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Building Social and Human Capital in the Black Community by Increasing Strategic Relationships, Cooperative Economics, the Black Marriage Rate, and the Level of Educational Attainment and Targeted Occupational Training

W. Sherman Rogers

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Building Social and Human Capital in the Black Community by Increasing Strategic Relationships, Cooperative Economics, the Black Marriage Rate, and the Level of Educational Attainment and Targeted Occupational Training

W. SHERMAN ROGERS*

“If you want to go fast, go alone. If you want to go far, go together.”
African Proverb

Abstract:

This is a multi-disciplinary article that focuses on the power of strategic relationships and cooperative economics in strengthening the human and social capital of the black¹ community. It involves studies emanating primarily from the fields of law, economics, history, political science, and sociology. The recommendations set-forth in this article, however, are relevant to all people in America. The central thesis that underlies the entirety of this article can be found in the simple exhortation of the African Proverb—“If you want to go fast, go alone. If you want to go far, go together.”

African Americans can significantly expand the level of social and human capital in the black community by (1) increasing strategic

*W. Sherman Rogers is Professor of Law at the Howard University School of Law in Washington, D.C. The author would like to thank Ms. Nnamdia Gooding for her assistance in the preparation of this article. Additional thanks to Mr. Brian Hedgeman and Ms. Victoria Capatosto.

1. This article often refers to African Americans as black people with the “b” in the word black typed in lower case. This is partially because all black people in the United States are not Americans. Moreover, under the United States Supreme Court’s decision in *Dred Scott v. Sandford*, 60 U.S. 393 (1857), the dominant culture did not consider enslaved and formerly enslaved people of African descent to be capable of becoming citizens of the United States. W. SHERMAN ROGERS, *THE AFRICAN AMERICAN ENTREPRENEUR THEN AND NOW* 3–4 (2009). Indeed, it took the Fourteenth Amendment to the Constitution to rectify this matter.

relationships; (2) increasing the practice of cooperative economics; (3) increasing the black marriage rate; (4) increasing the operation of businesses with multiple owners; and (5) increasing other forms of cooperative behavior.

W.E.B. Du Bois saw that black people acting cooperatively could establish a self-supporting economy. Indeed, democratic management of black economic enterprises could allow groups of black cooperatives to supply everything black people consume including amusement, recreation, and education. Accordingly, another reason why black people should increasingly explore the establishment of cooperatives as a means of economic cooperation is to provide the black population with independence in political and economic matters.

Some of the solutions to the economic challenges facing the black community through the use of the cooperative form of business organization include the establishment of: (1) worker cooperatives, producer cooperatives, consumer cooperatives and/or other forms of cooperatives that teach its members "specific industry skills; business planning and accounting; strategic planning; and skills of democratic participation;"² (2) cooperative housing and land trusts that provide affordable housing; (3) cooperative grocery stores; (4) food buying clubs; and (5) cooperative child-care services.

Other types of cooperative activity include an increase in: (1) worker-owned and managed businesses; (2) community-owned businesses; (3) programs that support individual and community entrepreneurship; (4) pooling capital and other resources through lending circles and solidarity groups.³

The cooperative form of organization does have potential flaws. Indeed, cooperatives are likely inferior to corporations and other forms of business organization when the cooperative's membership is composed of a heterogeneous group of members. For example, workers who perform different types of work, producers who produce different types of products, and consumers who possess different life-styles and values. These differences among members sometimes lead to conflicts between members that render the cooperative incapable of effectively and efficiently moving forward.

However, it is important to remember that only people produce wealth. The government, markets, corporations (and other types of business organizations including cooperatives) are only mechanisms through which people coordinate their production and consumption of wealth.

In any case, black people must still seek to increase strategic

2. NEMBHARD, *infra* note 7, at 86.

3. *Id.* at 224.

relationships, cooperative economics, the black marriage rate, businesses with multiple owners, and other forms of cooperative behavior. As the African proverb teaches, If you want to go fast, go alone. If you want to go far, go together.

An increase in cooperative efforts among black people offers great promise in solving the economic riddle confronting black Americans. The pooling of resources has helped to solve the problems of people since the beginning of time. There is much wisdom in a decision by people to act cooperatively and unite forces for a common good.⁴

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I. INTRODUCTION AND OVERVIEW

A. Developing and Increasing Strategic Relationships Among African Americans as a Means to Produce Wealth is Necessary

1. Why Collective Action is Necessary for African Americans to Improve Their Economic Status

This is a multi-disciplinary article that focuses on the power of strategic relationships and cooperative economics in strengthening the human and social capital of the black⁵ community. It involves studies emanating primarily from the fields of law, economics, history, political science, and sociology. The recommendations set-forth in this article, however, are relevant to all people in America. The central thesis that underlies the entirety of this article can be found in the simple exhortation of the African Proverb—“If you want to go fast, go alone. If you want to go far, go together.”

“Self-help, self-responsibility, democracy, equality, equity and solidarity” are the basis for cooperative values. Persons who adhere to these standards “believe in the ethical values of honesty, openness, social responsibility and caring for others.”⁶ It is for this reason that this article focuses a good deal of attention on the cooperative form of business organization (i.e., co-ops) as a means for helping people to coordinate their production of wealth—especially those who are at the bottom rung of the economic ladder.

There are two reasons for this emphasis on the use of co-ops as an organizational device: (1) to provide individuals and organizations with ideas on how to increase the income of people who have historically been at the bottom of the economic ladder through cooperative action and (2) to educate lawyers (and others) regarding the many uses of co-ops. The educational goal

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6. International Co-Operative Alliance, *Cooperative Identity, Values & Principles*, COOP, <https://www.ica.coop/en/cooperatives/cooperative-identity>. (last visited Feb. 8, 2020, 5:29 PM).

of this article with respect to the cooperative form of business organization is important because few law schools, if any, teach students about cooperatives in the typical business organizations class nor do these classes help prospective lawyers to distinguish standard business formats (e.g., general partnerships, limited partnerships, corporations, limited liability companies) from the cooperative form of organization.

An increase in cooperative efforts among black people offers great promise in solving the economic riddle confronting black Americans. The pooling of resources has helped to solve the problems of people since the beginning of time. There is much wisdom in a decision by people to act cooperatively and unite forces for a common good.⁷

W.E.B. Du Bois saw that black people acting cooperatively could establish a self-supporting economy. Indeed, democratic management of black economic enterprises could allow groups of black cooperatives to supply everything black people consume including amusement, recreation, and education.⁸

Du Bois was, arguably, on the right track. In 2017, for example, black Americans spent \$1.2 trillion.⁹ Those expenditures would qualify black Americans as the 16th largest economy in the world.¹⁰ In economics, expenditures reflect income as every dollar spent by a buyer is income to the seller. However, anecdotal evidence indicates that black Americans spend very little of their earnings in the black community. There are historical reasons for this phenomenon. One of the chief reasons has been racial hostility and discrimination against black businesses that competed against white businesses.¹¹ This is why Du Bois supported cooperative economics

7. JESSICA GORDON NEMBHARD, *COLLECTIVE COURAGE: A HISTORY OF AFRICAN AMERICAN COOPERATIVE ECONOMIC THOUGHT AND PRACTICE* 1 (2014).

8. *Id.* at 1, 15, 76-77, 104, 112, 235.

9. As of 2017, the earnings of African Americans—based on their spending—had increased to \$1.2 trillion. *Black Impact: Consumer Categories Where African Americans Move Markets*, NIELSEN (Feb. 15, 2018), <https://www.nielsen.com/us/en/insights/article/2018/black-impact-consumer-categories-where-african-americans-move-markets/>.

10. ROGERS, *supra* note 5, at 6 (referencing African American earnings as determined by black spending in 2006).

11. Economists measure gross domestic product (i.e. national income) by the amount of money people spend on new goods and services produced in the country during a twelve-month period. The idea is that every dollar one spends is income to the seller. Society as a whole cannot spend more money than it earns. “This is because one person’s spending is just another person’s earnings.” W. SHERMAN ROGERS, *WINNERS AND LOSERS IN THE AMERICAN CAPITALISTIC ECONOMY: A PRIMER* 160–63 (2016). White hostility and discrimination against black businesses out of racial jealousy, spite and, sometimes, for the purpose of forcing black people to purchase from white businesses can be seen throughout American history; ROGERS, *supra* note 5, at 31, 34, 67–68, 88–90; NEMBHARD, *supra* note 7, at 57 (citing the Leflore Massacre as an example).

among black Americans.

A failure to cooperate can lead to a complete collapse of efficient outcomes. This can occur when people have an incentive to poach off the efforts of others as opposed to coordinating their contributions to a unified plan of action.¹² Accordingly, there is much wisdom in uniting forces and pooling funds for a common good.¹³

When people behave non-cooperatively, they have to be more concerned about individually bearing all of the risks and responsibilities of life such as healthcare, housing, being defrauded, assaulted, and having their property stolen. Therefore, it becomes necessary to weigh the benefits of organizing in a cooperative fashion—i.e., spreading the costs of a variety of risks among a larger group—versus the cost of assuming these risks as an individual. Accordingly, we must determine whether the benefits that flow from the formation of an optimal sharing group exceed its costs.¹⁴

Many of the socio-economic benefits of marriage are to be found in other combinations such as general partnerships and other forms of multi-owned businesses. However, conflicts will inevitably arise in any group of two or more persons. The potential for conflict and disagreement will always be present whenever there is a relationship between two or more persons. It's just a fact. The Bible even states that there was “war in heaven” of all places.¹⁵

Because the potential for conflict and disagreement is ever present, business lawyers and other professionals routinely provide advice to clients on ways to proactively address recurring problems that typically lead to conflict between persons who are in relationships that require cooperation. Accordingly, people must first identify potential areas of conflict. Thereafter, they must proactively seek to hammer out an agreement between themselves. This is true regardless of whether the relationship is a business venture or one that it is purely personal.

Therefore, this article identifies the typical areas of disagreement between people and proposes solutions to resolve them. Lawyers have developed standardized prenuptial agreements for both personal marriages and business marriages (i.e., business partnerships and other business combinations between owners of small, closely held firms). The purpose of these agreements is to provide solutions to potential areas of conflict between people before they arise.

Standardized prenuptial agreements for personal and business relationships help to reduce conflict because they: (1) identify the subject

12. JOSEPH HEATH, *ECONOMICS WITHOUT ILLUSIONS: DEBUNKING THE MYTHS OF MODERN CAPITALISM* 67 (1d ed. 2010).

13. NEMBARD, *supra* note 7, at 1.

14. HEATH, *supra* note 12, at 91–92.

15. *Revelation* 12:7–9.

matter areas that typically lead to discord in order to minimize surprises between people and, thereby, help them to manage their expectations; (2) assist people in recognizing the opportunity costs¹⁶ and trade-offs that may be involved if the relationship is consummated; (3) promote transparency, fidelity, and fairness in the relationship and (4) provide an agreed-upon remedy if one of the parties breaches the agreement.

People will only have an incentive to enter into personal and business combinations if they: (1) can identify a benefit to be gained from the relationship and (2) mutually agree after disclosure of all relevant facts that the proposed arrangement is fair. Moreover, loyalty issues—which are grounded on *transparency* (i.e., ongoing disclosure of all material facts), *fidelity*, and *fairness*—are at the root of most conflicts between people in relationships. This article will discuss the typical potential areas of conflict covered in both types of prenuptial agreements.

2. Understanding the Economic System of Capitalism in Which African Americans Live

Any discussion concerning the economic condition of African Americans must begin with the recognition that the United States operates under the economic system of capitalism. Under this economic system, black Americans, “when compared to their white counterparts experience twice the rate of unemployment, have substantially lower personal and family income, are three times more likely to live poverty, and possess only one-fifth of the net worth of whites.”¹⁷

So exactly what is an economic system? An economic system is simply a framework that a nation uses to distribute and allocate goods and services among its people. Feudalism, socialism, communism and capitalism are examples of economic systems.¹⁸

Economics itself is the study of the allocation the scarce means of production toward the satisfaction of human wants. The scarce means of

16. Every choice a person makes in life involves a trade-off. A choice to do one thing is a choice not to do something else. And the cost of a person’s choice is what he or she must give up in return. Economists refer to the foregone choice as the “opportunity cost” of the choice that the person ultimately made. Therefore, it may be helpful for people to periodically ask themselves whether the benefits of a choice they made were outweighed by the costs and consequences of that choice. Sometimes, the choice people give-up—i.e., the opportunity cost to do what they wanted—is more beneficial than what they ultimately received as a result of their choice. Trade-offs have long been the center of economics. You can’t get something for nothing. ROGERS, *supra* note 11, at 4–5, 62, 165–67, 232–234.

17. ROGERS, *supra* note 5, at 6–7. Ironically, because the United States is a rich country, African Americans if listed as a separate nation would be the sixteenth most productive nation in the world. *Id.* at 6.

18. ROGERS, *supra* note 11, at 10.

production are land, labor, capital (i.e., the tools, equipment, and plant used for production) and entrepreneurial ability.¹⁹

However, it is important to remember that only people produce wealth. The government, markets, corporations (and other types of business organizations including cooperatives) are only “mechanisms through which people coordinate their production and consumption of wealth.”²⁰ Accordingly, one of the most important inquiries of economics is the question of determining who gets the wealth that people produce and how much. It should come as no surprise that every nation, no matter what type of economic system it utilizes, claims that all production is for its people.²¹

In Sweden and Norway, for example, the government provides all of its citizens with the basic necessities and taxes a large part of the income of the rich. Consequently, government in those countries *distributes income fairly evenly*.

However, in developing nations, a few wealthy families, usually less than 1 percent of the population, receive most of the nation’s output while the rest of the people live at a subsistence level.

Most industrialized nations—including the United States—on the other hand, have a few rich families, a very large middle class, and a minority of relatively poor people.

Accordingly, how nations divide the economic pie varies from country to country.²²

In his most famous work, *The Wealth of Nations*, Adam Smith stated that capitalism is a spontaneous social institution, based on the free-market system of supply and demand, that produces an orderly and efficient outcome without the need of government regulation. “In Smith’s view, a person’s selfish pursuit of his own economic self-interest works like an invisible hand that makes everyone in society more prosperous.”

Accordingly, Smith viewed capitalism as a self-regulating system that automatically solves recessions and keeps the employment rate stable. He also believed that any government effort to intervene—whether through social welfare programs or in any other manner—would only make things worse.²³

One commentator summarized the type of free-market capitalism espoused by conservatives who look to Adam Smith and other classical liberals as resting on a belief that a person’s individual self-interest is more

19. *Id.* at 149.

20. *Id.* at 44, 94–95.

21. *Id.* at 10–11.

22. *Id.* at 10–11, 17, 21–23 (citing STEVE SLAVIN, *ECONOMICS: A SELF-TEACHING GUIDE* 32–33 (2d ed. 1999)).

23. ROGERS, *supra* note 11, at 83–84, 97–98, 99, 193–94, 199.

important than the interests of the larger group. Indeed, classical liberal economic thought, as developed by Adam Smith and others, “departed from earlier views that saw society as a family and, therefore, greater than the sum of its members.” Instead, classical economic thought viewed society as only the aggregate of its individual members.²⁴ As former Secretary of State James Baker put it, “the genius of capitalism is to pacify a destructive human characteristic, greed, into benign self-interest—something we know as incentive.”²⁵

Therefore, it should not be surprising that classical economists like Herbert Spencer viewed “capitalism as an optimizing system—much like Darwin’s natural selection system—in which the market drove out the lazy, the irresponsible, and the inefficient in favor of the survival of the fittest.”²⁶ Accordingly, under the classical theory of capitalism, each person is on his own. And protecting an individual’s freedom of choice is thought to be more important than that of the welfare of society as a group.²⁷

Accordingly, deeply embedded in the fibers of capitalism is the belief in the individual freedom of each person to own, use, and dispose of private property; the individual right to choose whether to work or not to work; and the individual right to choose what to purchase and for how much. Free market capitalism is grounded on the protection of these individual rights and considered to be more important than the welfare of society as a group.²⁸

As the great British economist John Maynard Keynes stated, somewhat sarcastically, “capitalism is the extraordinary belief that the nastiest of men for the nastiest reasons, will somehow work for the benefit of us all.”²⁹ In light of the philosophy underling the economic system of capitalism, is the idea of joint ownership and cooperation antithetical to the tenets of capitalism? Let’s briefly address this matter now.

24. *Id.* at 199.

25. *Id.* at 20.

26. *Id.* at 97.

27. *Id.* at 109 (citing Colbert I. King, *The Bourbon Democrats Rise Again?* WASH. POST (Apr. 20, 2012), https://www.washingtonpost.com/opinions/the-bourbon-democrats-rise-again/2012/04/20/gIQA9cvXWT_story.html (citing a speech by President Barack Obama in Burlington, Vermont)).

28. *Id.* at 17–18.

29. ROGERS, *supra* note 5, at 4, citing Paul Farhi, *Feeding the Beast*, WASH. POST (Mar. 3, 2002), <https://www.washingtonpost.com/archive/lifestyle/2002/03/03/feeding-the-beast/c6664781-327d-4d7e-ac6b-aa0de64b70bf/?noredirect=on>.

3. Is the Use of the Cooperative Form of Business Organization Inconsistent with Capitalism?

The economic model of cooperative capitalism is based on the idea that “competition consolidates” while “cooperation expands.” It questions the validity of Adam Smith’s model of competitive capitalism. Cooperative capitalism encourages the sharing of knowledge and resources with others “as opposed to efforts to advance by snuffing competitors out.”³⁰

Believers in Adam Smith’s greed model of competitive capitalism sometimes forget that Smith also made clear that for capitalism to work, “an equally powerful inclination toward cooperation, empathy and trust” must also exist. Smith also expressed these views in his earlier work, *The Theory of Moral Sentiments*, and in other passages of *The Wealth of Nations*.³¹

As one commentator noted, “Smith . . . was never a prophet of greed that free-market cheerleaders have made him out to be.” Indeed, “[a]n economy organized around the cynical presumption that everyone is greedy is likely to be no more successful than one organized around the utopian assumption that everyone will act of altruism.” Interestingly, “brain researchers, behavioral economists, evolutionary biologists and social psychologists have confirmed Smith’s often overlooked observations.”³² Therefore, as Smith observed, “[h]owever selfish so ever man may supposed to be, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it, except the pleasure of seeing it.”³³

Prolific scholar W.E.B. Du Bois (1868-1963)³⁴ believed that the economic system of capitalism—with its focus on individually building wealth—had failed black Americans because of intentional racial discrimination and hostility. Therefore, Du Bois advocated that black people engage in collective economic cooperation by forming business cooperatives.

30. Cheryl Conner, *Can ‘Cooperative Capitalism’ Succeed?* FORBES (Dec. 12, 2013, 8:20 PM), <https://www.forbes.com/sites/cherylsnappconner/2013/12/12/can-cooperative-capitalism-succeed/#274e7e277f0e>.

31. Steven Pearlstein, *Five Myths About Capitalism: Maybe Greed Isn’t So Good*, WASH. POST (Sept. 27, 2018, 3:00 AM), https://www.washingtonpost.com/outlook/five-myths/five-myths-about-capitalism/2018/09/27/3f0b72f6-c06f-11e8-90c9-23f963eca204_story.html.

32. *Id.*

33. STEVEN D. LEVITT & STEPHEN J. DUBNER, *FREAKONOMICS: A ROGUE ECONOMIST EXPLORES THE HIDDEN SIDE OF EVERYTHING* 46–47 (1st ed. 2005) (citing Adam Smith in his book *The Theory of Moral Sentiments*).

