014), https://shelterforce.org/2014/08/12/homeownership_is_still_very_much_an_asset-building_strategy/.

³⁸ Rodney Brooks, *Declining Black Homeownership Has Big Retirement Implications*, FORBES (May 10, 2017), <https://www.forbes.com/sites/nextavenue/2017/05/10/declining-black-homeownership-has-big-retirement-implications/#45d87371e90c>.

³⁹ See ASS'N FOR ENTER. OPPORTUNITY, THE TAPESTRY OF BLACK BUSINESS OWNERSHIP IN AMERICA: UNTAPPED OPPORTUNITIES FOR SUCCESS 24 (2016), https://aeoworks.org/images/uploads/fact_sheets/AEO_Black_Owned_Business_Report_02_16_17_FOR_WEB.pdf [<https://perma.cc/SEZ9-L43E>]; Emily Badger, ‘*This Can’t Happen by Accident*’, WASH. POST (May 2, 2016), <https://www.washingtonpost.com/graphics/business/wonk/housing/atlanta/>.

⁴⁰ *Id.*

⁴¹ Laurence J. Kotlikoff & Lawrence H. Summers, *The Role of Intergenerational Transfers in Aggregate Capital Accumulation*, 89 J. POL. ECON. 706, 730 (1981).

⁴² Laurence J. Kotlikoff & Lawrence H. Summers, *The Contribution of Intergenerational Transfers to Total Wealth: A Reply*, (NBER, Working Paper No. 1827, 1986) (reviewing evidence accumulated after 1981); see also Kotlikoff & Summers, *supra* note 41, at 730 (intergenerational transfers are the “major element determining wealth accumulation” in the U.S.; eliminating intergenerational transfers would reduce wealth by \$3 trillion).

for people of color.”⁴³ More specifically, white families that receive an inheritance receive, on average, more than \$150,000 from the previous generation, whereas that figure is less than \$40,000 for black families.⁴⁴ The differences that have been found between black and white families are stark. White households living near the poverty line typically have about \$180,000 in wealth, while black households in similar economic straits typically have a median wealth near zero. In other words, many black families have a negative net worth.⁴⁵ White households with an unemployed head of household still have more wealth than a Black household with an employed head of household.⁴⁶ White families have simply had more time to pass opportunities to subsequent generations.

Recent data from the Metropolitan Policy Program at the Brookings Institute found that racism affects the value of black homeowners’ property. In the average U.S. metropolitan area, homes in neighborhoods where the share of the population is at least 50% black are valued at roughly half the prices as homes in neighborhoods with little to no black residents.⁴⁷ The research found that racism and bigotry have robbed black Americans of the collective sum of \$156 billion.⁴⁸

B. ECONOMIC VIOLENCE IN MODERN TIMES

Economic inequality has worsened since 1968, particularly for Black Americans.⁴⁹ While the past Civil Rights Movement was in response to discrimination and racist government policies, the current Black Lives Matter Movement is another response to existing structural inequities that stem from the root of the same tree that brought about the Civil Rights Movement.⁵⁰ The Black Lives Matter Movement has revived the economic justice and civil rights discourse. Recognizing that the economic violence suffered in Black communities

⁴³ Derrick Hamilton et. al., *Umbrellas Don't' Make it Rain: why Studying and Working Hard Isn't Enough for Black Americans*, INSIGHT CTR. FOR CMTY ECON. DEV., (April 2015).

⁴⁴ Meschede, Taylor, Mann & Shapiro, *supra* note 23, at 128.

⁴⁵ Darity, *supra* note 24.

⁴⁶ Jones, *supra* note 19.

⁴⁷ ANDRE M. PERRY, JONATHAN ROTHWELL, & DAVID HARSHBARGER, *THE DEVALUATION OF ASSETS IN BLACK NEIGHBORHOODS*, BROOKINGS INSTITUTE (Nov. 27, 2018), <https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/>.

⁴⁸ *Id.*

⁴⁹ Michael T. Owyang & Hannah G. Shell, *Measuring Trends in Income Inequality*, FED. RES. BANK OF ST. LOUIS (April 2016).