34. ROGERS, *supra* note 5, at 90–92 (In 1895, Du Bois became the first black person to earn a doctorate from Harvard University. Du Bois was a sociologist by training. He wrote over 4,000 articles, 22 books, five novels and established four journals).

We discuss Du Bois' position in more detail in Part I. B2. of this article.

4. Why This Article Focuses More Attention on the Cooperative Form of Organization (Co-ops) as Opposed to the More Standard Forms of Business Organization Such as Corporations, Partnerships, and Limited Liability Companies

One of the primary goals of this article is to educate people on how the use of the cooperative form of business organization may yield valuable results in solving the economic riddle of people who have historically been at the bottom of the income and wealth ladder in the United States. The pooling of resources has helped to solve the problems of people since the beginning of time.

Unfortunately, the typical law school text in Business Organizations and related courses do not discuss (or only mention in passing) the cooperative form of organizing business activity. Instead, these law school texts tend to focus exclusively on sole proprietorships, corporations, general partnerships, limited liability partnerships, limited partnerships, limited liability limited partnerships, and limited liability companies.

Therefore, many lawyers and laypersons alike do not generally possess much knowledge on how people can coordinate their production of wealth through the use of the cooperative (sometimes referred to as a co-op) as a form of business organization. Accordingly, this article intends to fill this gap.

Some of the solutions to the economic challenges facing the black community through the use of the cooperative form of business organization include the establishment of: (1) worker cooperatives, producer cooperatives, consumer cooperatives and/or other forms of cooperatives that teach its members "specific industry skills; business planning and accounting; strategic planning; and skills of democratic participation,"³⁵ (2) cooperative housing and land trusts that provide affordable housing; (3) cooperative grocery stores; (4) food buying clubs; and (5) cooperative child-care services.³⁶

Cooperatives develop social capital "in the process of developing and maintaining the co-op. Cooperatives require trust and solidarity, and at the same time create trust and solidarity in . . . developing and maintaining the co-op. Trust and solidarity while often necessary to make the association work, also become products or outputs of a cooperative enterprise." Scholars

35. NEMBARD, *supra* note 7, at 86, 224.

36. *Id.* Other types of cooperative activity include an increase in: (1) worker-owned and managed businesses; (2) community-owned businesses; (3) programs that support individual and community entrepreneurship; (4) pooling capital and other resources through lending circles and solidarity groups. *Id.* at 224.

refer to this as “social energy.”³⁷

Cooperatives also build human capital—i.e., investments people make in education and training. Education practices used by cooperative enterprises include: study circles; community workshops and development programs; industry specific training; self-management training; attendance at networking conferences that also focus on skill and leadership development; and education programs that teach co-op members and customers about the co-op model, principles, services and products.³⁸

However, it is important to remember that only people produce wealth. The government, markets, corporations (and other types of business organizations including cooperatives) are only “mechanisms through which people coordinate their production and consumption of wealth.”³⁹

B. Why Black Americans Will Continue to Struggle Economically in the Absence of Developing Strategic Relationships, Engaging in Cooperative Economics, Increasing the Black Marriage Rate and Partnerships With Each Other

1. The Economic Challenges and Opportunities Facing African Americans

a. Will the Working Class Ever Narrow the Income and Wealth Gap with the Upper Classes?

The rich are getting richer and the working class,⁴⁰ in the view of some economists, will never catch up.⁴¹ This is because the inherited fortunes of the rich will continue to dominate advanced societies like those in the United States and the inequality gap will continue to grow.

Here are four facts that, when combined, have caused some economists to predict that the working class in America will continue to fall further behind their

37. *Id.* at 86–87.

38. *Id.* at 87–88.

39. *Id.* at 44, 94–95.

40. Commentators loosely define the term “working class” to refer to people whose employers pay them hourly wages, who lack college degrees, and who work as unskilled laborers, retail workers, food service workers, artisans, and factory workers. *Working Class*, BUS. DICTIONARY, <http://www.businessdictionary.com/definition/working-class.html>; Joan C. Williams, *We Need to Redefine What ‘Working Class’ Means*, TIME (Aug. 14, 2017), <https://time.com/4899906/donald-trump-white-working-class/>.

41. Christopher Ingraham, *Massive New Data Set Suggests Economic Inequality is About to Get Even Worse*, WASH. POST (Jan. 4, 2018, 2:04 PM), <https://www.washingtonpost.com/news/wonk/wp/2018/01/04/massive-new-data-set-suggests-inequality-is-about-to-get-even-worse/>.

rich counterparts. These economists say that the following four realities will ultimately result in a more or less permanent two-tiered society of the haves and have nots. The reasoning goes something like this: (1) all income derives from either labor or capital; (2) income from capital includes returns from stocks, bonds, real estate, and business ownership while income from labor includes wages, salaries and employer-provided fringe benefits;⁴² (3) the top 10 percent of Americans own 70 percent of the capital;⁴³ and, finally, (4) the historical returns on capital significantly exceed the income derived from labor.⁴⁴

French economist Thomas Piketty, in his book titled *Capital*, noted that the rate of return on capital exceeded the rate of return on labor and that this was the root of the problem. His research indicated that the historical returns on capital have averaged 4 percent to 5 percent annually. On the other hand, Piketty's research predicted that the world's total income would grow by only 1-3 percent.⁴⁵

Significantly, research by economists subsequent to Piketty's findings have shown that the rate of return on capital versus labor is actually larger than what Picketty's research revealed. Indeed, a study led by Oscar Jorda, an economist with the San Francisco Federal Reserve, indicates that the rate of return on capital is 6.28 percent compared to only a 2.8 percent return on labor.⁴⁶

b. Opportunities Through Entrepreneurship

An equally compelling reason why the working class will continue to fall behind those who earn income from capital can be seen in research that indicates that the "mean income for entrepreneurs is almost 50 percent greater than [the income] for 'employees.'" Moreover, this research indicated that "this effect is not explained by 'professional' entrepreneurial pursuits such as opening a medical or law practice."⁴⁷

These findings strongly indicate that there must be an increase in the number of employees who become entrepreneurs through the ownership of businesses and cooperative economic structures that produce income from

42. ROGERS, *supra* note 11, at 21 (citing Robert J. Samuelson, *Class Warfare Justified?* WASH. POST (Apr. 20, 2014), https://www.washingtonpost.com/opinions/robert-j-samuelson-class-warfare-justified/2014/04/20/0fe43ae0-c730-11e3-8b9a-8e0977a24aeb_story.html).

43. *Id.*

44. *Id.*

45. *Id.*

46. Ingraham, *supra* note 41.

47. Dave Girouard, *Does it Pay to Become an Entrepreneur?* FORBES (Jan. 3, 2013, 11:13 AM), <https://www.forbes.com/sites/groupthink/2013/01/03/does-it-pay-to-become-an-entrepreneur/#1ec01abf2b59> (citing to a study published in 2009 by the International Institute for the Study of Labor).

capital and less on labor if they ever hope to catch up. This is unlikely to happen because many people desire the security of a job and realize that most new business ultimately fail.⁴⁸ Moreover, economists recognize that an entrepreneur's ability to assemble the factors of production—i.e., land, labor, and capital (capital being the tools, equipment and plant necessary for production) is a relatively scarce talent that most people do not possess.⁴⁹

However, there is still plenty of opportunity in America for people to start successful businesses. Therefore, creating new business enterprises and experimenting with cooperative economic structures may be a possible solution in closing the economic gap between the haves and the have nots. And, in any case, taking this route may help some people avoid economic devastation and poverty.

c. Opportunities Through the Gig Economy

Everyone should be familiar with the term the sharing economy (sometimes referred to as the Gig Economy or the online platform economy) and its implications. This is especially true for people with an entrepreneurial mindset.

Sharing economy businesses, in seeking out independent contractors to provide services to customers, emphasize that contractors have the benefits of “[f]lexible hours, being [their] own boss, [and] the glories and self-bootstrapping pride of entrepreneurship.” “These are among the virtues of ‘sharing economy’ gigs, as touted in a recent Uber-commissioned survey of its drivers.”⁵⁰

Other companies offering peer-to-peer platforms such as Airbnb, TaskRabbit and Homejoy, have made similar pitches: “They’re giving workers—particularly those who are unable to land traditional jobs or unfulfilled by 9-5 Organization Man duties—the freedom to take their breadwinning fates into their own hands.”⁵¹ Indeed, it is clear that the gig economy has created income opportunities for many people who, otherwise, might find it difficult to find employment.

The risk, however, according to one commentator, is that entrepreneurs involved in most sharing economy gigs—who provide services as independent contractors—do not have access to traditional corporate safety

48. *Id.*

49. ROGERS, *supra* note 11, at 149, 168 (citing STEVE SLAVIN, *ECONOMICS: A SELF-TEACHING GUIDE* 34 (2d ed. 1999)).

50. Catherine Rampell, *The Dark Side of ‘Sharing Economy’ Jobs*, WASH. POST (Jan. 26, 2015), https://www.washingtonpost.com/opinions/catherine-rampell-the-dark-side-of-sharing-economy-jobs/2015/01/26/4e05daec-a59f-11e4-a7c2-03d37af98440_story.html.

51. *Id.*

net programs administered by employers such as health insurance, workers compensation, and a variety of other benefits available only to employees but not to independent contractors.⁵² Some historians refer to these traditional corporate safety net programs as welfare capitalism.

In this context, the sharing economy looks more like a continuation of the disintegration of the corporation-centered safety net—e.g., the disappearance of defined benefit pension plans, increased use of temporary workers, as well as just-in-time scheduling, and outsourcing.

Moreover, a September 2018 report by JP Morgan Chase Institute found that a majority of people who earn income from the “online platform economy” only sporadically utilize these opportunities to earn income as independent contractors. The report found that an increasing number of these part-time entrepreneurs were using gig economy work to supplement a 9-5 job.⁵³ However, at least one full-time Uber driver told this author that he earned good money as a full-time independent contractor. And he emphasized that he made more than enough to pay all of his bills.⁵⁴

d. Challenges and Opportunities Caused by Technological Disruption Affecting the Work Force

Global Consultancy firm McKinsey predicted in a November 2017 report that, over the next 12-13 years, the rising tide of automation will force as many as 70 million workers in the United States to find another way to make money. The jobs most at risk involve repetitive tasks. About half the duties workers handle globally could be automated, according to the report, though less than 5 percent of occupations could be entirely taken over by computers.⁵⁵

Caretakers, psychologists, artists, writers—anyone who relies on empathy or creativity at work—can expect to have the most job security as automation continues to spread, said Jason Hong, a computer science professor at Carnegie Mellon University in Pittsburgh.⁵⁶

Examples of these changes abound. For example, in April 2018, a state-owned Chinese bank opened an automated branch equipped with facial-

52. *Id.*

53. Jena McGregor, *How Much People Really Make in the 'Gig Economy'*, WASH. POST (Sept. 24, 2018, 2:24 PM), <https://www.washingtonpost.com/business/2018/09/24/how-much-people-really-make-gig-economy/>. The JP Morgan Chase Institute refers to the gig/sharing economy as the “online platform economy.”

54. Interview with Corey Pinkney, Uber Driver (Nov. 25, 2018).

55. Danielle Paquette, *Robots Could Soon Replace Nearly a Third of the U.S. Workforce*, ASSOCIATED PRESS (Dec. 1, 2017), <https://apnews.com/1f2d6f7354aa4e6bac77c7536348ef54>.

56. *Id.*

scanning software, a virtual reality room, a hologram machine, talking robots and touchscreens for paying utility bills, among other functions. And it's fully automated.⁵⁷

A robot greets customers at the entrance and answers questions using voice recognition software. Clients can swipe their national identification cards to enter the bank—or scan their faces using the bank's facial recognition device.

Machines inside allow visitors to buy gold, change currency, or scout real estate investments using virtual reality googles. The bank isn't totally unstaffed. Guards still stand sentry, and a room equipped with teleconference software allows VIP clients to request help from human employees based elsewhere.⁵⁸

Additionally, on August 31, 2018, this author was mesmerized by two robots making mixed drinks to order on Royal Caribbean's Symphony of the Seas Cruise Liner.

However, "The goal of an economy is to produce more, not to work more."⁵⁹ And, "[a]s a general rule, economists do not shed any tears for people who lose their jobs because of technological advances or because their employers shut down a factory where they once worked." Moreover, once the old jobs disappear, they don't return. But, generally, new jobs that require a different skill set typically result. That's why retraining programs are necessary.⁶⁰

For example, the advent of the personal computer and the Internet since 1980 have caused 3.5 million jobs to be lost in the U.S. Those jobs include typists, secretaries and typewriter manufacturers. However, these new technologies have created 19.5 million new jobs in the U.S. in areas such as software developers, semiconductor manufacturers, and a host of newly emerging industries.⁶¹ In any case, black Americans must prepare now to deal with these realities going forward.

57. *China Opens its First Bank without Bankers*, MILLENNIUM POST (Apr. 25, 2018, 9:33 AM), <http://www.millenniumpost.in/business/china-opens-its-first-bank-without-bankers-296350>.

58. *Id.*

59. ROGERS, *supra* note 11, at 25.

60. *Id.* at 24.

61. Kathleen McCleary, *What You Need to Know About Artificial Intelligence*, PARADE (Apr. 20, 2018, 5:00 AM), <https://parade.com/661083/kmccleary/what-you-need-to-know-about-artificial-intelligence/>.

2. W.E.B. Du Bois' Scholarship on the Need for Economic Cooperation Among African Americans

In his book published in 1907 titled *Economic Cooperation Among Negro Americans*,⁶² W.E.B. Du Bois identified 154 black cooperatively owned businesses *in addition to the thousands of black mutual aid societies*.⁶³

Du Bois' position, as gleaned from the NAACP's *Crisis Magazine* and various speeches, was clear. *Du Bois had come to believe that capitalism was not working for black Americans* because discrimination and racism prevented most blacks from gaining *individual* wealth like other Americans.

Accordingly, from 1897 until the end of his life, Du Bois maintained that black Americans "should voluntarily form a group economy based on a sense of solidarity and use producer and consumer cooperatives to position [the black community] to serve [its own] economic needs separately from the white economy." Consequently, black Americans would be able to "control" their "own goods and services" for themselves and for their communities.⁶⁴

In 1907, the same year he published his book *Economic Cooperation Among Negro Americans*, Du Bois convened a conference at Atlanta University on the topic, Negro Businesses and Cooperatives. At that conference, Du Bois gave his so-called "Crossroads Speech." He memorably stated in that speech that: "[W]e unwittingly stand at the crossroads—should we go the way of capitalism and try to become individually rich as capitalists or should we go the way cooperatives and economic cooperation where we and our whole community could be rich together?"

According to political economist Jessica Gordon Nembhard, Du Bois was afraid that black Americans were choosing the wrong path—the path of individualism.⁶⁵

Speaking to this point, Nembhard observed that the dominant culture for years has pushed the idea that greed-based competitive capitalism—which places a higher premium on protecting individual freedom than the interest of society as a whole—is the most efficient economic system. Indeed, Nembhard notes that champions of free market capitalism have convinced

62. W.E.B. DU BOIS, *ECONOMIC CO-OPERATION AMONG NEGRO AMERICANS* (1907). A business using the trade name, Forgotten Books, has reproduced the book and has made it available digitally through its website and in paperback form through online retailers such as Amazon.

63. Ajowa Nzinga Ifateyo, *Black Co-ops Were a Method of Economic Survival*, GRASSROOTS ECON. ORGANIZING NEWSLETTER (May 27, 2014) <http://www.geo.coop/story/black-co-ops-were-method-economic-survival> (an interview with Professor Jessica Gordon Nembhard).

64. *Id.*

65. *Id.*

Americans that capitalism teaches that: (1) when people enter into the workforce, the focus should be on looking out for one's self and not helping others because it is a dog-eat-dog world; (2) it is unnatural to get people to share and make decisions collectively because humans are basically greedy; and that (3) forming worker, producer, or consumer cooperatives should be shunned because they are based on "socialist" or "communist" ideas.⁶⁶

Nembhard notes that, to this day, no one focuses on Du Bois' exhortations that black people should form cooperatives as a means to make the entire black community rich and abandon the focus on becoming individually rich as capitalists. Instead, Nembhard observed that what people remember most about Du Bois is his statement that "the problem of the 20th century was the problem of the color line." Accordingly, Nembhard states that many are completely unaware what Dubois said about the economy and capitalism or his belief that the solution was to be found in cooperative economics.⁶⁷

3. Jessica Gordon Nembhard's Work on the Benefits of Collective Action Among Black Americans

Political economist Jessica Gordon Nembhard stated in an interview⁶⁸ that it took her 14-15 years to complete her book titled *Collective Courage*.⁶⁹ The book represents Nembhard's desire to shine a light on the African American community's "long, rich history of cooperative ownership, especially in reaction to market failures and economic and racial discrimination." At its core, the book represents Nembhard's efforts to continue and expand on the work begun by Du Bois in the area of cooperative economics.⁷⁰ Nembhard titled her book, *Collective Courage*, because, as she notes:

[I]t was very dangerous [for black people] to create any alternative [economic paradigm outside of capitalism]. . . [W]hite supremacists and white competitors did not want Blacks to have independence. They did not want Blacks to buy from their own stores, to find a way to buy from a store that wasn't a white owned store. So that when Blacks did form these co-ops they got attacked. Sometimes they got beaten; sometimes they got shot and killed; sometimes the place got burned down. Sometimes all of the white merchants would join together and demand that banks not give the Black co-

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

op a loan. So they tried all kinds of sabotage.⁷¹

One example of this took place in what historians call The Leflore County (Mississippi) Massacre. In the Leflore Massacre, local white militias and posses killed between 25-100 black people. The root cause of the massacre was directly related to the loss of business by white merchants to a black owned and operated cooperative store.⁷²

In view of this history, Nembhard states that she felt compelled to write *Collective Courage*. In her view, it is crucially important for anyone who cares about economic inequality, poverty, community-based economic development and economic justice to understand how cooperative economics can be an important and viable economic strategy.⁷³

In *Collective Courage*, among other things, Nembhard discusses several notable black leaders—who are not generally known to have been supporters of cooperative business organizations (i.e., co-ops)—who were actively involved in promoting collective ownership activities among black Americans. In addition to Du Bois, Nembhard discusses the co-op activism of Dorothy Height,⁷⁴ Fannie Lou Hamer,⁷⁵ Ella Joe Baker,⁷⁶ Congressman John Lewis,⁷⁷ A. Phillip Randolph (in conjunction with the Ladies Auxiliary

71. *Id.*

72. NEMBHARD, *supra* note 7, at 57; *See also* ROGERS, *supra* note 5, at 30-31 (experience of black entrepreneur Henry Boyd in which jealous white people repeatedly burned down his manufacturing plant) and 28-29. The dominant culture has a long history of sabotaging successful black businesses through violence and other means.

73. *See* Ifateyo, *supra* 63.

74. *Id.* Ms. Height went to a black cooperative restaurant in Harlem when she was young. She also provided financial support to Fannie Lou Hamer in starting the Freedom Farm Cooperative in Mississippi. *Id.*

75. *Id.* In 1969, civil rights activist Fannie Lou Hamer founded the Freedom Farm Cooperative. *Fannie Lou Hamer Founds Freedom Farm Cooperative*, SNCCDIGITAL.ORG, <https://snccdigital.org/events/fannie-lou-hamer-founds-freedom-farm-cooperative/> (last visited Jan. 29, 2020). Ms. Hamer established the cooperative to purchase approximately 700 acres of land in an “attempt to empower poor black farmers and sharecroppers, who for generations, had been at the mercy of the local white landowners.” It was an amazing organization, however, Freedom Farm never obtained the institutional backing necessary to make it a long-term viable organization.

76. *Id.* Civil rights activist Ella Joe Baker—who worked alongside W.E.B. Du Bois, Thurgood Marshall, A. Phillip Randolph, and Martin Luther King, Jr., among others—at one time was the executive director of the Young Negroes’ Cooperative League in the 1930s; *see* Ifateyo, *supra* 63.

77. *Id.* John Lewis states in his autobiography, that one of his first jobs in the 1960s was as a co-op developer.

to the Brotherhood of Sleeping Car Porters,⁷⁸ Marcus Garvey,⁷⁹ George Schulyer,⁸⁰ and Nanny Helen Burroughs,⁸¹ among others.

C. The Tension Between the Fear of Scarcity (Based on Zero Sum Politics) and the Hope of Abundance (Based on Cooperation and Sharing of Profits)

“[T]he tension between the fear of scarcity (which fuels the theory of zero sum politics) and the hope for abundance (which is based on cooperation and sharing of resources) is [a]n eternal engine of politics rooted deep in the human psyche.”⁸²

Zero sum politics holds that that success for one can only come at the expense of another. The fear of scarcity is what underlies the theory of zero-sum politics. The fear of scarcity is not a learned trait. Instead, it is a primal instinct that it is wired into the human brain. The fear of scarcity can be witnessed most vividly in humanity’s hunter-gather past in which people

78. *Id.* Before labor organizer A. Philip Randolph organized the Brotherhood of Sleeping Car Porters, he was the editor of a magazine called *The Messenger*. In 1918, Randolph was writing articles about how black Americans needed to use co-ops to create wealth in the black community. And he worked with the Ladies Auxiliary to the Brotherhood of Sleeping Car Porters to provide co-op education. “Their point was that it wasn’t good enough to just have a labor union, you also had to keep money circulating among Black workers through [black-owned] co-ops.”

79. *Id.* Some commentators believe that Garvey’s real vision was to establish actual co-ops based on real democratic ownership, not just joint ownership. These scholars believe that Garvey’s goal was “democratic economics between Blacks in the U.S. and Blacks in Africa.”

80. *Id.* George Schulyer was a columnist for the *Pittsburg Courier*. Prior to that time, Schulyer was an assistant editor to A. Phillip Randolph with *The Messenger* publication. Schulyer joined with Ella Jo Baker in New York City to form the Young Negroes’ Cooperative League. Schulyer wrote a column in the *Pittsburg Courier* titled *A Call to Young Negroes to Save the Race By Coming Together, Joining the Young Negroes Cooperative League*. According to Jessica Gordon Nembhard, Schulyer stated in the article that black people “had tried everything else, that the old fogeys were still trying capitalism, and that the duty of the young Negroes was to come together and do cooperative economics and show the world and everybody that we could take charge of our own economy.”

81. *Id.* Nanny Helen Burroughs was the founder and first Secretary General of the Progressive Baptist Women’s Convention. She also founded the Black Women’s training school in Washington D.C. and has a street named for her in the Deanwood neighborhood of Washington, D.C. During her tenure as president of the training school, she also started Cooperative Industries of Washington, D.C. In the 1930s, the cooperative started out by producing brooms and mattresses with grant money she obtained from the federal government. The cooperative also purchased a farm in Maryland that employed D.C. residents on the farm and sold the farm produce in D.C. *Id.*

82. David Von Drehle, Opinion, *History’s win-win for the marginalized*, WASH. POST (Feb. 23, 2018) https://www.washingtonpost.com/opinions/historys-win-win-for-the-marginalized/2018/02/23/d8a10500-18ba-11e8-8b08-027a6ccb38eb_story.html.

awakened “hungry each morning to renew a merciless search for food and clashed violently over territory with rival tribes.”⁸³

On the other hand, the hope for abundance “is a learned trait. It requires one to study the history of human civilization and see the growing bounty created by networks, cooperation and the sharing of resources and talents.” As one commentator stated, “[t]his is the politics of win-win.”⁸⁴

The thesis of this article is that, when there is an increase in networking, cooperation and the sharing of resources and talents among people, there is a win-win situation for everyone and, particularly, the marginalized in society. The politics of win-win—and the hope of abundance that underlies it—refutes the notion of zero sum politics.⁸⁵

Indeed the belief that success for one can only come at the expense of another has never led to rising prosperity for all.⁸⁶ Nevertheless, in any cooperative arrangement involving the sharing of resources and talents of people, there will always be net contributors and net recipients. The tricky part is how to make sure that those who are made better off by a system of shared distribution only receive their enhanced benefit to the extent that those at the bottom of the distribution chain—i.e, those who put in more than what they receive—are also made better off.⁸⁷

Finally, an important focus of this article is on possible opportunities in using the cooperative form of business organization as a mechanism for coordinating and increasing the production of economic wealth by black people in America.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. ROGERS, *supra* note 11, at 7.

II. THE CASE FOR BUILDING SOCIAL AND HUMAN CAPITAL IN THE BLACK COMMUNITY BY INCREASING STRATEGIC RELATIONSHIPS, COOPERATIVE ECONOMICS, THE BLACK MARRIAGE RATE, BUSINESSES WITH MULTIPLE OWNERS, AND OTHER FORMS OF COOPERATIVE BEHAVIOR

A. A Summary of the Reasons for Building Black Partnerships, Cooperatives and Other Forms of Multi-Owned Organizations

1. The Basic Thesis

This article seeks solutions to the problem of black economic inequality in America. Most black businesses operate as sole proprietorships.⁸⁸ However, studies indicate that solely owned businesses are not as economically or operationally efficient as firms with multiple owners. We shall discuss those studies later in this article. Nevertheless, it should be noted that the sole proprietorship is by far the most common type of business organization.⁸⁹

This article maintains that one solution to the black quest for economic liberty requires that solely owned black businesses must endeavor to build multi-owned firms and institutions that will continue after they die.

The same thesis holds true for black individuals who proceed through life as a single economic unit. Studies indicate that black people who are married are substantially better-off economically than their single counterparts. Unfortunately, black people in America have the lowest marriage rate of any group. This article will, therefore, make an analogy between sole proprietorships and single persons. This is because sole proprietors and single persons tend to be economically and operationally less efficient than firms with multiple owners or persons who are married.⁹⁰

It should be noted, however, that there has been a rather steep drop in the marriage rate among all Americans. Not surprisingly, economists believe that this trend toward flying solo is generally bad for the economy. This article will explain why this is the case. But, in short, studies indicate that family disintegration fuels the intergenerational transmission of poverty. While

88. ROGERS, *supra* note 5, at 117.

89. Chris Bradford, *Statistics of Sole Proprietorship*, ARIZ. CENT.: YOUR BUS., <https://yourbusiness.azcentral.com/statistics-sole-proprietorship-5293.html>. (last visited Jan. 29, 2020).

90. See discussion, *infra* Parts V-VII; See also ROGERS, *supra* note 5, at 7.

there are notable exceptions to this finding, the general rule seems to prevail in the black community.⁹¹

Studies also indicate that there is a sequence for economic success in America. Those studies show that the most economically successful persons in America choose to engage in certain activities in a specific order. The most economically successful individuals among millennials—who are currently the nation’s largest generation—typically do the following things in this order. They: (1) get, at least, a high school diploma; (2) get a job; (3) get married; and (4) only then have children. Studies indicate that only 3 percent of millennials who follow this sequence are poor.

Significantly, a study by Wendy Wing of the Institute of for Family Studies and W. Bradford Wilcox of the American Enterprise Institute indicates that eighty-six percent of millennials who put “marriage before the carriage” have family incomes in the middle or top third of incomes. On the other hand, forty-seven percent of millennials who did not follow the sequence are in the bottom third.⁹² However, as the article which references the study goes on to note: “Success is, of course, more complex than adherence to the sequence. Much cultural capital often is unavailable to poor people.”

The article concludes by noting that “Wang and Wilcox recommend education focused on high-level occupational skills, subsidizing low-paying jobs, and ‘public and private social marketing campaigns,’ from public schools to popular media, promoting marriage toward the end of the success sequence.”⁹³

2. Why Cooperative Economics is Important

The three basic systems of cooperation necessary for a market system to exist are stability of possession (i.e., the protection of the right to own property); transfer through consent (i.e., the right to buy and sell property); and the performance of promises (i.e., a court system that enforces promises made between two parties).⁹⁴

People have a selfish incentive to maximize their own wealth. However, studies have shown that people tend to cooperate to achieve public goals even though this may reduce the amount of power, money and status that they otherwise would have realized.⁹⁵

91. See discussion, *infra* Parts V-VII.

92. George F. Will, *Listen up, millennials. There’s sequence to success*, WASH. POST (July 5, 2017) https://www.washingtonpost.com/opinions/listen-up-millennials-theres-sequence-to-success/2017/07/05/5a4a8350-6011-11e7-a4f7-af34fc1d9d39_story.html.

93. *Id.*

94. HEATH, *supra* note 12, at 34–35.

95. JEFFREY L. HARRISON, *LAW AND ECONOMICS IN A NUTSHELL* 429–37 (5th ed. 2011).

A failure to cooperate can lead to a complete collapse of efficient outcomes. This can occur when people have an incentive to poach off the efforts of others as opposed to coordinating their contributions to a unified plan of action.

When people behave noncooperatively, they have to be more concerned about individually bearing all of the risks and responsibilities of life. Therefore, it becomes necessary to weigh the benefits of organizing in a cooperative fashion—i.e., spreading the costs of a variety of risks among a larger group—versus the cost of assuming these risks as an individual.⁹⁶

International trade is an example of cooperative relationships. Competitions have winners and losers. Buyers have competition *among* buyers and sellers have competition *among* sellers. But there is no competition *between* sellers and buyers.⁹⁷

Therefore, international trade is simply a system of mutually beneficial cooperation between people from different countries. A country agrees to buy goods and services from another country when the other country can produce a good or service of comparable quality at a lower price and when the opportunity cost of the buying country is lower than producing the good itself.⁹⁸

Capitalism “is the most decentralized system of cooperation ever devised by man (comparable in many ways to the Internet in its lack of central control structures).” The market for illegal drugs, for example, operates like any capitalistic market in which buyers and sellers manage to find each other and prices respond to supply and demand pressures. A war on capitalism would be just as futile as the so-called war on the market for illegal drugs. Once people establish a market based on the laws of supply and demand, there is no going back. The only question is how people manage the market—i.e., how inclusive and humane is the system and how people determine how the benefits and burdens of cooperation are to be distributed.⁹⁹

3. Building Social Capital Through Partnerships and Cooperative Alliances

Social capital is a term that describes the ability of people to work and play together—to cooperate and connect with one another. A recent report by the Congressional Joint Economic Committee (JEC) determined that America’s social capital is dramatically breaking down in four areas: (1)

96. HEATH, *supra* note 12, at 91–92.

97. *Id.* at 99.

98. *Id.* at 304–05. *See also* ROGERS, *supra* note 11, at 233–34.

99. HEATH, *supra* note 12, at 226–27.

family life, (2) the workplace, (3) religion and (4) community.¹⁰⁰

It is noteworthy that members of cooperatives develop social capital “in the process of developing and maintaining the co-op. Cooperatives require trust and solidarity, and at the same time create trust and solidarity in . . . developing and maintaining the co-op. Trust and solidarity while often necessary to make the association work, also become products or outputs of a cooperative enterprise.” Scholars refer to this as “social energy.”¹⁰¹

Indeed, “the structure of democratic governance and the necessity of building trust and trustworthiness in order to operate a cooperative efficiently demand both skill and social capital development. This develops members’ leadership skills with the co-op and equips them to go on and become leaders in other contexts.”¹⁰² Additionally, “[d]emocratic participation and decision making, as well as skill and leadership development, often spill over into other arenas, as co-up members become more active in civic organizations and politics.”¹⁰³

4. Building Human Capital Through Education and Training

Education and training are both forms of human capital and both are essential to productivity.¹⁰⁴ Admittedly, an increase in college graduation rates is likely the single most important factor in advancing economic parity among members of disadvantaged communities. But this will not help the many people who, realistically, will never attend college.

However, all members of the American underclass and the so-called working poor can benefit from an increase in cooperative economics. Therefore, black-owned institutions, among other things, should be committed, where feasible, to hiring and training persons who might not otherwise find employment.

“Du Bois’ concepts of ‘intelligent cooperation’ and ‘intelligent democratic control’ in economic leaders and institutions depend heavily on public information and member education and training.”¹⁰⁵ Education practices used by cooperative enterprises include: study circles; community workshops and development programs; industry specific training; self-management training; attendance at networking conferences that also focus

100. Robert J. Samuelson, Opinion, *Trump is not destiny. Here’s what is*, WASH. POST (June 11, 2017) https://www.washingtonpost.com/opinions/trump-is-not-destiny-heres-what-is/2017/06/11/1dc9f7c6-4d33-11e7-9669-250d0b15f83b_story.html.

101. NEMBARD, *supra* note 7, at 86–87.

102. *Id.* at 233.

103. *Id.* at 234.

104. GREG IP, *THE LITTLE BOOK OF ECONOMICS* 12–13 (2010).

105. NEMBARD, *supra* note 7, at 86.

on skill and leadership development; education programs that teach co-op members and customers about the co-op model, principles, services and products.¹⁰⁶

Poor black Americans and others who find themselves in an economically untenable situation must pursue economic opportunities and financial stability through jointly owned enterprises as opposed to sole proprietorships (or other business formats composed of a single owner). The thesis also maintains that, ideally, people should pursue opportunities as married couples. And even if people choose not to marry, they should consider entering into some type of economic partnership with another person as opposed to pursuing opportunities as a single person.

The National Urban League's report on the State of Black America for 2017 notes that (1) the average African American household brings in about half as much income as a white household; (2) 25 percent of Americans live in poverty with the bottom 5 percent subsisting on little more than \$7,000 a year according to the Census Bureau; (3) in Washington, D.C., the median income for white households was \$120,000 in 2015 compared to \$41,000 for black households; (4) about 90 percent of white residents in Washington, D.C. have college degrees compared with only 26 percent of black residents; and (5) that the two characteristics that stand out about black people who are doing well in D.C. are as follows: 69 percent went to college and 64 percent are married or live with a partner.¹⁰⁷

The thesis of this article is that the best way to advance the interests of disadvantaged persons in America is by building social and economic capital in the black community by an increase in business partnerships, marriage, strategic relationships, and other forms of cooperative economics.

B. A Brief Overview of Cooperatives as a Form of Business Organization and Notable Examples

Cooperative arrangements such as mutual insurance and principles of cooperation existed long before the beginning of the cooperative movement. The cooperative movement began when people began to apply cooperative principles to business organizations.¹⁰⁸

106. *Id.* at 87–88.

107. Courtland Milloy, Opinion, *African Americans are living longer, but need better opportunities to improve their lives*, WASH. POST (May 2, 2017) https://www.washingtonpost.com/local/african-americans-are-living-longer-but-need-better-opportunities-to-improve-their-lives/2017/05/02/c9e2f2f0-2f43-11e7-9534-00e4656c22aa_story.html.

108. MICHIE, BLASI, & BORZAGA, *THE OXFORD HANDBOOK OF MUTAL CO-OPERATIVEV, AND Co-OWNED BUSINESSES* 97–98 (2017).

1. Robert Owen, the Father of the Cooperative Movement

Scholars credit Robert Owen (1771-1858) as being the father of the cooperative movement. He was a Welshman who made his fortune in the cotton trade. Owen believed in putting his workers in a good environment with access to education for themselves and their children. Therefore, he soon put his ideas on cooperative economics to practice with successful results in the cotton mills of New Lanark, Scotland.

Spurred by this success, Owen had the idea of forming “villages of cooperation” where workers would drag themselves out of poverty by growing their own food, making their own clothes, and ultimately becoming self-governing. He tried to develop such communities in Orbiston Scotland and in New Harmony, Indiana in the United States. However both communities failed.¹⁰⁹

2. Cooperative Economic Theory, the Cooperative as a Form of Business Organization, and Notable Examples

Cooperative economics is a field of economics that focuses on cooperative studies and political economy in the study of cooperatives and how they are managed.¹¹⁰ There has been an academic debate between those who favor *consumer cooperatives* known as Cooperative Federalists and those who favor *producer cooperatives* (pejoratively labeled as individualist cooperativists by the Federalists).¹¹¹

a. Cooperative Federalism

In consumer cooperatives, the consumers of a cooperative’s goods are considered its users (e.g., credit unions and food cooperatives). Cooperative Federalism is the school of thought favoring consumer cooperative societies.

The cooperative federalists maintain that consumers should form cooperative wholesale societies (Cooperative Federations) in which all members are cooperators. In this arrangement, cooperative wholesale societies undertake the task of purchasing farms and/or factories. Cooperative federalists maintain that profits from these cooperative wholesale societies should be paid as dividends to the member operators, rather than to their workers.

109. *Id.*

110. *See generally* CHARLES GIDE, CONSUMERS’ CO-OPERATIVE SOCIETIES (Cedric Long, 1922).

111. *Id.*

b. Cooperative Individualism

In producer cooperatives, the producers of a cooperative's goods and services are defined as its users.¹¹²

c. Types of Cooperatives and Notable Examples

Part IV of this article discusses 16 types of cooperatives. However, scholars have determined that there are only 3-5 categories of cooperatives. These commentators have further noted that a rational observer could place almost any of the 16 types of cooperatives in one or more of these 3-5 categories. Therefore, categorizing a cooperative can be initially confusing.

In her book, *Collective Courage*, political economist Jessica Gordon Nembhard, citing the International Co-operative Alliance, states that there are three major categories of cooperatives:¹¹³

- (1) **Consumer-Owned.** Examples include cooperatives that take the form of buying clubs, retail stores, rural electric and energy cooperatives, grocery stores, credit unions, and housing cooperatives.
- (2) *Notable Examples:* Recreational Equipment, Inc. (REI) and Mountain Equipment Co-op (MEC) are examples of consumer cooperatives.¹¹⁴
- (3) **Producer-Owned.** Examples include cooperatives that jointly purchase supplies and equipment and/ or jointly produce, process and market food and other products.
- (4) *Notable Example:* Ocean Spray Cranberry-and- Grapefruit is an example of a producer cooperative.¹¹⁵ Best Western International and Ace Hardware stores are producer-owned retail and hybrid cooperatives.¹¹⁶ And the Associated Press—which is cooperatively owned by its contributing newspapers and radio and television stations as an unincorporated nonprofit association—is, arguably an example of a producer/supplier cooperative.
- (5) **Worker-Owned.** Examples include cooperatives formed by workers to jointly own a business that operates under democratic

112. *Id.* at 30.

113. NEMBHARD, *supra* note 7, at 3–4.

114. *Id.*

115. *Id.*

116. *Id.* See also discussion of Retail Cooperatives, *infra* Part IV.

principles. Worker cooperatives serve as a means for its owners to stabilize their employment and derive income from profits of the business.

- (6) *Notable Examples:* Publix Supermarkets, Polyguard Products, Davey Tree Expert, and Cooperative Health Care Associates of the Bronx are examples of worker cooperatives.¹¹⁷

Other commentators recognize five primary categories of cooperatives. The five categories are: (1) Consumer, (2) Producer, (3) Worker, (4) Purchasing, and (5) Hybrid.¹¹⁸ Here is a brief description of the five primary categories of cooperatives:

- **Consumer:** Consumers who buy goods or services from their cooperative are the owners of these type of cooperatives.
- **Producer:** Producers of commodities or crafts who have joined forces to process and market their products are the owners of these types of cooperatives. This category appears to be substantially similar to what some scholars call supply cooperatives.¹¹⁹
- **Worker:** Employees who become co-op members own and democratically govern these types of cooperatives.
- **Purchasing:** Independent businesses or municipalities that seek to improve their purchasing power are the owners of these types of cooperatives.
- **Hybrid:** people with common interests band together to form a cooperative which combines several different types of cooperatives.¹²⁰

117. See discussion of Retail Cooperatives, *infra* Part IV.

118. Five Types of Cooperatives, IWDC.COOP, <https://www.iwdc.coop/why-a-coop/five-types-of-cooperatives-1> (last visited Jan. 29, 2020).