⁵⁰ Josh Hafner, *How Michael Browns Death, Two Years Ago, Pushed #BlackLivesMatter Into a Movement*, USA TODAY (Aug. 8, 2016), <https://www.usatoday.com/story/news/nation-now/2016/08/08/how-michael-browns-death-two-years-ago-pushed-blacklivesmatter-into-movement/88424366/> (The Black Lives Matter movement emerged during the summer of August 2014 and continued through 2015, when African Americans led protests across the country in response to the police murder of Michael Brown in Ferguson, Mo., the police killing of Freddie Gray in Baltimore Md. and the acquittal of the police officer accused of the choking death of Eric Garner in New York City. The movement that emerged from these protests took “Black Lives Matter” as their slogan.).

resonates through every aspect of civil society from access to education to bail reform to criminal justice and the plea system criminalizing poverty, the Black Lives Matters Movement champions both the civil rights and economic justice model put forward by the Civil Rights Movement fifty years ago. However, our mainstream vision sweeps the economic justice discussion under the rug, likely because the Black Lives Matter political platform points to massive structural changes required to move towards full social equity. Today's activists are speaking, just as they did in 1968, and it is important that we listen.

The Civil Rights Movement and the Black Lives Matter Movement share a core economic justice goal, although the economic justice goals are often overshadowed by the important civil rights and criminal justice goals.⁵¹ There are many structural inequities that come out of the country's legacy of slavery, but often civil rights and criminal justice (mass incarceration)⁵² get highlighted over economic justice and community development.⁵³ Wealth as a component of economic justice is important because research suggests that the racial wealth gap may be one of the main mechanisms for perpetuating racial economic inequality.

There are parallels to today's political and economic climate from the Civil Rights era, such as discrimination and racialized violence, and the limitation of Black business opportunity.⁵⁴ The status quo of the Jim Crow South that spurred the Civil Rights Movement in the middle of the twentieth century laid the groundwork for the current economic and political climate. In that era, forced and government-supported segregation limited Black economic power and black business ownership.⁵⁵ The Civil Rights Movement connected white violence to economic violence and similarly, the Black Lives Matter movement also connects government-sanctioned violence to economic justice.⁵⁶ The Black Lives Matter movement has connected police violence to other forms of institutional racism.⁵⁷ The platform extends beyond the narrative of protesting anti-black violence and police violence to a recognition of the value of black life, which then naturally extends to economic justice.⁵⁸ The Black Lives Matter political platform lists the wealth gap as one of its issues.⁵⁹ Economic justice continues to be at the core of what leaders are doing and have done, but it may not be highlighted or

⁵¹ Tanzia Vega, *The Next Battle for Black Lives Matter: Economic Justice*, CNN MONEY (Aug. 2, 2016), <https://money.cnn.com/2016/08/02/news/economy/black-lives-matter-the-economy/index.html>.

⁵² Adam Litptax, *U.S. Prison Population Dwarfs that of Other Nations*, N.Y. TIMES (April 23, 2009), <https://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html> (The United States accounts for 5% of the world's population and 25% of the world's prison population.).

⁵³ Vega, *supra* note 51.

⁵⁴ *See generally*, Rothstein, *supra* note 16 (outlining the relationship between the criminal injustices highlighted by the events in Ferguson, MO and the roots of segregation).

⁵⁵ *See supra* note 16 and accompanying text.

⁵⁶ *See Economic Justice*, THE MOVEMENT FOR BLACK LIVES MATTER, <https://policy.m4bl.org/economic-justice/> (last visited Nov. 8, 2018).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

picked up nationally by the mainstream, but economic justice at its root, is linked to historic structural inequities.⁶⁰

II. STRUCTURAL INEQUITY AND THE REALITIES OF ENTREPRENEURSHIP

In the pre-Civil Rights era, both Booker T. Washington and W.E.B. Dubois “advocated the importance of black business creation and expansion.”⁶¹ Part of the solution to economic inequality was entrepreneurship and community economic development.⁶² Entrepreneurship theory is the idea that entrepreneurship is a viable means of economic development because it has the potential to facilitate new business, create jobs and foster innovation. It promotes entrepreneurship as a wealth-building strategy.⁶³ Its proponents would argue that entrepreneurship is a vital component to achieving economic justice to realize the dream articulated by Dr. King.⁶⁴

Long seen as a vehicle for wealth building and job creation, “[e]ntrepreneurship has long been praised as a route to eliminate racial wealth inequality.”⁶⁵ Assuming entrepreneurship is a viable solution to economic disparity, the current state of entrepreneurship is such that entrepreneurship is only viable for the already wealthy and privileged.⁶⁶ The current makeup of the entrepreneurship ecosystem is such that entrepreneurship as a “solution” to poverty and economic disparity will not meaningfully change the status quo or bridge the racial wealth gap.⁶⁷ Entrepreneurship and community economic development have been criticized for their approach to furthering economic justice.⁶⁸ Recent scholars have questioned entrepreneurship as a tool for poverty alleviation, finding that past barriers to opportunity prevented black families from building wealth and finding that entrepreneurship and the market alone cannot address wealth inequality without public sector intervention.⁶⁹ In April 2018, researchers debunked myths related to the racial wealth gap, in a report titled, “What We Get Wrong About the Racial Wealth Gap” and concluded that entrepreneurship cannot be a viable strategy to eliminate the wealth gap since wealth is needed