119. HEATH, *supra* note 12, at 189. Mr. Heath appears to use the term supplier cooperative to categorize cooperatives that almost all scholars would refer to as a producer cooperative. Nevertheless, as we shall see later, some commentators have narrowed the definition of a “supply” cooperative to mean a cooperative that supplies it members with the inputs—i.e., equipment, tools, raw materials, etc.—necessary for production. In any case, the term “supply cooperative” as used by Mr. Heath seems to refer to what most scholars would categorize as a “producer cooperative.”

120. IWDC, *supra* note 118.

d. How Cooperatives Differ from the Standard Business Corporation (and Other Business Organizations)

Like other businesses, cooperatives must raise sufficient revenues to cover costs. However, cooperatives differ from other business organizations in a number of different ways. Jessica Gordon Nembhard in her book, *Collective Courage*, lists several differences (and similarities) between cooperatives and other forms of business organization (the other business formats consisting of corporations, limited liability companies (LLCs), general partnerships, sole proprietorships, nonprofits, and ESOPs).¹²¹

Nembhard states that the primary difference between cooperatives and other business formats lies in the fact that cooperatives are “owned by the people who use its services.”¹²² According to the International Co-operative Alliance (ICA),¹²³ a cooperative is “an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.”¹²⁴

Nembhard, citing to various authorities, summarizes the differences between businesses using the cooperative form of business organization and other business formats as follows: “Cooperative businesses must operate democratically, according to a set of principles that include open membership, equal voting rights for each member regardless of how much is invested, returns based on use, continuous education, and concern for the community . . . as well as accountability and transparency. According to the ICA, ‘cooperatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity.’”¹²⁵

Nembhard further noted that: “Cooperatives operate on a ‘double bottom line’—paying attention not just to good business practices and producing a surplus but also to good functioning of the association and to member and community participation (democratic participation) and well-being. Because many cooperatives also address sustainability (both economic and environmental), they are often seen as addressing a ‘triple bottom line:’ economic (business), social (mutuality and participation), and ecological sustainability. This is not an either/or relationship in which one goal has priority over others.”¹²⁶

121. NEMBHARD, *supra* note 7, at 2–14.

122. *Id.* at 2.

123. *Id.* The International Co-operative Alliance is a nongovernmental trade association founded in 1895 to represent and serve cooperatives worldwide.

124. NEMBHARD, *supra* note 7, at 2.

125. *Id.* at 4.

126. *Id.*

Here are a few other ways in which cooperatives differ from other types of business formats:¹²⁷

- Cooperative enterprises modify capitalist principles by instituting democratic voting—i.e., limiting voting to one vote for each member (as opposed to voting based on the number of shares owned).
- Cooperatives vest ownership, control, and beneficiary in the hands of the user/member.
- Cooperatives combine buyers, sellers, consumers, and owners in one organization. This eliminates overproduction, business uncertainty, middlemen, and reduces costs.
- Cooperatives exist to meet member needs, not just to earn a return on investment.
- Cooperatives distribute profits (which co-ops refer to as surplus) to members in proportion to use; not on the number of investment units owned by the member.
- Cooperative members pay taxes on salaries and on “qualified profit distribution based on patronage.” On the other hand, the cooperative pays taxes on unallocated surplus and nonqualified profits.

e. Possible Drawbacks in Organizing a Business as a Cooperative

One scholar opined that many taxicab companies, travel agencies, and the typical law firm are essentially worker cooperatives. Of course, this would only be true to the extent that workers equally owned the firm, had an equal vote in determining policies, and established the firm not only to earn a return on money but to meet the needs of its worker-owners.¹²⁸

The same scholar also states that people could organize every firm in the nation as either a worker, producer, or consumer cooperative.¹²⁹ However, he believes that this would be a mistake. In his view, cooperatives composed of

127. *Id.* at 4–5.

128. HEATH, *supra* note 12, at 188–89. For example, a law firm could seemingly only become a cooperative if all of its members were owners. Accordingly, a law firm that had associates—i.e., contract workers—would arguably not constitute a cooperative because not all lawyers could be members; *Id.* at 305–06; *See also* NEMBARD, *supra* note 7, at 4–5 discussing how cooperatives differ from corporations and other types of business organizations. Nembhard also developed a chart detailing how cooperatives differ from corporations and other forms of business organization based on information provided by the University of Wisconsin Center for Cooperatives; *Id.* at 6–9. We shall discuss these and other issues in Part IV of this article.

129. HEATH, *supra* note 12, at 189.

a heterogeneous group of workers who do different types of work, producers who produce different products, and consumers who possess different lifestyles and values are often subject to significant conflicts between members. These conflicts are likely to paralyze the cooperative business and render it incapable of effectively moving forward in unity and harmony.¹³⁰

Accordingly, he favors the corporate form—in the absence of having a cooperative with a homogeneous group of owners—because shareholders of corporations are a relatively homogeneous group whose ultimate interest is solely to make money.¹³¹ We discuss these issues in greater detail in Part IV of this article.

However, it is important to remember that only people produce wealth. The government, markets, corporations (and other types of business organizations including cooperatives) are only “mechanisms through which people coordinate their production and consumption of wealth.”¹³²

III. WHY ARE THERE SO FEW BLACK PARTNERSHIPS AND OTHER TYPES OF BLACK BUSINESSES WITH MORE THAN ONE OWNER?

A. Statistical Analysis of the Number of Black Businesses That Are Solely Owned and/or Classified as Sole Proprietorships

As of 2008, there was only one African American company with publicly traded shares of stock and 90-95 percent of black businesses were sole proprietorships.¹³³ These statistics remain the same as of Black Enterprise Rankings of the top black businesses in 2017.

B. Historical Explanations for the Low Number of Black Partnerships and Multi-Owned Businesses

The United States, has excluded black people from participation in its economic system of capitalism for most of its history. Moreover, the dominant culture has a long history of sabotaging successful black businesses through violence and other means.¹³⁴ Indeed, black people in America were,

130. *Id.* at 191–94.

131. *Id.* at 194–95.

132. ROGERS, *supra* note 5, at 44, 94–95.

133. *Id.* at 169, 171.

134. NEMBHARD, *supra* note 7, at 57. *See also supra* Section I.B.3. *See also* Section III.D.3. *See also* ROGERS, *supra* note 5, at 30, 31 (experience of black entrepreneur Henry

arguably, not fully incorporated into the American capitalistic economic system until 1970.¹³⁵ These and other reasons related to the rampant discrimination against black people—past and present—largely explain why black people have not been able to close the economic gap between themselves and their white counterparts. With this in mind, let's take a look at few concepts of economics as well as American history to better understand this phenomenon.

Capitalism is based on four principles. But the first principle is the most important because it is based on (1) the government's promise to protect all persons' rights to own private property. Other principles of capitalism (2) protect an individual's freedom of economic contract with respect to his or her labor (3) protect an individual's right to pursue opportunities in a free market system of supply and demand free of the dictates of the government or the routines of tradition, and (4) the free market system is supposed to be one in which lenders provide market participants with nondiscriminatory access to loans.¹³⁶

Unfortunately, for a significant portion of this nation's history, black people were themselves property and later segregated by law from the rest of the population. Additionally, lenders have historically discriminated against otherwise qualified black people have sought loans.

The massive resistance of the holdout state of Texas to the Emancipation Proclamation—issued by President Lincoln on January 1, 1863—[Lincoln had earlier threatened to issue the Proclamation on September 22, 1862 if the confederate states did not rejoin the union by January 1, 1863]—speaks volumes with respect to the terror and hardships that the dominant society has imposed on black people.¹³⁷

Texas resisted compliance with the Proclamation until literally forced to do so after federal occupation and enforcement on June 18 and 19, 1865. This was more than two years after the Proclamation's issuance, and over two months after the Civil War had formally ended (on April 9, 1865). Indeed, the federal government's military action against Texas took place a mere six

Boyd in which jealous white people repeatedly burned down Boyd's manufacturing plant). *See generally*, ROGERS, *supra* note 5, at 28–39.

135. ROGERS, *supra* note 5, at 28–39 (pre-Civil War), and 53–63 (post Reconstruction and Segregation; 67–80 (black economic enclaves under government-imposed segregation), and 101–115 (the civil rights era and the end of American apartheid).

136. *Id.* at xix, 8–9.

137. *The Emancipation Proclamation*, NAT'L ARCHIVES (Apr. 17, 2019) <https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation>; *Preliminary Emancipation Proclamation*, AM. ORIGINALS NAT'L ARCHIVE & RECORDS ADMIN. (Apr. 17, 2019) https://www.archives.gov/exhibits/american_originals_iv/sections/preliminary_emancipation_proclamation.html#

months prior to the ratification of the 13th Amendment abolishing slavery in December 1865. The actions of Texas illustrates the fierce resistance that black people have had to overcome just to achieve the basic liberty to bodily freedom.¹³⁸

The *Dred Scott v. Sandford*¹³⁹ case held that black persons of African descent who had been reduced to bondage were considered to be chattel property and something less than human beings. It took two constitutional amendments—the thirteenth (ratified on December 18, 1865) and the fourteenth (ratified in 1868)—to elevate black people to fully human (as opposed to chattel status) and to make black people born in the United States capable of becoming citizens of the United States.

Similarly, the Declaration of Independence’s statement in 1776 of universal equality, for example, did not apply to black people. Let’s take a look at the text of the Constitution to illustrate this point.

Under the U.S. Constitution adopted on September 17, 1787 and officially established by 9 of the 13 states on June 21, 1788:

enslaved black people counted as “three-fifths of all other persons for political representation purposes [Article I, Sec. 2 Clause 3].”

The Constitution also prevented Congress from prohibiting the slave trade until 1808 [Article I, Sec 9, and Clause 1].

The Constitution also sought to ensure that “escaping” slaves would be returned to their owners [Article IV, sec. 2, Clause 3].¹⁴⁰

Interestingly, the Constitution never actually uses the words slave, black, African, or any other racial labels. This was primarily to cover-up the unpalatable reality of what the United States—a country that proclaimed to be built upon principles of independence and equality—was permitting to occur against an entire group of human beings.¹⁴¹

Additionally, “Americans should know . . . that Wall Street’s rise as a financial center was largely fueled by the cotton trade, which could not have functioned without slavery. When the Civil War began, the mayor of New York, Fernando Wood, tried to find a way for the city to remain neutral so that it could continue its lucrative business dealings with the South.”¹⁴²

“As Thurgood Marshall noted in an important speech during the

138. *Id.*

139. *Scott v. Sandford*, 60 U.S. 393 (1857).

140. THE AFRICAN AMERICAN ALMANAC 411–412 (Gale Research Inc., 7th ed. 1997); U.S. CONST. art. I, § 2, cl. 3, *amended by* U.S. CONST. amend. XIV, XVI, § 9, cl. 1, *and* art. IV., § 2, cl. 3.

141. ROGERS, *supra* note 5, at 38, 39.

142. Eugene Robinson, *Haley Barbour’s ‘Diddy’ Sense of Slavery’s History*, WASH. POST (Apr. 13, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/04/12/AR2010041203297.html>.

bicentennial of the United States Constitution in 1987, the Founding Fathers' foresight and sense of justice was troubling and not particularly profound. He noted, among other things, that economic interests of the Northern and Southern states were behind the compromise of the Southern states to continue importing slaves to the United States until 1808."¹⁴³

In its 1842 decision in *Prigg v. Pennsylvania*,¹⁴⁴ the Supreme Court made it clear that any state effort to prevent individuals from capturing and returning slaves to their owners was preempted by the Fugitive Slave Act of 1793.¹⁴⁵

Additionally, the story behind how Washington, D.C. became the "Slave Capital" of the United States is also instructive.¹⁴⁶

In 1790, America classified about 20 percent of its population as property. "Though some Southern leaders felt uneasy about the institution of slavery few could imagine the South without slaves."¹⁴⁷

As an international abolitionist movement gained steam in the late 1700s century, many Southerners felt under siege and believed that a Southern capital would protect their interests. But they did not have the votes to put the capital in the South.

On the other hand, Alexander Hamilton, a founding member of the New-York Society for Promoting the Manumission of Slaves wanted the federal government to assume the debts of the states which the states had incurred during the Revolutionary War so that other nations would respect the newly minted United States of America as a country that paid its bills.

However, the Southern States believed that this would give the federal government too much power and eventually lead to the demise of the Southern States' ability to maintain slavery under the concept of states' rights.¹⁴⁸

But Hamilton did not have the votes to get his assumption plan through congress just like the southerners did not have the votes to get the capital city of the United States to be located in the south.

Article I, Section 8, Clause 17 of the United States Constitution gives Congress the authority to establish a "district" that shall serve as the seat of government of the United States but does not state where that district shall be

143. ROGERS, *supra* note 5, at 27, 28.

144. *Prigg v. Pennsylvania*, 41 U.S. 539 (1842).

145. THE AFRICAN AMERICAN ALMANAC 411–412 (Gale Research Inc., 7th ed. 1997).

146. ROGERS, *supra* note 11, at 352, 350–353, citing Chris Ayers Asch, *The Grand Bargain on Debt That Made D.C. a Slave Capital*, WASH. POST (July 21, 2011), https://www.washingtonpost.com/opinions/the-founders-grand-bargain-on-debt-that-made-dc-a-slavery-capital/2011/07/18/gIQAN1fNSI_story.html.

147. *Id.* at 352.

148. *Id.* at 351.

located.

Thomas Jefferson, a Virginia slave owner who had a personal interest in the outcome, stepped in to broker a compromise. *Over dinner at his rented Manhattan home in mid-June Jefferson brought Hamilton and Madison together to work out an agreement.*¹⁴⁹

Madison agreed to pressure Southern representatives to support the assumption bill. In exchange, Hamilton would persuade his Northern allies to support a capital on the banks of the Potomac.

It was a deal with tremendous long-term consequences for the nation and for the future capital. The compromise secured America's financial future as well as the constitutional doctrine of implied powers, strengthening the federal government at a critical time.

But the deal sealed the new city's fate as a slave capital. Safely ensconced between two of the country's largest slave states—Maryland and Virginia—Washington, D.C. became a glaring contradiction—a citadel of freedom that nonetheless protected slavery and prospered from the burgeoning domestic slave trade.

Thanks to the port of Alexandria, which remained part of the District until 1846, Washington, D.C. became the largest slave-trading city in the nation. Slaves in Washington were an everyday part of life. They helped build the city, they lived in the White House, and they were sold on auction blocks downtown.

President Lincoln, fighting a war to preserve the Union from a slavery-friendly capital, tread cautiously lest he frighten Maryland into the arms of the Confederacy. Therefore, Lincoln resisted calls for D.C. emancipation until 1862 and allowed compensation to be paid to Washington slave-owners.

The grand bargain struck over Jefferson's dinner table in 1790 came with heavy costs that ultimately led to the Civil War. Interestingly, the same issues underlying the compromise remain today.

Those issues include how expansive a role the federal government should play in its relationship to the several states and in the economic welfare of the American people.¹⁵⁰

Martin Luther King's 1963 I have a Dream Speech also spoke to black economic issues. Dr. King spoke of the Declaration of Independence and the United States Constitution as a promissory note to which every American was an heir. He pointedly noted, however, that America had defaulted on that promissory note as to black people. America, he said, had, instead, given black people a "bad check" marked "insufficient funds." As King often said,

149. *Id.* at 351–353.

150. *Id.* at 352–353.

“the cause of economic justice is the cause of social justice.”¹⁵¹

The wealth of free black persons prior to the Civil War is impressive when viewed in light of the obstacles confronting them. Those obstacles included laws that, in some jurisdictions: restricted the movements of free blacks; prohibited them from meeting in groups of more than five persons; banned them from possessing weapons; denied them the right to vote; disqualified them from owning stocks, bonds and annuities and depositing money in banks; prevented them from suing in court and the right to serve as witnesses in court.¹⁵²

Additionally, many white institutions would not extend credit to free blacks. Moreover, there was occasionally mob violence by whites who resented successful black business persons. Indeed, some state and local governments attempted to expel free black laborers and entrepreneurs when white businessmen complained that they monopolized some of the service industries. It was these obstacles that prevented most free blacks from developing large business enterprises and a wealthy class of black businessmen prior to the Civil War.¹⁵³ Unfortunately, the effects of these practices and the continued discrimination against black people in America require that the black population increasingly look to cooperative economics as one of the solutions to narrowing the economic gap between themselves and the white majority.

C. Early Attempts in the Black Community to Create Black Institutions

Mutual assistance and self-help have been cornerstones of the African American community for generations. In 1903, W E. B. Du Bois called the creation of mutual assistance societies by black people in the 1700s “the first wavering step of a people toward organized social life.”¹⁵⁴

An increase in the establishment of strategic relationships is absolutely necessary for black empowerment to become a reality. For example, “it is a statistically verifiable that marriage has a powerful wealth-building effect.” And studies show that this is especially true for those in the African American Community who do get married and stay married. Unfortunately, black people in America have the lowest rate of marriage of all groups.¹⁵⁵

151. ROGERS, *supra* note 5, at 126.

152. *Id.* at 33–35.

153. *Id.*

154. See generally *The Making of African American Identity: Vol. I, 1500–1865*, NAT’L HUMANITIES CTR. RESOURCES TOOLBOX (March 2007) <http://nationalhumanitiescenter.org/pds/maai/community/text5/text5read.htm>.

155. ROGERS, *supra* note 5, at 7.

In any case, the earliest mutual assistance societies among free blacks provided a form of health and life insurance for their members—care of the sick, burials for the dead, and support for widows and orphans.

Later societies sought to promote education and job training, especially for newly arrived African Americans, freemen and fugitive slaves. While the number of societies attests to the wide-ranging efforts of northern free blacks, most were hampered by low funds and low membership. Some of the most prominent were the following:

1. The Free African Society, Founded by the Black Ministers Richard Allen and Absalom Jones in 1787

The Free African Society listed its goals—as well as its expectations of all members—in its founding document. Members would contribute money to a fund from which a weekly sum would be paid to the “needy of this society . . . provided, this necessity is not brought on them by their own imprudence.” The society was nondenominational to include free blacks of all religious sects, as no one sect had enough members to create its own mutual aid society. “How great a step this was,” wrote W.E.B. Du Bois, “we of today scarcely realize.”¹⁵⁶

2. The New York African Society for Mutual Relief founded in 1808

Similar to the Free African Society, the organizers of the New York society formed it to provide a form of health and life insurance for its members and their families.

In his 1809 address, the president and cofounder of the society, William Hamilton, exhorted its members to be firm in their commitment to the society i.e., to each other. “Let us all be united, my Brethren,” he concluded in rousing rhetoric, for “mutual interest, mutual benefit, and mutual relief.” The Society persevered for more than 150 years, into the 1950s.¹⁵⁷

3. Various Black Mutual Benefit Societies in Philadelphia

In a newspaper notice in 1831 titled “To the Public,” the mutual benefit societies of Philadelphia listed their goals and financial contributions for the relief and education of poor African Americans in the city.

Why would they do this? Because, and I quote, “many have mistaken our

156. NAT’L HUMANITIES CTR. RESOURCES TOOLBOX, *supra* note 154.

157. *Id.*

object, and doubted the utility of these institutions,” even accusing them of promoting “extravagance and dissipation” among their recipients. “Not so, the societies insist: their funds go to the neediest among them for basic sustenance.”¹⁵⁸

4. The Phoenix Society, Founded in New York City in 1833

The newly formed Phoenix Society also published its goals in a newspaper, in this case the African American *Liberator*.

Education was its primary object, and it outlined achievable steps to enroll black children and adults in reading and writing classes, trade apprenticeships, lending libraries, lecture series, and self-improvement groups—even providing clothing to children who could not otherwise participate. Although the society soon folded for lack of funds, other societies continued similar programs in New York City. And there were many more of these types of organizations that existed prior to emancipation.¹⁵⁹

5. Maggie Lena Walker and the Independent Order of Saint Luke

In 1903, Maggie Lena Walker became the first female to charter a bank and the first female bank president in the United States. The bank survived the great depression and continued exist until 2009 as the oldest continually African American-operated bank in the country.¹⁶⁰

But it all started with a mutual aid and beneficial society called the Independent Order of Saint Luke. Maggie joined the local council of the Independent Order of St. Luke in Richmond, Virginia when she was 14 years old. The Independent Order of Saint Luke was a fraternal burial society established in Baltimore in 1867. Its purpose was “to administer to the sick and aged, promote humanitarian causes, and encourage individual self-help and integrity. Maggie served in various ways for the order. By 1899, she had ascended to the top leadership position of the order, called the Right Worthy Grand Secretary. She held this position from 1899 until her death in 1934.”¹⁶¹

Between 1890, when Mrs. Walker first assumed the top leadership position, and 1924, the organization’s funds increased from \$31.00 to \$3.5 million. Mrs. Walker took over leadership of a

158. *Id.*

159. *Id.*

160. ROGERS, *supra* note 5, at 97–98.

161. *Id.*

dying organization, revived it, and helped it flourish through sound policies, good public relations, and tireless work. In 1902, she established a newspaper, the *St. Luke Herald*, to improve communication between the Order and the public.

Mrs. Walker in speeches and written commentaries stressed the need for the black community to pool its money, lend that money to credit-worthy applicants for interest, and reap the collective benefits for the black community. In 1903, she founded the Saint Luke Penny Savings Bank and served as the bank's first president. Thus, Mrs. Walker became the first woman in the United States to charter a bank and to serve as a bank president. By 1920, the bank had financed 645 black-owned homes. Mrs. Walker's management was so effective that the Penny Savings Bank survived the depression. She later served as the chairman of the board of directors when the bank merged with two other Richmond Banks to become The Consolidated Bank and Trust Company.¹⁶²

Although it changed its name as a result of a merger, the bank's mission, according to its Website in 2009, remained the same as Maggie's—to help further the development and prosperity of the black community.¹⁶³

However, in 2009, the bank lost its separate identity as a black firm when Premier Financial Bankcorp, Inc. merged it with four subsidiaries to form Premier Bank.¹⁶⁴

6. The Grand United Order of True Reformers

In January 1881, Reverend W.W. Brown established the Grand Fountain United Order of True Reformers. The True Reformer Bank of Richmond of Richmond Virginia was a subsidiary of and grew out of a mutual aid society known as the Grand Fountain United Order of True Reformers.¹⁶⁵ The black church—as can be seen in the development of the True Reformer Bank—was typically behind the establishment of fraternal insurance and burial societies and other cooperative mutual aid organizations that eventually became full-

162. *Id.*

163. *Id.*

164. *Walker Leaves Lasting Legacy* (2013), FED. RESERVE BANK OF RICHMOND (Feb. 2013) https://www.richmondfed.org/-/media/richmondfedorg/publications/education/maggie_walker/pdf/mwalker.pdf.

165. ABRAM L. HARRIS, *THE NEGRO AS CAPITALIST: A STUDY OF BANKING AND BUSINESS AMONG AMERICAN NEGROES* 57, 77 (Urban Research Press, Inc. 1992) (1936).

fledged insurance companies and banks.¹⁶⁶

The chief purpose of the Grand Fountain United Order of True Reformers “as stated in its charter was to provide a ‘mutual benefit fund’ for its members. The capital stock was to be not less \$100.00 nor more than \$10,000 at \$5.00 per share.” The following facts illustrate the growth of the order between 1881 to 1901. The data shows that “[t]he death claims and sick benefits paid up to 1901 were \$606,000 and \$1,500,000 respectively. The membership was over 50,000 in 1901 and the real estate owned was valued at \$233,500.”¹⁶⁷

On March 2, 1888, the Grand Fountain United Order of True Reformers established the Savings Bank of the Grand Fountain United Order of True Reformers at Richmond, Virginia. It was the first bank that black people actually organized and administered. It later became known as simply the The True Reformer Bank.¹⁶⁸ The bank was subordinate to the Order (i.e., the mutual aid society) “both in fact and in law.” And the Order operated the True Reformer Bank “in conjunction with several other undertakings.”¹⁶⁹ The bank continued until 1910 when it failed.¹⁷⁰

D. Six Historic Examples of Cooperative Economics That Advanced the Black Community in the United States and Abroad

1. The Concept of Ujamaa as the Basis for Julius Nyerere’s Social and Economic Development of Tanzania After Tanzania Gained its Independence From Britain in 1961

The Swahili name Ujamaa means extended family, brotherhood, or socialism. As a political concept, the term Ujamaa means that “a person becomes a person through the people or community.” Ujamaa, which commentators recognize today as a form of “cooperative economics”, is the fourth of seven principles of the African American celebration of Kwanzaa. This principle encourages African Americans: “To build and maintain our own stores, shops, and other businesses and to profit from them together.”¹⁷¹

166. *Id.* at 58–59.

167. *Id.* at 77.

168. *Id.* at 57, 77–78. The Capital Savings Bank of Washington, D.C., established in October 1888, was the second bank that was actually organized and administered by black people.

169. *Id.* at 78.

170. *Id.* at 88–91.

171. Sidney J. Lemelle and Niwapi Tunakwenda, ‘*Ni wapi Tunakwenda*’: *Hip Hop Culture and the Children of Arusha*, *THE VINYL AIN’T FINAL: HIP HOP AND THE*

The concept of Ujamaa was the foundation of the framework for President Julius Nyerere's social and economic policies for Tanzania after it gained independence from Britain in 1961. Nyerere's published his ideas in 1967 in a paper called the Arusha Declaration. The Arusha Declaration was Nyerere's blueprint for an African model of development based on African socialism.

Nyerere used Ujamaa as the basis for a national political and economic management model. In doing so, he (1) created a one-party system (which some commentators have referred to as a de facto dictatorship); (2) nationalized the economy's key sectors; (3) institutionalized political, social and economic equality through the creation of a central democracy; (4) abolished discrimination based on pre-existing status; (5) collectivized all forms of local production; (6) attempted to foster self-reliance by transformation of economic and cultural attitudes that emphasized work for both the group and for the individual; (7) implemented a system of compulsory education for all Tanzanians to sensitize them to the principles of Ujamaa; and (8) the creation of a Tanzanian as opposed to a tribal identity through means such as a the use of Swahili.¹⁷²

Under Nyerere's leadership, Tanzania made great strides in many in many vital areas of social development. Examples of these successes included: reduced infant mortality, an increase in life expectancy, primary school enrollment, and the adult literacy rate.

However, Ujamaa—like many nationalized/collectivized economic systems—resulted in decreased productivity. This was largely a result of high taxes, bureaucracy, corruption, bribery, and lack of personal incentive to produce more when one lacks the freedom to privately own property as in capitalist countries. By 1985, it had become clear that Ujamaa had failed to lift Tanzania out of its poor economic state. And Nyerere announced that would voluntarily retire after the 1985 presidential elections. Unfortunately, corrupt government leaders and political leaders came into power after Nyerere left office.

Nevertheless, Tanzanian rappers resurrected the principles of Ujamaa beginning at the turn of the century in 2000. As a result, “[t]he principles of cooperative economics—‘local people cooperating with each other to provide for the essentials of living’—can be seen in the lyrics of many

GLOBALIZATION OF BLACK CULTURE 230-254 (Dipannita Basu and Sidney Lemelle ed., 2006), Cranford Pratt, *Julius Nyerere: Reflections on the Legacy of His Socialism*, in 33(1) CAN. J. OF AFR. STUD. 137, 137-150 (2007), and Alistair Boddy-Evans, *What Was Ujamaa and How Did It Affect Tanzania?*, Thought Co (Aug. 2, 2019), <https://www.thoughtco.com/what-was-ujamaa-44589>.

172. *Id.*

Tanzanian hip-hop artists to this day.¹⁷³

2. Susu

Susu is an ancient version of cooperative economics that people in West Africa and the Caribbean practice. It is one of the oldest forms of microfinance in Africa. Persons known as susu collectors operate their microfinance businesses from kiosks in commerce centers and serve as mobile bankers.

This is how susu works. Susu clients make modest but regular deposits of money on a daily or weekly basis during the course of a month into a susu account. “At the end of this period the susu collector returns the accumulated savings to the client but keeps one day’s savings as commission. Susu collectors may also provide advances to their clients or rotate the accumulated deposits of a group between individual members.”¹⁷⁴

The practice continues today in parts of West Africa. As a result, the practice of susu provides many West Africans with access to money to start small businesses that often benefit the community. Additionally, black immigrants from the Caribbean have used a form of susu to significantly boost their economic growth rate. They have also leveraged this practice to establish successful credit unions.¹⁷⁵

3. The Colored Farmers National Alliance and Cooperative Union (CFACU)

In 1886, a group of black farmers in Texas formed the Colored Farmers’ National Alliance and Cooperative Union (CFACU). They formed this cooperative union because the decreasing profits from farming required a collective remedy. Moreover, the white cooperative organization, the Southern Farmers’ Alliance, refused to admit black farmers. Scholars estimate that the CFAU had 1.2 million members during the late 1800s. This made CFAU the largest black organization of its time.

The CFAU managed several cooperatives in the late 1800s, promoted alliances between farmers and workers, coordinated efforts for planting and harvesting, shared agricultural techniques and innovations, and was active in

173. A. Moore, *Five Historic Examples of Cooperative Economics (Ujamaa) That Advanced The Black Community*, ATLANTA BLACK STAR (Dec. 16, 2013) <http://atlanta.blackstar.com/2013/12/16/5-historic-examples-cooperative-economics-ujamaa/>.

174. Andre Moore, *Five Historic Examples of Cooperative Economics (Ujamaa) That Advanced The Black Community*, ATLANTA BLACK STAR (Dec. 16, 2013) <https://atlanta.blackstar.com/2013/12/16/5-historic-examples-cooperative-economics-ujamaa/>.

175. *Id.*

local and regional politics in order to protect rights of African Americans after Reconstruction.

White farmers attempted to instill fear in the members of the CFAU and harassed them. The white farmers harassed CFAU members because the CFAU encouraged black people to stop trading with the local white merchants and to obtain their produce from CFAU cooperative stores.

In what is known as The Leflore County (Mississippi) Massacre, local white militias and posses killed between 25-100 black people. The root cause of the massacre was directly related to the loss of business by white merchants to the CFAU's cooperative store. Astonishingly, neither state nor county officials took any action in response to the mass killing.

Accordingly, the white plantation leaders felt empowered to order the black cooperative store to desist from selling goods or loaning money to the Colored Alliance or any of its members.¹⁷⁶ Notwithstanding atrocities such as this, the CFAU managed to operate several cooperatives in the late 1800s before disbanding.¹⁷⁷

4. The Universal Negro Improvement Association (UNIA)

Marcus Garvey founded the Universal Negro Improvement Association (UNIA) in 1914. By the 1920s, it had become the largest American-based cooperative venture among black people in the 20th century. During this time, UNIA's membership increased to 8 million people with branches in almost every Caribbean, Latin American and sub-Saharan country.

UNIA encouraged entrepreneurship, urged black people to buy from black-owned businesses, and employed about 700 people in its numerous enterprises (e.g., the Negro Factories Corporation, three grocery stores, two restaurants, a laundry, a tailor shop, a dress-making shop, a millinery store, a printing company and a doll factory). UNIA also established the Black Star Line, Inc. to purchase ships to facilitate the transportation of goods and African Americans throughout the African global economy.¹⁷⁸ The federal government brought questionable charges against Garvey leading to his conviction on mail fraud charges in 1925. This resulted in the collapse of UNIA. After Garvey's two year imprisonment, Garvey returned to his home country of Jamaica. In 1935, Garvey moved to England and continued to advocate Pan-African ideas until his death in 1940.¹⁷⁹

176. NEMBARD, *supra* note 7, at 57.

177. NEMBARD, *supra* note 72.

178. MOORE, *supra* note 174.

179. ROGERS, *supra* note 5, at 94-95.

5. The Colored Merchant's Association

In 1900, Booker T. Washington founded the National Negro Business League to promote the interests of African American businesses.¹⁸⁰

In 1928, the League established the Colored Merchants' Association (CMA) as a cooperative organization of black grocery stores. The goal of the CMA was to reduce the operating costs of black retailers through mutual support, cooperative buying, and collective marketing.

The CMA model proved enormously successful in increasing the business and profits of associated stores. As a result, the CMA spread to nearly 18 cities including Chicago, Philadelphia, Nashville, Dallas and New York. The CMA provided its members with "intensive training in merchandising techniques, sales training, advertising, and management resources such as market analysis, inventory and bookkeeping systems, and collection and credit procedures."

The CMA required its members, among other things, to pay \$5.00 per month per store and meet minimum standards. The CMA network had grown to 253 member stores by 1930.

Unfortunately, the Great Depression and the increasing number of chain stores and supermarkets increasingly led to the demise of many small grocers after the 1930s. This eventually led to the CMA's bankruptcy in 1936. The CMA, among other things, raised awareness about African American buying power.¹⁸¹

6. The Federation of Southern Cooperatives

The founders of the Federation of Southern Cooperatives established it in 1967 in Atlanta, Georgia as a nonprofit organization. The purpose of the Federation is to support black cooperatives in southern states. Its headquarters is located in East Point Georgia. The Federation later merged with the Land Emergency Fund and is now known as the Federation of Southern Cooperatives/Land Assistance Fund.¹⁸²

"Member cooperatives engage in organic farming, marketing, agricultural processing, fishing, sewing, handicrafts, land buying, grocery cooperatives, and credit unions." Additionally, the Federation "engages in state and federal policy advocacy and provides technical assistance" to

180. Patricia Hoskins Morton, *National Negro Business League (NNBL)*, ENCYCLOPEDIA OF AL (June 28, 2013) <http://www.encyclopediaofalabama.org/article/h-2131>.

181. *Id.* See also Colored Merchants Association, NCPEDIA, <https://www.nepedia.org/industry/colored-merchant-assoc>. (last visited Feb. 17, 2020).

182. *Id.*

protect and maintain black land ownership and “promote sustainable family farming and cooperative development.”

During the course of the Federation’s 51-year history, it “has helped to create and/or support more than 200 cooperatives and credit unions mostly in the 11 states where it operates (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Missouri, Mississippi, South Carolina, Tennessee, Texas, and the Virgin Islands).” The Federation is also involved in cooperative development in Africa and the Caribbean.¹⁸³

Since its founding in 1967, the Federation of Southern Cooperatives/Land Assistance Federation has remained true to its founding purposes of helping people to help themselves through cooperatives. Since the civil rights movements of the 1960s, cooperatives have played an important part in helping black farmers to sustain or develop as independent operators. Sustaining and building operating independence is a major objective of black farmers and community leaders. Cooperatives have played a major role in achieving this goal.¹⁸⁴

E. The Importance of the Hundreds of Black Organizations That are For or About African Americans and African American Issues

Some commentators have defined a “black organization” as an “institution or foundation that has the sole purpose of enhancing the lives of African American citizens.” Corporate and individual donations are generally the sources of support for black organizations. However, federal, state, and local grants are sometimes the sources of funding for some black organizations.¹⁸⁵

There is a need for black organizations, as demonstrated in this article, because the majority culture has often ignored the issues, aspirations and needs of the African American community. Hundreds of black organizations exist nationwide with local chapters in many urban areas. These organizations provide assistance to the African American community “with healthcare, daycare, entrepreneurship, minority business grants, minority business loans, scholarships, internships, equal opportunity, civil rights, and more.”¹⁸⁶

One encyclopedia lists 296 African American Organizations. The writers of the compilation include a few organizations on its list that are no longer

183. *Id.*

184. NEMBARD, *supra* note 7, at 193.

185. *Top Black Organizations and Non-Profits*, BLACKNEWS.COM, http://www.blacknews.com/directory/black_african_american_organizations.shtml. (last visited Feb. 17, 2020).

186. *Id.*

operational primarily because of the historical significance of these organizations. Examples of now defunct but historically significant organizations include the Free African Society and the Niagara Movement.

On the other hand, there are many African American organizations that the encyclopedia does not include on the list because they are small local organizations that are not generally known to the public. For example, many African American churches have a variety of community outreach programs that provide various types of assistance to the needy.

The encyclopedia lists 12 categories of African American Organizations. Those categories are as follows:

- (1) African American Fraternities and Sororities
- (2) African American LGBT Organizations
- (3) African American Studies Organizations
- (4) African American Arts Organizations
- (5) African American Gangs
- (6) Prince Hall Freemasonry
- (7) African American Professional Organizations
- (8) African American Repatriation Organizations
- (9) African American Rights Organizations
- (10) State Legislative Black Caucuses
- (11) African American Trade Unions
- (12) African American Women's Organizations

These organizations—with the exception of African American gangs—remain as relevant today as when they began to emerge in America during the 1600s and 1700s as self-help organizations. But even scholars have recognized that black gangs that engage in illegal market activity are essentially businesses that operate like McDonalds' franchises and other types of legitimate businesses.¹⁸⁷

Juliet E. K. Walker, perhaps the greatest historian of black entrepreneurship in America, observed:

While the government has failed blacks, blacks have not failed themselves. Even with minimal resources, black Americans have had a long tradition of saving for both individual and cooperative enterprises, beginning with African secret burial societies established in the 1600s and continuing with free African mutual aid societies founded in the 1700s.¹⁸⁸

187. STEVEN D. LEVITT & STEPHEN J. DUBNER, *FREAKONOMICS: A ROGUE ECONOMIST EXPLORES THE HIDDEN SIDE OF EVERYTHING* 111–126 (2005); *see also*, HEATH, *supra* note 12, at 226–227.

188. JULIET E. K. WALKER, *THE HISTORY OF BLACK BUSINESS IN AMERICA: CAPITALISM,*

These principles are needed today as much as they were in the 1600s and 1700s. Self-help, self-responsibility, democracy, equality, equity and solidarity are the basis for cooperative values. Persons who adhere to these standards “believe in the ethical values of honesty, openness, social responsibility and caring for others.”¹⁸⁹ The power of strategic relationships and cooperative economics in strengthening the human and social capital of the black community is well documented.

Accordingly, one of the most important solutions to significantly empowering the black community in a manner never witnessed before is to increase strategic relationships, cooperative economics, and the level of educational attainment and targeted occupational training throughout the black community.

IV. BENEFITS OF MULTI-OWNED FIRMS

A. A General Comparison of Cooperatives with Business Corporations

A cooperative is essentially a profit-sharing arrangement.¹⁹⁰ Scholars generally refer to an organization as a cooperative when workers, suppliers, or customers own the firm.¹⁹¹ The organizers of cooperatives establish it to serve the interests of its members. If it is a consumer cooperative, then the organization attempts to get its customers a better deal. If it is worker’s cooperative, the organization tries to give them better terms of employment. And if it is a lender’s cooperative, the organization tries to get the lenders a better deal on the loans they have made.