⁶⁰ *See id.*

⁶¹ Clay & Jones, *supra* note 11, at 259

⁶² Rashmi Dyal-Chand & James V. Rowan, *Developing Capabilities, Not Entrepreneurs: A New Theory for Community Economic Development*, 42 HOFSTRA L. REV. 839, 841 (2013).

⁶³ *Id.*

⁶⁴ *See King, supra* note 4.

⁶⁵ Darity, *supra* note 24.

⁶⁶ *See generally* Lynnise E. Phillips Pantin, *The Wealth Gap and the Racial Disparities in the Startup Ecosystem*, 62 ST. LOUIS U. L.J. 419 (2018).

⁶⁷ *Id.* at 445–57.

⁶⁸ *Id.* at 451–52.

⁶⁹ *See* Louise A. Howells, *Dimensions of Microenterprise: A Critical Look at Microenterprise as a Tool to Alleviate Poverty*, 9 J. AFFORDABLE HOUSING & CMTY. DEV. L. 161, 174 (1999-2000) (examining microenterprise as a tool to address poverty); *see also* Scott L. Cummings, *Community Economic Development as Progressive Politics: Towards a Grassroots Movement for Economic Justice*, 54. STAN. L. REV. 399 (2001); Dyal-Chand & Rowan, *supra* note 62, at 842 (critiquing entrepreneurship as a community economic development strategy).

before one becomes an entrepreneur.⁷⁰ The report noted that the only way for entrepreneurship to have a meaningful impact on the racial wealth gap would be if there were a dramatic divergence from the current composition of the entrepreneurial ecosystem in terms of ethnicity and class makeup.⁷¹ The report found that “in short the composition of entrepreneurship type would need to be dramatically different in terms of ethnic and class makeup to have a net positive effect on the racial wealth gap No amount of tutorials or online classes from wealth experts can change the reality of the racialized advantages and disadvantages that undergird entrepreneurship in America”⁷² Effectively, “there are no actions that Black Americans can take unilaterally that will have much of an effect on reducing the wealth gap.”⁷³

The significance of differences in wealth along racial lines cannot be understated for it is wealth that creates opportunity, begetting more wealth and opportunity.⁷⁴ Since entrepreneurs typically draw from their own resources to finance and startup their venture, one needs to already be wealthy to take advantage of entrepreneurship as a wealth-building opportunity.⁷⁵ Further, the amount of wealth that an entrepreneur has affects her ability to access sources of capital for the business.⁷⁶ Because Black people are less likely to inherit money or receive financial assistance from their families, they are less able than their white peers to use that income derived from inheritance to pursue other wealth-building opportunities.

As evidenced by the legacy of Jim Crow and New Deal era policies, Black people have less capital to leverage and less valuable collateral for bank loans, both of which might be needed to start a successful entrepreneurial venture.⁷⁷ Because of the concentration of wealth among white individuals, funding streams to entrepreneurs mirror existing pockets of wealth, resulting in white male entrepreneurs receiving the majority of startup funding.⁷⁸ Therefore, for non-white entrepreneurs, success in entrepreneurship is rare.⁷⁹

III. ECONOMIC JUSTICE AND THE ROLE OF TRANSACTIONAL LAW CLINICS

The first transactional clinics in law schools were focused on affordable housing and community economic development (“CED”).⁸⁰ These clinics represented community groups

⁷⁰ Darrity, *supra* note 24, at 1.

⁷¹ *Id.* at 34.

⁷² *Id.* at 34–35.

⁷³ *Id.* at 4.

⁷⁴ *Id.*

⁷⁵ See Dyal-Chand & Rowan, *supra* note 62.

⁷⁶ *Id.* at 860–64.

⁷⁷ Emily Fetsch, *Does Racial Wealth Disparity Hinder Entrepreneurship?*, GROWTHOLOGY (Jan. 21, 2016), <http://www.kauffman.org/blogs/growthology/2016/01/does-racial-wealth-disparity-hinder-entrepreneurship>.

⁷⁸ Melissa Bradley, *Investing in Minority Entrepreneurs: An Economic Imperative for the United States*, KAUFFMAN COMPILATION: RESEARCH ON RACE AND ENTREPRENEURSHIP, (Dec. 2016).

⁷⁹ Fetsch, *supra* note 70.

⁸⁰ Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering*

and individuals seeking social and economic justice. Community economic development is an approach to working with government and private sectors to build strong communities, industries, and markets.⁸¹ A CED clinic facilitates the work of government actors, community groups, and private sectors to further the development of specific communities, particularly low-income communities.⁸² CED and community lawyering organically arose out of the drive for social justice in clinical legal education.⁸³

In the 1990s, the modern “business law clinic,” which is markedly different than the traditional CED clinic, emerged.⁸⁴ In more recent times, transactional clinics have become ever more pervasive in the law school curriculum.⁸⁵ A business law clinic fulfills the mission of training students to be transactional lawyers by providing real world experiences with actual clients.⁸⁶ These clinics tend to focus on entrepreneurship, innovation and small business, and some clinics may pedagogically move away from traditional clinical pedagogy.⁸⁷ The breadth of types of transactional clinics is astounding. Transactional law clinics across the country focus on intellectual property,⁸⁸ social enterprise,⁸⁹ arts⁹⁰, food law,⁹¹ international

for *Social Change and Economic Justice*, 4 *CLINICAL L. REV.* 195 (1997); see also, Laurie Hauber, Promoting Economic Justice Through Transactional Community Centered Lawyering, 27 *ST. LOUIS U. PUB. L. REV.* 3, 10 (2007).

⁸¹ Jones, *supra* note 80, at 207–08.

⁸² *Id.* at 232.

⁸³ Patience Crowder, *Designing a Transaction Law Clinic for Life-Long Learning*, *LEWIS & CLARK L. REV.* 413, 416 (2015) (describing how by working with community groups and nonprofit organizations in underserved communities, the work of these clinics is directly linked to the social justice origins of clinical legal education).

⁸⁴ Robert R. Statchen, *Clinicians, Practitioners, and Scribes: Drafting Client Work Product in a Small Business Clinic*, 56 *N.Y.L. SCH. L. REV.* 233, 241 (2011-2012) (stating that a number of transactional clinics, and particularly small business clinics, began to increase in the late 1990s).

⁸⁵ See Susan R. Jones & Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*, 43 *WASH. U. J.L. & POL’Y* 85, 86 (2013) (stating that transactional legal clinics have grown exponentially and have manifested in increasingly diverse transactional specialties).

⁸⁶ *Id.* at 100.

⁸⁷ *Id.* at 87.

⁸⁸ *Id.* at 90.

⁸⁹ *Id.* at 105.

⁹⁰ *Id.* at 99.

⁹¹ See Emily M. Broad Leib, *Retooling Law and Legal Education for Food System Reform*, Keynote Remarks at the Seattle University Law Review Symposium, 1180 (March 6, 2015).

transactions,⁹² complicated corporate deals,⁹³ and nonprofit organizations.⁹⁴ Like their litigation counterparts, many transactional clinics have mission-driven goals or operate under a specific theory of change, typically those goals might include supporting a client's business, and/or creating a transactional learning experience for students, and/or the delivery of transactional legal services that impact individuals and community.⁹⁵

As a director of an entrepreneurship and community development clinic, I am particularly interested in the entrepreneurship paradigm and the provision of free legal support to individual efforts of disrupting systems and building wealth for under-resourced entrepreneurs.⁹⁶ I attempt to instill in my students an interest in promoting economic empowerment and self-sufficiency in low-income communities through entrepreneurship in an effort to improve the circumstances of individuals and communities.

The issues around the modern-day racial wealth gap present a compelling intellectual conundrum particularly for clinical law professors with mission-driven transactional or CED clinics. If it takes wealth to become a successful entrepreneur, how can those who support low-income entrepreneurs as a clinic goal continue to work towards economic equality through our clinic work? It gives me pause to then learn that research shows that entrepreneurship and microenterprise are not generally viable strategies for poverty alleviation or economic empowerment and, moreover, will not narrow—let alone close—the racial wealth gap.⁹⁷ I find myself questioning the value or efficacy of entrepreneurship clinics, community economic development clinics or transactional clinics in general.

Entrepreneurship is firmly entrenched in our culture. Small businesses are responsible for new job creation, recognized and promoted in academia and in the public, private and nonprofit sectors.⁹⁸ Entrepreneurship is not going anywhere anytime soon, but I am compelled to contemplate the idea that entrepreneurship is not a viable tool for asset accumulation for

⁹² Crowder, *supra* note 83, at 417.