Similarly, a typical business corporation is just a special type of cooperative in that it serves the interests of all its owners.

People could organize every firm in the country as either a worker, producer,¹⁹² or consumer cooperative if they wished. However, there are

RACE, ENTREPRENEURSHIP, SECOND EDITION, VOLUME I, TO 1865, at xv (2009).

189. COOP, *supra* note 6

190. HEATH, *supra* note 12, at 305–306.

191. *Id.* at 188.

192. *Id.* at 189. Heath refers to producer cooperatives as supplier cooperatives in his book. However, it appears that virtually all other commentators use the term producer cooperatives to refer to what Heath calls supplier cooperatives. Accordingly, this article uses the term producer cooperative for consistency purposes. The term supplier cooperative appears to have a much more limited meaning. Specifically, commentators use the term supplier cooperative to refer to transactions in which a producer cooperative also supplies raw materials to its members. An example would be an agricultural cooperative that also provides inputs

several reasons why that may not be a good idea. We shall briefly summarize those pros and cons now.¹⁹³

Cooperatives are most successful when the members constitute a relatively homogeneous group that provide the same product or service. When this is not the case, problems can arise.

We shall use worker, producer, and consumer cooperatives to illustrate how conflicts may arise when members of these three types of cooperatives do not constitute a homogenous group.

1. Worker Cooperatives¹⁹⁴

Worker cooperatives are most successful when there is a single class of worker doing essentially the same job. Problems arise when different people provide different goods or services to the firm as this creates a division between a class of members. However, “[w]hen everyone is doing the same job and has approximately the same level of skill, it is relatively easy” for managers to decide compensation questions.¹⁹⁵

But when workers begin to do different jobs, things become more complicated and conflicts arise. These conflicts can manifest themselves in the broader social conflicts we witness with respect to wages—”skilled vs. unskilled, white-collar vs. blue-collar, dangerous vs. safe.”¹⁹⁶

Another basic flaw in a worker’s cooperative is that worker cooperatives have an incentive to restrict hiring new members (to prevent average profitability from falling). This, in turn, reduces production (as a result of not hiring new worker-members). Therefore, there is a constant temptation is to bring in new workers as “contract” workers and not as full-members. To do so, however, makes the worker cooperative seem very much like capitalist firms.

For example, in law partnerships, the general partners “who make out like bandits,” are the full members. On the other hand, the associates—i.e., the contract workers—do most of the work and reap only a small part of the revenues.¹⁹⁷

An example of the disabling conflicts that can arise in a heterogeneous group of employee-owners can be seen in the disaster that took place at United Airlines after it became employee owned. The relevant facts are as

such as seed, fertilizer, and machinery services to its members; *see* discussion, *infra* section Part IV.B.4.

193. *Id.*

194. *Id.* at 191.

195. *Id.*

196. *Id.*

197. *Id.* at 305–306.

follows. In 1994, employees became the majority owners of United Airlines as part of a bankruptcy settlement in which employees agreed to \$4.88 billion in wage concessions. Things did not go well, in part, because pilots, mechanics, and crew remained members of three separate unions. As a result, each union continued to bargain the firm for wage concessions which pitted one union against the other. “This sort of infighting was one of the direct costs of employee ownership” among “an internally heterogeneous ownership group.”¹⁹⁸

United’s problems could have been avoided by having a participative management structure that encourages employees to think and act like owners.¹⁹⁹ United Airlines is no longer a majority worker-owned airline. It is now a publicly-traded airline holding company in the aftermath of United’s acquisition of Continental Airlines in 2010. It is now formally known as United Airline Holdings, Inc.²⁰⁰

Examples of successful employee-owned firms include Publix, the largest employee-owned company in the United States. Publix, a Florida-based supermarket chain, has \$34 billion in sales and 190,000 employees. Publix consistently wins awards as a great place to work and shop while turning in solid financial performance.²⁰¹

Other examples of successful employee-owned firms include Polyguard Products, a 100 percent employee-owned manufacturer of coatings and moisture barriers that has had 24 years of consecutive sales growth. Another example is employee-owned Davey Tree Expert Company. In 2016, Davey had sales of \$845 million in 2016 and recorded a healthy net profit. Davey Tree Expert Company has experienced steady growth since its inception.²⁰²

Commentators refer to an organization as a cooperative when workers, producers/suppliers or customers own the firm. In that sense, many taxi cab companies, travel agencies, and the typical law firm are essentially worker cooperatives.²⁰³

198. *Id.* at 192.

199. Bill Fotsch & John Case, *United’s Trouble Could Have Been Avoided*, FORBES (Apr. 17, 2017), <https://www.forbes.com/sites/fotschcase/2017/04/17/uniteds-troubles-could-have-been-avoided/#2b7f8d60c062>.

200. United Continental Changes Name to United Airlines Holdings Inc, REUTERS (June 27, 2019, 1:19 PM), <https://www.reuters.com/article/ual-namechange-idUSL4N23Y4MJ>; *see also* United and Continental Close Merger, UNITED (Oct. 1, 2010), <https://archive.ph/20120710064351/http://ir.unitedcontinentalholdings.com/phoenix.zhtml?c=83680&p=irol-newsArticle&ID=1478014&highlight=>.

201. Fotsch & Case, *supra* note 199.

202. *Id.*

203. HEATH, *supra* note 12, at 188.

2. Producer/Supply Cooperatives

Similarly, producer/supply cooperatives are most successful when the cooperative supplies a single product such as milk. Problems are likely to arise, however, when a dairy cooperative decides to produce both milk and eggs. This is because controversies are likely to arise with regard to the attention paid to marketing and other aspects with respect to one product over the other. A supplier of eggs has a different interest than the supplier of milk. Accordingly, it is understandable why conflicts may arise between two members who produce different products.²⁰⁴

Both Visa and MasterCard, for example, are producer/supply cooperatives owned by lending agencies who supply the credit. True Value Hardware is also a supply cooperative. In both cases, the members of the supply cooperatives provide a homogeneous product and/or service.²⁰⁵

3. Consumer Cooperatives

For the same reasons, consumer cooperatives—such as housing cooperatives—are most successful when tenants occupy similar units and share similar lifestyles. Some scholars have noted that customers own many firms in the agricultural sector. And some retailers—such as REI (Recreational Equipment, Inc.) and MEC (Mountain Equipment Co-op)—have also organized themselves as consumer cooperatives.²⁰⁶

Naomi Klein and Avi Lewis' documentary, *The Take*, portray worker cooperatives “as a new kind of economy” and as an ‘alternative to global capitalism.’” However, there is extensive literature, apparently ignored by Klein and Lewis, “that raises serious doubts about the possibility of structuring an economy along these lines.”²⁰⁷

4. Corporations

Corporations tend to avoid the internal conflicts witnessed by worker owned cooperatives. This is because shareholders—the owners of the corporation—are a fairly homogeneous group whose ultimate interest is money. On the other hand, there is often corrosive internal fighting between members of a heterogeneous group of worker-members in a cooperative arrangement. And, as we have seen, the same seems to hold for a

204. *Id.* at 191.

205. *Id.* at 187.

206. *Id.* at 194.

207. *Id.* at 5.

heterogeneous group of worker-owners of a corporation. Accordingly, it sometimes seems to be in everyone's best interest to hand over ownership to a more impartial, homogeneous group of shareholders.²⁰⁸

A corporation, at heart, is primarily a nexus of contracts between the corporation and four classes of individuals—suppliers, workers, customers and lenders. Through these relationships, the corporation purchases inputs (e.g., raw materials, workers) which it uses to transform the collection of inputs into output in the form of goods (i.e., a product or a service).²⁰⁹

The owners of the corporation's stock have voting rights and are its residual owners. The board of directors owe the common shareholders a fiduciary duty of care and loyalty. Bond holders and preferred stock owners of the corporations are contractual claimants to the corporations assets and typically have no right to vote on structural or organic matters involving the corporation (e.g., voting for directors, mergers, amendments to the articles of incorporation, sale of all or substantially all the assets of the corporation, and dissolution). The board of directors and its officers do not owe the contractual claimants a fiduciary duty. Instead, they only have an obligation to honor the contracts the corporation has made with bondholders and preferred stockholders.²¹⁰

Accordingly, corporations avoid the internal conflicts witnessed by worker owned cooperatives as the owners of the corporation are a fairly homogeneous group whose ultimate interest is solely money.

Thus, a corporation is merely a *nexus of contracts* between suppliers (who provide inputs), customers (who purchase outputs), lenders (who supply the money for a business to purchase capital—i.e., the tools, equipment, plant and machinery necessary for producing a product or service) and workers (who contribute the labor to make it all happen).

Corporations use the money they make to cover costs such as paying employees, purchasing materials, servicing loans, and paying rent. What we call profit is simply the residual amount left over after all the firm's contractual obligations have been met.

B. A More Detailed Discussion of the Cooperative Form of Organization

As we stated at the outset, there are two primary reasons for the emphasis on the use of co-ops as an organizational device in this article: (1) to provide individuals and organizations with ideas on how to increase the income of

208. *Id.* at 194–195.

209. *Id.* at 185–186.

210. *See generally In re Trados Inc. S'holder Litig.*, 73 A.3d 17 (Del. Ch. 2013).

people who have historically been at the bottom of the economic ladder through cooperative action and (2) to educate lawyers (and others) regarding the many uses of co-ops. This is because few law schools, if any, teach students about cooperatives in the typical business organizations class nor do these classes help prospective lawyers to distinguish standard business formats (e.g., general partnerships, limited partnerships, corporations, limited liability companies) from the cooperative form of organization.

1. The Cooperative Form of Organization

Co-ops operate on the basis of one member, one vote, and return dividends to their

owners based on patronage.²¹¹ In contrast, the owners of corporations control the entity based on the number of shares they own. Accordingly, in the corporate form of organization, the percentage of shares owned by a shareholder determines the percentage of any distribution that a shareholder will receive.²¹²

2. The Rochdale Society of Equitable Pioneers

Scholars consider the The Rochdale Society of Equitable Pioneers (RCEP), founded in 1844, as the first successful cooperative enterprise.²¹³ The members formed the Society to establish their own store to sell food items that they otherwise would not be able to afford. Modern cooperatives use the Rochdale Principles as a model.

3. The Seven Rochdale Principles

Commentators frequently refer to cooperative principles—i.e., the seven guidelines by which cooperatives put their values into practice—as the seven Rochdale Principles. Those principles call for:

- (1) Voluntary and open membership
- (2) Democratic member control
- (3) Economic participation by members

211. *Basic Principles of a Cooperative*, IWDC, <https://www.iwdc.coop/why-a-coop/basic-principles-of-a-cooperative>. (last visited Feb. 04, 2020).

212. *Employee Stock Ownership Plan Facts*, NATIONAL CENTER FOR EMPLOYEE OWNERSHIP, <https://www.esop.org/>. (last visited Feb. 04, 2020).

213. Lynn Pittman, *History of Cooperatives in the United States: An Overview*, CTR FOR COOPERATIVES UNIV. OF WISCONSIN-MADISON, 1, (Dec. 2018), https://resources.uwcc.wisc.edu/History_of_Cooperatives.pdf.

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- (4) Autonomy and independence
 - (5) Education, training, and information
 - (6) Cooperation among cooperatives
 - (7) Concern for community

4. The Rochdale Statement of Cooperative Values

Self-help, self-responsibility, democracy, equality, equity and solidarity” are the basis for cooperative values. Cooperative members “believe in the ethical values of honesty, openness, social responsibility and caring for others.”²¹⁴

C. The Five Major Categories of Cooperatives and 16 Sub-Types of Cooperatives: Ideas on How People Who Live on the Margins Can Become Economically Self-Sufficient

As a general matter, commentators have given labels to at least 16 types of cooperatives: (1) Food Cooperatives (that also could be called a Consumer Cooperatives); (2) Marketing Cooperatives (that could also be called Producer Cooperatives); (3) Worker Cooperatives; (4) Supplier Cooperatives; (5) Consumer Cooperatives; (6) Non-Monetary Cooperatives; (7) Retailer’s Cooperatives; (8) Volunteer Cooperatives; (9) the Italian Social Cooperative; (10) Business and Employment Cooperatives; (11) Housing Cooperatives; (12) Utility Cooperatives; (13) New Generation Cooperatives; (14) Agricultural Cooperatives; (15) Credit Unions, Cooperative Banking and Cooperative Insurance Firms; and (16) Federal or Secondary Cooperatives.

However, as this article pointed out in Part II, commentators generally agree that there are five primary categories of cooperatives in which one could place all 16 of these various types of cooperatives—(1) Consumer, (2) Producer, (3) Worker, (4) Purchasing, and (5) Hybrid.²¹⁵

Commentators and scholars have noted that virtually any cooperative can be placed in multiple categories. Therefore, defining the type of a cooperative by category can be initially confusing. For example, some writers describe cooperatives by (1) the *ownership structure* of the cooperative; (2) the *product or service* that the cooperative sells; or (3) the *activity* in which the group collectively acts.²¹⁶

Cultivate.coop provides two examples of how a co-op can be labeled in

214. *Id.*

215. IWDC, *supra* note 118.

216. *Id.*

more than one way.

1. Food Cooperatives (that could also be called Consumer Cooperatives)

Example 1: In the first example, Cultivate.coop states that one can correctly label “a group of people forming a co-op to open a grocery store and sell food to co-op members and perhaps other customers” as both a “consumer co-op” or a “food co-op.” Cultivate.com explains this result by noting that, in the first instance, the label refers to “the co-op’s ownership structure (consumers).” In the second instance, Cultivate.com notes that the second labels refer to what the co-op is selling to its owners (food).

2. Marketing Cooperatives (that could also be called Producer Cooperatives)

Example 2: In the second example, Cultivate.coop states that one can correctly label “[a] group of dairy farmers who sell milk under a cooperatively owned brand name which they own” . . . as either a ‘producer co-op’ or a ‘marketing co-op.’ Additionally, if the same group of dairy farmers “open their own milk processing plant to make cheese or some other product, they are also a ‘value-added agricultural co-op.’” Moreover, if all of them “buy equipment, fertilizer, services or anything else together,” commentators could correctly label them as “purchasing co-ops.”²¹⁷

3. Worker Cooperatives

Worker cooperatives are owned by some or all of its workers. They offer workers a chance to own their own company with very little start-up capital. Cooperative Home Care Associates of the Bronx is an example of worker co-op that has developed a large membership. Cooperative Health Care Associates has about 800 members. They are mostly women of color, often immigrants, who tend to provide care to homebound elderly, sick, and disabled persons.²¹⁸

217. *Id.*

218. *Types of Cooperatives*, COOPERATIVE EDUCATION NETWORK. https://web.archive.org/web/20190126034212/http://cultivate.coop/wiki/Types_of_cooperatives# (last visited Jan. 26, 2019).

4. Supplier Cooperatives

Supply cooperatives provide their members with inputs for production. For example, an agricultural supply cooperative supplies its members with inputs for agricultural production. This would include such inputs as seed, fertilizer, and machinery services.²¹⁹

5. Consumer Cooperatives

A consumer cooperative is a business that its customers own. “Members vote on major decisions and elect the board of directors” from among themselves. Generally, employees can also become members.²²⁰

6. Non-Monetary Cooperatives

The idea behind non-monetary cooperatives is to promote sustainable development by reducing human consumption of goods. They provide a service based on voluntary labor of its members. Examples of such services include free rental of equipment of all kinds and work “in the identical manner of a library.”²²¹

7. Retailer’s Cooperatives

A retailer’s cooperative—known as a secondary or marketing cooperative in some countries—allows for locally owned businesses such as grocery stores, hardware stores and pharmacies to utilize economies of scale on behalf of its members to receive discounts from manufacturers and to pool marketing. Members of the cooperatives are businesses rather than individuals.²²²

An example of a retailer’s cooperative is the Best Western International chain whose members are hotel operators. Best Western refers to itself as a nonprofit membership association.

219. *Types of Farmer Cooperatives*, NAT’L AGRIC. L. CTR. (Feb. 8, 2020, 7:09 PM), <https://nationalaglawcenter.org/overview/cooperatives/>.

220. *What is a Co-op?*, ROGUE CO-OPS, <https://rogue.coop/content/what-co-op/>. (last visited Feb. 04, 2020).

221. Marie-Laurie Barron, *Defining the Frontiers of the Firm Through Property Rights Allocation: The Case of French Retailer Leclerc*, 65 REV. OF SOC. ECON. 293, 293–294 (building on the theory of property rights to analyze the organizational evolution of the French retailer cooperative Leclerc and management of assets in retailer cooperatives).

222. Small Farm Program, *What is a Cooperative?* UNIVERSITY OF CALIFORNIA, DAVIS, http://sfp.ucdavis.edu/cooperatives/what_is/ (last visited Feb. 16, 2020).

8. Volunteer Cooperatives

A network of volunteers establish and operate a volunteer cooperative to confer a benefit on its members or the general public. Examples include a lodge, social club, and other types of nonprofit organizations. They often take the form as “volunteer-run consumer [cooperatives] or service organization[s], in which workers and beneficiaries jointly participate in management decisions and receive discounts on the basis of sweat equity.”²²³

A volunteer cooperative is different from a worker cooperative. A worker cooperative is, by definition, owned by its employees. However, a volunteer cooperative is typically a nonprofit organization.

9. The Italian Social Cooperative

The Italian social cooperative is a particularly successful form of multi-stakeholder cooperative. Approximately 11,000 exist.²²⁴

There are two types of social cooperatives—Type A and Type B. The Type A social cooperative brings together providers of social services and beneficiaries of those social services as members. Type A social cooperatives deliver health, social or educational services to their members. Stakeholders who may become members include paid employees, beneficiaries of the service, volunteers, financial investors, and public institutions. Type A social cooperatives allow for volunteers to comprise up to 50 percent of the membership.

The Type B social cooperative brings together permanent workers and previously unemployed persons who seek employment in the labor market. The Type B cooperative may target disadvantage based on physical and mental disability, drug and alcohol addition, developmental disorders and problems with the law. However, Type B cooperatives do not target disadvantage based on race, sexual orientation, or abuse. In Type B cooperatives, at least 30 percent of its members must be from the disadvantaged target group. Type A and B social cooperatives have the following common characteristics:

- The cooperative cannot distribute any more than 80 percent of its assets
- The cooperative, upon dissolution, may only distribute its assets for altruistic purposes consistent with its objectives
- The social cooperative must be recognized as a juridical entity

223. *Id.*

224. *Census of Industry and Services*. ROME, <https://www.comune.roma.it/web/it/roma-statistica-censimenti.page> (last visited Feb. 16, 2020).

and possess limited liability

- The cooperative's objective must be for the general benefit of the community and the social integration of citizens
- At least 30 percent of members must be from the disadvantaged target group
- Voting is one person one vote²²⁵

10. Business and Employment Cooperatives

Business and employment cooperatives—which scholars classify as a subset of worker cooperatives—provide support for the creation of new businesses. They provide a secure income to entrepreneurs who are at the incipient stages of developing their business ideas. When the entrepreneur establishes the business and begins to generate income, the cooperative allows the entrepreneur to stay and become a full member of the cooperative. “The micro enterprises then combine to form one multi-activity enterprise whose members provide a mutually supportive environment for each other.”

Accordingly, business and employment cooperatives provide prospective entrepreneurs with the platform for making the transition from “inactivity to self-employment but in a collective framework.” Thus, these types of cooperatives “open up new horizons for people who have ambition but who lack the skills or confidence needed to set off entirely on their own . . . or who simply want to carry out an independent economic activity but within a supportive context.”²²⁶

11. Housing Cooperatives

Housing cooperatives provide a legal structure for the ownership of housing. In a share capital housing cooperative, the cooperative issues shares to the residents which reflect the residents ownership in the cooperative's real estate. In a nonprofit housing cooperative, the cooperative issues membership and occupancy rights to residents who pay subscriptions or rent to the cooperative.