⁹³ See *The Transactional Lab*, U. MICH. L. SCH. TRANSACTIONAL LAB, <http://www.law.umich.edu/clinical/transactionallab/Pages/default.aspx> (For example, the University of Michigan Law School Transactional Lab represents corporate clients, often in-house counsel of large corporations. The Lab works with law students to prepare them to be junior attorneys with deal skills, sense, and knowledge. The director of the Transactional Lab intentionally chose the word “Lab” instead of the word “Clinic” to describe the work of the Lab in that the Lab was driven by the pedagogical goal of teaching law students corporate deal skills rather than serving public interest clients (conversation with Michael Bloom, Director, Transactional Lab, University of Michigan Law School)).

⁹⁴ See Jones & Lainez, *supra* note 85, at 98–100 (setting out the clients and practices in transactional legal clinics).

⁹⁵ Praveen Kosuri, “Impact” in 3D - Maximizing Impact Through Transactional Clinics,” 18 CLIN. LAW REV. 1, 16 (2011).

⁹⁶ See, e.g., Lynnise E. Pantin, *The Economic Justice Imperative for Transactional Law Clinics*, 62 VILL. L. REV. 175 (2017).

⁹⁷ Howells, *supra* note 69, at 171.

⁹⁸ Robert Jay Dilger, *Small Business Administration and Job Creation*, CONGRESSIONAL RESEARCH SERV. 1, 7 (Feb. 2, 2018), <https://fas.org/sgp/crs/misc/R41523.pdf>.

low-income entrepreneurs.⁹⁹ The research adds a compelling dimension to conversations around economic justice. Now that there are over 140 transactional law school clinics¹⁰⁰ supporting entrepreneurs, small businesses and community groups, should such clinics close their doors?

My position is this: We shouldn't throw away the legal clinics, just yet; rather we should double down on our efforts to identify economic opportunities in low-income communities. Law school clinics can and should be part of efforts to build wealth and to promote wealth and economic empowerment. Research suggests that to address racial wealth inequality, a 'major redistributive effort or another major public policy intervention to build Black American wealth' is required.¹⁰¹ Transactional clinics should continue to represent individual entrepreneurs, but they should also expand their pedagogy to explicitly teach economic justice and add advocacy components to their clinical model to advocate for asset accumulation strategies and policies.¹⁰²

Typically, law students do not have the opportunity to directly explore economic justice and the origins of the wealth gap.¹⁰³ Enrolling in a legal clinic, may be the only opportunity that a law student may have in law school to engage in the topic of economic inequality.¹⁰⁴ Transactional clinicians may consider whether and how to incorporate economic justice pedagogy into transactional clinics and standard law school courses, by including discussions of the racial wealth gap and economic inequity in their curriculum. Teaching economic justice would spark in our students an understanding of the results of state-sponsored discrimination and its aftermath.¹⁰⁵ It could also help students understand the ramifications of the wealth gap, expand perspective, inform policy, teach skills, and help them meet ethical obligations.¹⁰⁶

Economic justice is one part of a solution towards racial and social justice. Legal services providers and business services providers operate within a system that is the result of government-sanctioned exclusionary policies that produced the economic disparity that exists today.¹⁰⁷ Given the historic wealth inequalities and the institutionalized practices related to homeownership and access to capital described above that are rooted in racism and discrimination, it has become clearer that participating in the entrepreneurship ecosystem as it currently exists will not overcome or even narrow the racial wealth gap.¹⁰⁸ Therefore, it would be fool-hardy to focus solely on entrepreneurship within the current political and economic climate, when the status quo is predicated upon the very same policies that the Civil Rights

⁹⁹ Hauber, *supra* note 80, at 14–15.

¹⁰⁰ See Jones & Lainez, *supra* note 85, at 92–93 (2013) (finding that the Kauffman Foundation reports there are more than 140 transactional clinics at just over 200 American Bar Association (ABA)-approved law schools).

¹⁰¹ Darity, *supra* note 24, at 4.

¹⁰² See Hauber, *supra* note 80.

¹⁰³ Pantin, *supra* note 96, at 181.

¹⁰⁴ *Id.* at 193.

¹⁰⁵ *Id.* at 198.

¹⁰⁶ *Id.* at 195.

¹⁰⁷ Pantin, *supra* note 66, at 424.