Housing cooperatives typically come in one of three types of ownership (i.e., equity) structures—(1) market-rate housing cooperatives, (2) limited equity housing cooperatives; and (3) group equity or zero-equity housing

225. MICHIE, BLASI, & BORZAGA, *supra* note 108, at 308–320; Allesandra Mancino, Antonio Thomas, *An Italian Pattern of Social Enterprise: The Social Cooperative*, NONPROFIT MANAGEMENT AND LEADERSHIP, Vol. 13 No. 3 (Spring 2005).

226. WILLIAM G BRUEGGEMANN, *THE PRACTICE OF MACRO SOCIAL WORK* 311 (4th ed. 2014).

cooperatives.

Market-rate cooperatives allow their members to sell their shares in the cooperative whenever they wish and for whatever price they may obtain.

Limited equity housing cooperatives—an ownership structure which affordable housing developers often use—permit members to own some equity in their residence. However, these types of cooperatives limit the members from selling their equity in their homes to the amount they paid for their unit.

Group equity or zero-equity housing cooperatives prohibit members from owning equity in their residences. Additionally, these types of housing cooperatives often have rental agreements substantially below market rates.²²⁷

12. Utility Cooperatives

Scholars classify utility cooperatives as a type of consumers' cooperative. These types of cooperatives provide a public utility service such as electricity, water, or telecommunications to its members. The managers of the cooperative either reinvest profits from the activity for infrastructure and development or distribute profits to members as a return on the member's investment in the cooperative.

Cooperatives providing electricity to its members generally fall into two categories—(1) generation and transmission cooperatives or (2) local distribution cooperatives. Generation and transmission cooperatives create and generate power via the transmission grid to homes and business. Local distribution cooperatives gather electricity from a variety of sources and sends it to its members.

Studies have demonstrated that in Tanzania, when people are involved in producing their own water through cooperative endeavors, it has a direct effect on the quality of the water.

In the United States during New Deal era of President Franklin Roosevelt, business organizers formed utility cooperatives to provide electrical and telephone services to rural areas.²²⁸

227. *More Than Just Housing . . . Co-Op Housing*, Univ. of Wisconsin Ctr. For Cooperatives, available at <https://ncdc.unl.edu/Documents/coopHouse02%281%29.pdf>; *Types of Cooperatives*, UNIV. OF NEBRASKA-LINCOLN, <https://ncdc.unl.edu/typescooperatives.shtml>. (last visited Feb. 15, 2020), and Gerald Sazama, *A Brief History of Affordable Housing Cooperatives in the United States 1996-09* UNIV. OF CONNECTICUT, DEPT. OF ECON. 1, 1 & 10–11.

228. Jim Cooper, *Electric Cooperatives From New Deal to Bad Deal?*, 45 HARV. J. LEG. 335, 336–339, 345–355 (2008), and Nat'l Rural Elec. Coop. Assoc., *Tanzania*, NRECA INT'L, <http://www.nrecainternational.coop/where-we-work/tanzania/>. (last visited Feb. 16, 2020).

13. New Generation Cooperatives

New generation cooperatives are a hybrid between traditional cooperatives and limited liability companies or public benefit corporations. They typically operate in capital intensive industries and add value to existing primary products and services. For example, some new generation cooperatives produce ethanol—an alternative to fossil fuels—from corn; make pasta from durum wheat; or manufacture gourmet cheese from goat's milk.²²⁹

14. Agricultural Cooperatives

Cooperatives in which farmers pool their resources for mutual economic benefit are known as agricultural cooperatives or farmer's cooperatives. Commentators broadly divide agricultural cooperatives into two types—agricultural service cooperatives and agricultural production cooperatives. However, regardless of the labels, they both provide a variety of services to their members on a collective basis.

Agricultural service cooperatives provide an array of services to their individual farming members. Examples include agricultural marketing cooperatives that promote specific commodities and provide complete supply chain distribution of the commodity from the point of production, packing, storage, food processing all the way to the commodity's distribution and sale.

Agricultural supply cooperatives—which are a subset of agricultural service cooperatives—may provide seeds, fertilizers, chemicals and farm machinery. They often aggregate purchases for the members to take advantage of volume discounts and, thereby, achieve economies of scale.

Agricultural production cooperatives pool production resources such as land and machinery that allow individual farmers to farm jointly. One well known agricultural supply cooperative is the cranberry-and-grapefruit cooperative Ocean Spray.²³⁰

229. Kathy Kelley, *An Introduction to a New Generation Cooperatives*, PA. ST. U. EXTENSION (Mar. 11, 2016) <https://extension.psu.edu/an-introduction-to-new-generation-cooperatives>.

230. *Supra* note 219. See also John M. Staatz, *Farmers' Incentives to Take Collective Action Via Cooperatives: A Transaction-Cost Approach*, 18 COOP. THEORY: NEW APPROACHES 87, 88–107 (1987).

15. Credit Unions, Cooperative Banking and Cooperative Insurance Firms

Credit unions provide the same financial service to its members as banks. However, they are nonprofit organizations that adhere to cooperative principles. They originated in Germany in the mid-1800s.²³¹

In 1900, Alphonse Desjardins started the first credit union in North America in Quebec, Canada. Eight years later, Desjardins provided guidance for the first credit union in the United States. There are now approximately 7,950 active federally insured credit unions in the United States with almost 90 million members and more than \$679 billion on deposit.²³²

16. Federal or Secondary Cooperatives

A federal or secondary cooperative is one in which all the members are themselves are cooperatives. They have largely taken the form of cooperative wholesale societies and cooperative unions. The purpose of a cooperative wholesale community is to arrange for bulk purchases for the members and, if possible, to organize production. On the other hand, the purpose of cooperative unions is to develop a spirit of solidarity among societies.²³³

D. Why Corporations are the Preferred Form of Business Organizations for Large Publicly Held Firms

Why are corporations the most popular way for large firms to organize production as opposed to, say, cooperatives—i.e., businesses owned by workers, or producers/suppliers, or consumers?

As we discussed earlier, every firm in the economy could be organized as a *worker cooperative*, or a *producer cooperative*, or a *consumer cooperative*. Thereafter, we could close down the stock market leaving lenders with no option but to deposit their money in banks, which would then make these funds available to various cooperatives on strictly contractual terms. Thus, one could have capitalism without the capitalists.

However, there are various reasons why this might not be a good idea. Cooperatives are most successful when the type of “input” provided by the

231. *Cooperative Banks and Credit Unions*, CO-OPLAW.ORG, <https://www.co-oplaw.org/co-op-basics/types/credit-unions/> (last visited Feb. 16, 2020).

232. United States Dept. of Agriculture Rural Development, *Understanding Cooperatives: The Structure of Cooperatives*, COOP. INFO. REPORT 45 § 3 (1994) https://www.rd.usda.gov/files/CIR45_3.pdf.

233. *Id.* As we noted earlier, we use the term producer cooperative to refer to what Heath calls a supplier cooperative.

owners is extremely homogenous.

For example, producer cooperatives are most successful when the input is a single commodity such as milk (as opposed to milk, eggs, and butters). This is because when different people begin to supply different goods, it creates divisions among the class of owners. For example, how much of the budget should be spent on advertising milk as opposed to eggs or butter.

Consumer cooperatives such as housing cooperatives are most successful when tenants occupy similar units and share similar life styles.

Worker cooperatives are most successful when there is single class of workers each doing approximately the same job.

Bitter infighting is not unusual in cooperatives with a heterogeneous ownership group (see, e.g., United Airlines circa 1994 when the company was facing bankruptcy and a heterogeneous group of employees owned 55% of the firm). Every firm has agency costs (i.e., hiring managers to run the business) but internal conflict among the owners with multiple and conflicting interests has the potential to exacerbate agency costs dramatically.

The agency costs of doing business as a corporation, on the other hand, are comparatively low as the “owners” of a corporation are all “investors” with the same general object.

E. Other Types of Business Organizations for Firms with More Than One Owner, Ideal Features for Start-up Businesses, and Importance of Agreements Between Owners

1. General Considerations

a. Ideal Features for Start-up Businesses

Private business organizations are mechanisms through which people coordinate their production and consumption of wealth. This article maintains that the multi-owned businesses should be the goal of black businesses.

“The proposed business structure for enterprises with two or more owners should, ideally, be one that provides its owners with:

- (1) equal opportunity and the right to take an active role in the management of the business.
- (2) limited liability.
- (3) the right to individually take tax deductions for expenses incurred by the business. (sometimes referred to as flow-through taxation).
- (4) the ability to recoup one’s equity investment upon leaving the business (usually accomplished via a buy-sell agreement

between the owners).

- (5) the ability to prevent new persons from becoming owners in the business without the consent of all existing owners (equity transfer restrictions on owners).²³⁴

The general partnership, with the exception of the limited liability feature, provides owners all of these benefits. Traditional corporation law, with the exception of limited liability, provides none of these protections to small closely held businesses. Accordingly, the owners need to have a specific, comprehensive written agreement between them that addresses the expectations of the owners with respect to these matters. Individuals who are considering launching a business enterprise should be particularly careful in addressing these issues.”²³⁵

b. Importance of Agreements Between Owners in Closely Held Businesses

“An agreement between owners in closely held businesses should be entered into by owners of closely held businesses regardless of the type of business organization. The agreement between owners in a limited liability company (LLC) is called an operating agreement between ‘members;’ the agreement between owners of a corporation is called a shareholders’ agreement; and the agreement between owners of a partnership is called a partnership agreement.

The most essential features in such agreements among the owners are:

- (1) how an owner gets his/her portion of the net worth of the business upon departing the business (i.e., a buy-sell agreement).
- (2) restrictions on an owner’s ability to transfer his or her ownership units without the consent of the other members.
- (3) the profit/loss split.
- (4) the management rights of the owners of the business.
- (5) other closely related matters (e.g., whether to limit the right of an owner to pledge his/her right to receive his share of the profits as collateral for a personal loan).”²³⁶

234. ROGERS, *supra* note 5, at 169–170.

235. *Id.* at 170.

236. *Id.*

2. Other Types of Organizational Formats for Firms With Multiple Owners

a. The General Partnership

A general partnership is an association of two or more persons who combine to carry on as co-owners of a business for profit.²³⁷ The prospective owners do not need to file any organizational documents for a general partnership to exist between themselves. Partnership law states that sharing of profits from the business constitutes prima facie evidence that one is a partner in the business.²³⁸ Other rules for determining whether a partnership exists between two or more persons can also be found in the partnership statutes. The general partnership, like the sole proprietorship, renders its owners unlimitedly, personally liable for the debts of the partnership if the partnership cannot pay its bills. African American entrepreneurs should be aware of the ramifications of joint and several liability in doing business as a general partnership precisely because of the reality that creditors of the business can seize their personal assets if the business fails. Moreover, it makes no difference if a particular partner is innocent of any wrongdoing that may cause the partnership to be liable. If one partner is held liable, all partners are liable under general partnership laws regardless of fault or involvement in the wrongful act.

The general partnership, however, provides the business owners with all the other features normally desired by one who is starting a business enterprise. Unless there is another kind of partnership agreement in place, the general partners are presumed to have equal rights to participate in the management and control of the partnership; they are able to recoup their investment stake in the net worth of the partnership upon withdrawal from the partnership; they have a veto power over anyone becoming a new owner in the business; and they have the right to individually take tax deductions for expenses incurred by the business (i.e., flow-through taxation).²³⁹

237. UNIF. P'SHIP ACT § 6 (1914), 6 U.L.A. 313 (2001) (pt. I); REV. UNIF. P'SHIP ACT § 202(a) (1994), 6 U.L.A. 92 (2001).

238. UNIF. P'SHIP ACT § 7(4) (1914), 6 U.L.A. 418 (2001) (pt. I); REV. UNIF. P'SHIP ACT § 202(c) (1994), 6 U.L.A. 92-93 (2001) (pt. I).

239. See UNIF. P'SHIP ACT § 18(g) (1914), 6 U.L.A. 101 (2001) (Pt. II); REV. UNIF. P'SHIP ACT § 401 (i) (1994), 6 U.L.A. 133 (2001) (pt. I).

b. The Limited Liability Partnership

The prospective owners must file articles of organization with the appropriate governmental agency to create a limited liability partnership (LLP). The LLP may be an excellent choice of business format for prospective entrepreneurs starting a small business enterprise, depending on the protections provided by the particular state statute. The LLP is a general partnership in which there is no joint and several liability for partners who did not participate in the matter that gave rise to tort liability. The limited liability partner, under the first LLP statute enacted in Texas, remained liable for the contractual obligations of the firm. That statute was enacted by the Texas legislature in response to claims brought against innocent partners in litigation resulting from the collapse of real estate and energy prices in the early 1980s. More than one-third of all the bank failures occurred in Texas.²⁴⁰

Statutes creating limited liability partnerships basically do away with joint and several liability of general partners for wrongdoing/professional malpractice in which they had no involvement. Nevertheless, a partner is not shielded from the consequences of his own wrongdoing or from negligent supervision of others. Other states have passed so-called full shield statutes that extend liability protection to all types of claims. In 1997, Texas broadened its statute to cover contract as well as tort claims. A full broad shield LLP provides limited liability for partners similar to the limited liability available to shareholders in a corporation or to limited partners in a partnership that do not participate in the management of the business.²⁴¹

c. The Limited Partnership

The prospective owners must file articles of organization with the appropriate governmental agency in order for a limited partnership to exist. A limited partnership must have at least one general partner and at least one limited partner. The limited partnership fails to provide management control for all of the owners because the limited partners cannot take part in control of business without sacrificing limited liability. Legislative changes in the statutes, however, have made it possible for limited partners to engage in some management-related activities without losing limited liability protection.

The limited partnership is also deficient since the general partner remains unlimitedly liable. There are ways, however, for even a general partner to

240. ROBERT W. HAMILTON & RICHARD D. FREER, *THE LAW OF CORPORATION IN A NUTSHELL* 15 (West Publishing Co. eds., 6th. 2011).

241. *Id.*

escape liability. The general partner in a limited partnership may accomplish this by incorporating the general partners or forming a limited liability limited partnership. Additionally, it is relatively difficult for a limited partner to withdraw his or her equity interest in the typical limited partnership as limitations on limited partner withdrawal of their equity interests are allowed under the limited partnership statutes and are common in limited partnership agreements. For this reason, prospective entrepreneurs should not choose this business format for doing business unless they are engaged in real estate syndications for construction and management of commercial shopping centers, office projects, and similar real estate ventures. The limited partnership is also an excellent choice of business format for other types of firms that produce substantial depreciation and similar tax write-offs which may be proportionately deducted by the limited partners.²⁴²

d. The Limited Liability Limited Partnership

Some jurisdictions have adopted limited liability limited partnership (LLLP) statutes. These statutes limit the liability of general partners in a limited partnership to the extent afforded to general partners under the LLP statute of the particular jurisdiction. The LLP statute limits the joint and several liability of general partners for professional malpractice that would otherwise apply under general partnership statutes, among other things.

As is true with all other business organizations (with the exception of sole proprietorships and general partnerships), the owners must file articles of organization with the appropriate governmental agency in order for a limited liability limited partnership to exist. These organizations still have the other deficiencies listed in the section discussing the limited partnership and the limited liability partnership. The LLLP statute is not in wide use today. The more common practice in limited partnerships is to have only a single corporate general partner that is usually minimally capitalized and has nominal equity interest in the limited partnership. For these reasons, prospective entrepreneurs should not generally choose this form of business in their entrepreneurial endeavors.²⁴³

e. The Limited Liability Company

The limited liability company (LLC) is an excellent organizational format for entrepreneurs operating closely held businesses. The LLC is a hybrid between a general partnership and a corporation. However, it is

242. ROGERS, *supra* note 5, at 176.

243. *Id.*

neither a general partnership nor is it a corporation. The owners of a LLC are referred to as its “members.” In order to establish a LLC, the organizers must file articles of organization with the appropriate governmental agency. The LLC, when properly structured, provides owners with management control, limited liability, flow-through taxation, ease in recouping the owner’s stake in the net worth of the business, and the ability to veto the admission of new owners to the business. The details concerning the agreement between the members of a LLC are set forth in a document referred to as an operating agreement. Accordingly, the LLC affords its owners all of the features normally desired by persons starting a small closely held business. For these reasons, the LLC is probably the best business organization format for most individuals taking the entrepreneurial plunge.²⁴⁴

**V. ARE PARTNERSHIPS AND OTHER TYPES OF
BUSINESSES WITH MORE THAN ONE OWNER
MORE EFFICIENT THAN SOLELY OWNED
BUSINESSES? A COMPARISON OF BUSINESSES
WITH MULTIPLE OWNERS AND THOSE WITH
ONLY ONE OWNER**

**A. Percentage of Bar Complaints Filed Against Solo
Practitioners v. Practices with Multiple Owners**

Many solo practitioners have great practices and receive rave reviews. However, research has shown that there are far more bar complaints filed against solo practitioners than law practices with multiple owners.²⁴⁵

For example, in California from 2000 to 2001, solo practitioners represented only 23% of attorneys in the state. However, 78% of disciplinary cases prosecuted and completed were against solo practitioners.²⁴⁶ Similarly, in Texas in the early 2000s, solo practitioners represented only 34% of attorneys in the state. However, 67% of the disciplinary actions and public sanction were brought against solo practitioners.²⁴⁷

Additionally, in 2013, the Office of Bar Counsel for Washington, D.C.

244. *Id.* at 177.

245. Leslie Levin, *The Ethical World of Solo and Small Law Firm Practitioners*, 41 HOUS. L. REV. 309, 312 (2004).

246. *Id.* at 313.

247. *Id.*

found that aggrieved clients filed: 46% of their complaints against solo practitioners or small firms; 36% of their complaints against larger firms; 6% of their complaints against the Government; 22.5% of their complaints against in-house attorneys; 2% of their complaints against public interest firms; and 4.3% of their complaints against other types of law structures such as academia.²⁴⁸

B. Typical Reasons Why Solo Practitioners are Disciplined and How These Ethical Breaches May be Reduced and/or Eliminated by Operating as a Partnership or Other Multi-Owned Business

There are several reasons why bar counsel of various jurisdictions discipline solo practitioners more than their peers. The typical reasons are neglect of client matters and the failure to communicate with clients.²⁴⁹ Examples of these issues include a solo practitioner's failure to keep the client informed, failure to explain the attorney's legal strategy to the client, and failure to respond promptly to the client's inquiries.²⁵⁰

Bar counsel (i.e., disciplinary officials) refer to these types of cases as "garden variety neglect" cases because they are so common.²⁵¹ And legal commentators often refer to such cases as "1.3/1.4" cases. This is because Rules 1.3 and Rule 1.4 of the Rules of Professional Conduct require that an attorney adequately communicate with his or her client and exercise diligence in handling the client's case.²⁵² Additionally, bar counsel also frequently bring proceedings against solo practitioners for misuse or misappropriation of trust funds belonging to the client.²⁵³

The clients of solo practitioners typically do not have much knowledge of law and frequently have cases that are emotionally taxing.²⁵⁴ Studies have shown that these factors often lead the clients of solo practitioners to second-guess and criticize the practitioner's efforts. Therefore, it is not surprising that studies indicate that the clients of solo practitioners are more likely to file a bar complaint against their attorneys for neglect or lack of quality

248. Gene Shipp, *Bar Counsel: What the Numbers Show at Office of Bar Counsel*, DC BAR (July/Aug. 2014), <https://www.dcbar.org/bar-resources/publications/washington-lawyer/articles/july-august-2014-bar-counsel.cfm>.