¹⁰⁸ *Id.* at 435–36.

movement confronted 50 years ago.¹⁰⁹ Some of those same policies that exist today cultivate the landscape that entrepreneurs of color operate in—which is creating a business within the realities of the legacy of Jim Crow and slavery.¹¹⁰

New economic opportunities must be created and transactional law clinics have a role to play to create such opportunity. There are several entry points for a clinic to get involved in addressing economic justice. Acknowledging the limitations of direct service, transactional clinics could offer an element of their clinic that addresses systematic change through community education and empowerment. As part of the services offered to clients, for example, clinics could either directly or by partnering with community organizations offer workshops around wealth building in low-income communities. Many clinics and of course many law firms already participate in community education, for example, law firms and clinics currently conduct outreach and share information about how entrepreneurs can protect the intellectual property of their business venture. Transactional law clinics might consider community education around wealth building strategies such as affordable retirement products,¹¹¹ children's savings accounts¹¹² or increasing access to financial and social capital.¹¹³ Transactional clinics might also consider adding advocacy components to their clinical model to advocate for asset accumulation strategies and policies such as expanding homeownership for first time home buyers, increasing access to credit or developing alternative credit models. The role that transactional clinics would play in these solutions would be to dedicate time in their clinics to support and promote advocacy towards the implementation of these solutions.

CONCLUSION

Notwithstanding the critique displayed in this essay around entrepreneurship as a strategy towards economic empowerment, supporting under-resourced entrepreneurs, and low-income entrepreneurs is still vital, but it cannot be the only solution to promoting economic justice.¹¹⁴ The fact that entrepreneurship will not resolve the disparities in opportunity leftover from Jim Crow and the legacy of slavery should not detract from the value of such clinics. These clinics support an important ecosystem in the neighborhoods the clinics serve, create impact in such neighborhoods and develop skills for the student attorneys participating in the clinic. But if we are truly aiming for an end to racial wealth disparity, then massive systematic reforms must occur. There is an opportunity for transactional clinics to play an important role in systematic change by continuing to support low-income entrepreneurs, teaching economic justice and advocating for structural reform to the current economic system.

When we talk about justice in 2018, we must draw on the legacy of Dr. King. We celebrate his work, but we need to reckon with his death and the subsequent fifty years since

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 434.

¹¹¹ *Id.* at 458.

¹¹² *Id.* at 458–59 (citing Darrick Hamilton & William Darity Jr., *Can “Baby Bond” Eliminate the Racial Wealth Gap in Putative Post-Racial America*, 37 REV. BLACK POL. ECON. 207, 214 (2010)).

¹¹³ *Id.* at 455–56.

¹¹⁴ *Id.* at 452.

his assassination wherein the economic disparities between white and black Americans have increased at an alarming rate.¹¹⁵ His trajectory from 1955 to 1968 shows that he had become increasingly frustrated and disillusioned,¹¹⁶ focusing more intently on economic justice.¹¹⁷ In King's final speech in Memphis, he says, "something is happening with this world."¹¹⁸ He paints a bleak picture of the events occurring in the American south.¹¹⁹ But then he goes on to say that he believed that it was the best time in which to live, that above all, he would choose to live in the latter part of the twentieth century, because he felt that the country was truly beginning to grapple with its issues and problems.¹²⁰ He emphasized the work that needed to happen and was happening to bring about change.¹²¹ He emphasized that it required everyone to participate. The sentiments are relevant today.¹²² If we fail to act, we will have created an even scarier scenario for the 100th anniversary of the Dr. King's assassination. If we act, we will create a more just and equitable future.

¹¹⁵ Tracy Jan, *No Progress for African Americans on Homeownership, Unemployment and Incarceration in 50 Years*, WASH. POST: WONKBLOG (Feb. 26, 2018), https://www.washingtonpost.com/news/wonk/wp/2018/02/26/report-no-progress-for-african-americans-on-homeownership-unemployment-and-incarceration-in-50-years/?utm_term=.50bec4e2d40a.

¹¹⁶ J.A. O'Rourke, *Descending From Glory To Reality: A Reflection on the Trajectory of Martin Luther King Jr.'s Use of His Speech: "Remaining Awake Through a Great Revolution*, SPECTRUM (Apr. 5, 2018), <https://spectrummagazine.org/article/2018/04/12/descending-glory-reality-reflection-trajectory-martin-luther-king-jr%25E2%2580%2599s-use-his-sp>.

¹¹⁷ *Id.*

¹¹⁸ King, *supra* note 7.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*