249. Levin, *supra* note 245.

250. Benjamin Cowgill, *Ethical Hazards of Solo and Small Firm Practice*, GP SOLO MAG. (Jan.-Feb. 2008), at 47, 49–50.

251. *Id.* at 49.

252. *Id.*

253. *Id.* at 49–50.

254. *Id.* at 47–48.

representation than attorney who work in law partnerships.²⁵⁵

Studies also have found that solo practitioners who practice as: “[d]ivorce lawyers are more vulnerable to allegations of conflicts of interest, criminal defense lawyers are more vulnerable to allegations of incompetent representation, and personal injury attorneys are more vulnerable to allegations of prejudicial neglect.”²⁵⁶

Interestingly but, perhaps, not surprisingly, most solo practitioner’s ethical violations are directly related to substance abuse, depression, anxiety, career burnout, diminished energy or enthusiasm, loss of self-confidence or self-esteem, or a simple feeling of being overwhelmed.²⁵⁷ These factors are often found in an overworked solo practitioner.²⁵⁸

In view of these realities, this article takes the position that solo practitioners may be able to reduce or eliminate their ethical breaches by operating as a partnership or other multi-owned business. Operating as a partnership (or other form of multi-owned business) would provide a sole practitioner with at least one other attorney that could assist him or her with the needs and demands of each client.²⁵⁹ This additional help in communicating with clients would also make it less likely that a client would feel neglected or uninformed about his or her case.²⁶⁰

Unlike solo practitioners, partnerships and multi-owned law practices are more likely to have corporate or institutional clients who are less likely to criticize an attorney’s efforts or report the attorney to the bar.²⁶¹ Furthermore, larger firms typically have “safety nets” in place such as practice group leaders, senior partners, and client managers to whom clients can vent. These safety nets make it less likely that a client will file a bar complaint against the attorney for neglect and lack of diligence in handling the client’s case.²⁶²

Alternatively, another remedy—short of going into a partnership with another attorney or attorneys—would be for the solo practitioner to hire a sufficient number of associate attorneys and paralegals.

255. *Id.* at 48.

256. *Id.* at 49.

257. *Id.* at 50.

258. *Id.*

259. *Id.* at 49.

260. *Id.*

261. *Id.* at 48.

262. Cowgill, *supra* note 250, at 48.

C. The Economics of Partnership Compensation v. Solo Practitioner Compensation

1. Solo Practitioner Compensation

A variety of authorities have reported a wide range of income for solo practitioners in the United States. The operative fact, however, is that these reports consistently find that solo practitioners make less money than attorneys who practice in partnerships.

For example, in 2012, Business Insider reported that the average income for solo practitioners was \$49,130.²⁶³ By 2016, other commentators reported that the average annual earnings of solo practitioners was closer to \$100,000.²⁶⁴ And, as of 2020, another report indicated that solo practitioners earned an average of \$100,000.²⁶⁵ Collectively, these reports indicate that there is a range in the earnings of solo practitioners.

In any case, the studies all indicate that solo practitioners earn far less than law firm partners.²⁶⁶ In 2012, one report found that partners in law firms earned seven times more than the average solo practitioner.²⁶⁷ Accordingly, a comparison of the outcomes for solo practitioners with those of partners in multi-owned firms seem to confirm the thesis of this article that “if you want to go fast, go alone but if you want to go far, go together.”

2. The Partnership Compensation Structure Used by This Author's Law Firm

It is a daunting prospect for firms owned by one person to contemplate merging their individual businesses beyond merely sharing office and administrative expenses to the more complicated matter of profit sharing. However, that's how institutions are built and economies of scale suggest that solo practitioners move in this direction.

Many minority- owned law firms operate as sole proprietorships.

263. Benjamin H. Barton, *Middle Class Lawyers are a Dying Breed*, BUSINESS INSIDER (June 24, 2015), <https://www.businessinsider.com/middle-class-lawyers-are-a-dying-breed-2015-6>.

264. Michael Sjmkoivic, *How Much do Lawyers Working in Solo Practice Actually Earn?*, BRIAN LEITER'S LAW SCHOOL REPORTS (July 26, 2016), <http://leiterlawschool.typepad.com/leiter/2016/07/how-much-do-lawyers-working-in-solo-practice-actually-earn-michael-simkovic.html>.

265. *Average Attorney- Solo Practitioner Salary*, Payscale, https://www.payscale.com/research/US/Job=Attorney%2C_Solo_Practitioner/Salary (last visited Feb. 04, 2020).

266. Barton, *supra* note 263.

267. *Id.*

Sometimes, it is difficult for a person who has built a firm from scratch to contemplate a situation in which he/she would get anything less than 100 percent of the revenues less expenses for employees. Nevertheless, I believe that there should be a move away from this business format for the reasons I stated in the preceding paragraph.

I was a partner in a small law partnership. In my view, the advantages in doing business as a partnership, as opposed to a sole proprietorship, are many. For example, my firm split profits as such:

- 1/6—to the partner who brought in the case (i.e., 16.666666 percent);
- 3/6—to the partner (or partners) who primarily work on the case (i.e., 50 percent); and
- 2/6—to be split between the partners equally as profit sharing (i.e., 33.333333 percent)

This arrangement actually worked quite well for us. This is because a partner who brought in the case would receive 4/6 (i.e., 66.6666 percent) of the revenue from that case *if he/she primarily worked on the case*. *Additionally*, the partner would receive an equal split of the remaining 2/6 share (i.e., the partner would receive a slice of the remaining 33.333333 percent).

We thought it was a fair arrangement for the following reason. If a partner was experiencing a drought in bringing in revenue, that partner would still receive a portion of the 2/6 split of that revenue. I remember getting paid for cases that I had nothing to do with. It was during those times that I was very happy to be in a partnership! Additionally, it gave me incentive to bring in additional business to ensure that my partners would continue to be happy with the arrangement.

Fairness and proper implementation should always be the primary objective in any partnership compensation arrangement.²⁶⁸

3. Additional Examples of Partnership Compensation Plans

The following are a few additional examples of partnership compensation plans:

- (a) *Percentages*: Partnerships use percentages more often than any other method to determine the compensation of an individual partner. At the beginning of each year, the partnership develops a variety of performance-based to statistics to determine a partner's percentage of compensation. These performance-

268. Joel A. Rose, *Partner Compensation Plans: A Primer*, JOELAROSE.COM, <http://www.joelarose.com/articles/prtnrcom.html> (last visited Sept. 27, 2018).

based statistics include billable and consequential non-billable time, aging of accounts receivable, disbursements and write-ups of bills, billings, amounts of write-offs and write-downs of unbilled time, and collections. The partnership's compensation committee typically determines the percentages of net profits that each partner receives.²⁶⁹

- (b) *Units of Participation*: Under a units of participation plan, the partnership apportions ownership units to each partner in a manner that corresponds to each partner's contributions to the firm in conjunction with other factors.²⁷⁰
- (c) *Percentages or units of participation with a reserve*: In addition to a partnership's assignment of percentages or units of participation to its partners, the partnership may also establish a reserve consisting of a percentage of the firm's net profit that it apportions to the firm's partners. The reserve is normally 5 to 10 percent of a firm's net profit. The partnership's compensation committee typically bases the reserve on a partner's contribution to the firm. Partnerships consider the following factors in determining how to apportion the reserve to its partners. Those factors include: (1) fees collected, (2) hours worked, (3) profitability as the result of billings and collections, (4) consequential non-billable hours devoted to the partnership, (5) business origination, and (6) administrative skills.²⁷¹
- (d) *Variable of percentages or units*: Under this type of compensation plan, the partnership apportions profits to partners through a variable of percentages or units based upon a variety of factors. Some of these factors in determining a partner's percentage of the profits are (1) past performance, (2) anticipated performance, (3) seniority, and (4) reputation. Thereafter, the partnership equally apportions the remainder of the profits.²⁷²
- (e) *Combination Plan*: A combination plan compensates partners by incentivizing them to focus on certain issues that are important to the firm. Some of the incentives may include (1) work incentives, (2) group incentives, (3) business development incentives, (4) incentives to use associates, and (5) contingency plans.²⁷³
- (f) *Statistical Plans*: Partnerships often use mathematical formulas

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.*

273. *Id.*

with statistical plans to compensate their partners.²⁷⁴ The following are examples of such plans:

- (g) *Simple Formula*: A simple formula statistical plan uses simple formulas to determine partner compensation. Many simple formula plans “include a method of pro-rating origination of work and production of work, and provide credit for managing the firm and performing other firm-approved, non-fee-producing activities.”²⁷⁵
- (h) *Weighted Credit Formula*: A weighted credit formula assigns weights to essential factors in determining a partner’s compensation. Such factors include: (1) profitability, (2) business origination, (3) work production, and (4) attorney responsibility.²⁷⁶
- (i) *Equal-sharing-plus formula*: An equal-sharing-plus formula allows the partners to share 90 percent of 95 percent of the net income equally among all partners and calls for the distribution of the remainder according to a judgment based on statistics and subjective factors.²⁷⁷

4. Monetary Advantages in Doing Business as a Partnership v. Sole Proprietorship

As this article discussed earlier, there are monetary advantages in doing business as a partnership rather than as a sole proprietorship. In a partnership, the partners share the business liabilities and expenses between partners.²⁷⁸ However, in a sole proprietorship the proprietor must shoulder all the business liabilities and expenses.²⁷⁹ Additionally, in a partnership the partners can share the costs of starting the business.²⁸⁰ On the other hand, in a sole proprietorship, the sole proprietor has to shoulder the cost of starting the business.²⁸¹

Furthermore, in a sole proprietorship, if the owner is unable to run the business, the proprietor’s income will likely also end.²⁸² But in a partnership,

274. *Id.*

275. *Id.*

276. *Id.*

277. *Id.*

278. *Sole Proprietorship vs Partnership: Everything You Need to Know*, UPCOUNSEL, <https://www.upcounsel.com/sole-proprietorship-vs-partnership> (last visited Sept. 27, 2018).

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

if one partner is unable to perform his or her responsibilities, the other partner (or partners) can continue to run the business. Finally, partnerships can enhance their profitability because of the added experience, skills, and knowledge that each partner provides.²⁸³

VI. THE ECONOMIC CONDITION OF SINGLE BLACK PERSONS COMPARED TO MARRIED BLACK PERSONS

The economic condition of single black persons is significantly worse than that of married black persons. According to the U.S. Census Bureau, in 2017 the median income for married black couples was \$74,878.²⁸⁴ However, the median income for black male households with no spouse was \$41,347 and \$31,801 for black female households with no spouse.²⁸⁵ Similarly, in 2011 the median income for married black couples was \$63,890.²⁸⁶ On the other hand, the median income for black male households with no spouse was \$34,031 and \$25,234 for black female households without a spouse.²⁸⁷

The 2005 statistics showed similar disparities. In 2005 the median income for married black couples was \$57,705.²⁸⁸ However, the median income for black male households with no spouse was \$32,374 and \$22,612 for black female households with no spouse.²⁸⁹

Accordingly, it is abundantly clear that the economic condition of married black persons—who are able to pool their income and help each other in other ways—is significantly better than that of single black persons.

283. Derek Tallent, *Sole Proprietorship vs Partnership*, CAMINO FINANCIAL (Dec. 30, 2019), <https://www.caminofinancial.com/sole-proprietorship-partnership/amp/>.

284. U.S. CENSUS BUREAU, 2017 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES: UNITED STATES, BLACK OR AFRICAN AMERICAN ALONE (2017).

285. *Id.*

286. U.S. CENSUS BUREAU, 2011 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES: UNITED STATES, BLACK OR AFRICAN AMERICAN ALONE (2011).

287. *Id.*

288. U.S. CENSUS BUREAU, 2005 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES: BLACK OR AFRICAN AMERICAN ALONE (2005).

289. *Id.*

VII. ISSUES THAT TYPICALLY ARISE BETWEEN OWNERS IN MULTI-OWNED SMALL BUSINESSES AND IN MARRIAGES: WAYS TO ADDRESS THE PROBLEMS THAT WILL INEVITABLY OCCUR

A. Typical Problems Likely to Arise in Small Multi-Owned Businesses

As we stated at the outset of this article, the potential for conflict and disagreement will always be present whenever there is a relationship between two or more persons. It's just a fact. The Bible even states that there was "war in heaven" of all places.²⁹⁰

Lawyers and other professionals are available to provide advice to people who plan to enter into partnerships whether personal or business. Typically, these professionals help people identify common and recurring issues that invariably lead to conflict. After the prospective partners have identified these potential areas of conflict, lawyers and other professionals can assist the prospective business partners in hammering out an agreement between themselves.

Many problems are likely to arise in small multi-owned businesses. One common problem involves disputes regarding money.²⁹¹ Business partners often disagree on how much the firm should spend on the business and how much it should spend on compensation for the owners.²⁹²

One of the most common disputes over money occurs when a partner (who is in charge of the firm's funds or who has access to those funds) embezzles the firm's money.²⁹³ This obviously can lead to arguments, clashes between partners, and partnership dissolution.²⁹⁴

Another problem that may occur involves the use of a partner's intellectual property for the business.²⁹⁵ If the partner does not take the necessary precautions to clearly identify his or her ownership of the intellectual property, a court may rule that the intellectual property belongs to the firm in the event of a dispute with the partner over the ownership of the property.²⁹⁶ Accordingly, if the partner leaves the partnership, the partner

290. *Revelation* 12:7-9.

291. Marci Martin, *Fighting With Your Business Partner? Resolving 3 Common Disputes*, BUSINESS NEWS DAILY (Sept. 20, 2017), <https://www.businessnewsdaily.com/10227-resolve-business-partner-disputes.html>.

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.*

would not be able to claim the intellectual property as his or her individually owned property.²⁹⁷

Issues are also likely to arise when a partner: (1) loses interest in the business; (2) feels like his or her expectations are not being met; (3) believes that he or she is putting more effort and energy into the business than the other partner(s); and (4) has a different management style that causes the partner to be unable to work harmoniously with the other partner (s).²⁹⁸

Another common problem is a lack of communication between partners.²⁹⁹ This can cause tension between partners and result in unresolved issues that get blown out of proportion.³⁰⁰

Finally, conflicts between partners can arise when the partners fail to clearly define their respective roles and duties and when they do not share the same vision and/or goals for the business. This typically leads to a variety of disagreements between the partners on fundamental decisions they must make for the business.³⁰¹

B. Typical Problems Likely to Arise in Marriages

As with business partnerships, there are many potential problems that can cause a marriage to fail. At this juncture, the article shall list some of the common problems that often lead to misunderstanding, discord, separation, divorce and, sometimes, even homicide. This article also recommends a number of important provisions that the parties might decide to include in their prenuptial agreement.

The contractual provisions in prenuptial agreements govern potential disputes that may arise during the course of the relationship. The purpose of these provisions is to reduce misunderstandings between the parties and to determine in advance how the parties will resolve their financial matters should the relationship terminate.

A prenuptial agreement can also be used to help manage the expectations of the parties. It accomplishes this result by serving as a vehicle that allows the parties to make full and fair disclosure of all material facts that could lead

297. *Id.*

298. Marian Banker, *Partnership Problem: Common Serious Problems*, PRIME STRATEGIES, <http://primestrategies.com/partnership-problem-common-serious-problems/> (last visited Sept. 28, 2018); Murray Newlands, *6 Challenges Confronting Every Business Partnership*, ENTREPRENEUR (Sept. 30, 2015), <https://www.entrepreneur.com/article/250204>.

299. Dave Smith, *5 Reasons It Might Be Time to Find a New Business Partner*, INC. (Mar. 25, 2011), <https://www.inc.com/guides/201103/five-reasons-to-find-a-new-business-partner.html>.

300. *Id.*

301. *Id.*

to conflict.

As we have already seen, one of the most common sources of conflict that arises between married people is a basic lack of communication. When people do not feel comfortable expressing their feelings, it can cause tensions to rise which can lead to frequent arguments.³⁰² Communication issues typically arise because the parties are not honest with each other; do not express their feelings and needs; and fail to actively listen and to be open minded with each other.³⁰³

Other typical problems in a marriage include: holding on to grudges and not forgiving one's partner; relegating a partner's needs to a secondary status because of daily responsibilities such as taking care of children or a demanding career; and financial stress caused by not having enough money or by a partner's overspending.³⁰⁴

But this does not end our discussion of potential areas of conflicts between people in personal relationships. A few of the additional sources of problems arise: when one of the parties refuses to accept or accommodate a partner's flaws and, instead, attempts to change his or her mate; when one of the parties to the marriage is emotionally and/or physically unfaithful or inattentive to the other person; when people external to the relationship such as extended family members or in-laws cause stress to the relationship; and when the parties start a family of their own without adequate discussion of their expectations concerning their subsequent responsibilities.³⁰⁵

Finally, serious problems frequently arise when the parties have different sexual desires; when one of the parties has weight issues; and when one of the parties has a drinking or drug abuse problem.³⁰⁶

302. Sara Schwartz, *The 7 Biggest Complaints of Long-Married Couples*, HUFFPOST (Jan. 22, 2016), https://www.huffingtonpost.com/entry/the-7-biggest-complaints-of-long-married-couples_us_56a27e06e4b0404eb8f180b2.

303. Macy Cate Williams, *7 Common Marriage Problems - and How to Fix Them*, MSN (Apr. 19, 2018), <https://www.popsugar.com/love/How-Do-I-Fix-My-Marriage-43400588>.

304. *Id.*

305. *Id.*; Sylvia Smith, *8 Common Problems in Married Life*, MARRIAGE.COM (Nov. 26, 2019) <https://www.marriage.com/advice/relationship/8-common-problems-in-married-life>; Jaimie Mackey, *Beware! The 3 Most Common Marriage Problems And How to Deal With Them*, BRIDES (Sept. 23, 2019), <https://www.brides.com/story/most-common-marriage-problems>.

306. Schwartz, *supra* note 302.

C. Ways to Proactively Address the Typical Issues Between Owners of Small, Multi-Owned Businesses and Between Married People

1. Business Prenuptial Agreements

Business owners in small closely held firms should enter into written business prenuptial agreements. The agreement between partners is called a partnership agreement. The agreement between shareholders in a closely held corporation is called a shareholders agreement. And the agreement between members of a limited liability company is called an operating agreement.³⁰⁷

A business prenuptial agreement³⁰⁸ basically serves the same function as a marital prenuptial agreement—it helps to protect an owner’s investment in the business.³⁰⁹ In most states, business partnerships are governed by the Uniform Partnership Act (UPA) or the Revised Uniform Partnership Act (RUPA).³¹⁰

The UPA sets baseline rules that, for the most part, are only legally binding to the extent that the partners have not entered into a contrary agreement.³¹¹ The UPA addresses issues such as title to partnership property, fiduciary duties of partners, and partners’ joint and several liability.³¹² However, it important to have a business prenuptial agreement because the UPA and RUPA, for the most part, allow the partners to contractually determine the rules by which they shall be governed. Therefore, the partnership statutes only become regulatory to the extent that the partners have not otherwise agreed.³¹³

A business prenuptial agreement should include: a management agreement; a buyout agreement; a provision setting forth any restrictions on a partner’s ability to alienate (i.e., to sell) his/her/or its ownership interest; a

307. ROGERS, *supra* note 5, at 170.

308. Kévin Sagnier, *The 7 Most Relevant Clauses in a Partnership Agreement*, UPWORK, (June 6, 2017), <https://www.upwork.com/hiring/for-clients/clauses-in-a-partnership-agreements>.

309. Emily Esterson, *Why You Should Get a Small Business Prenup*, ALL BUSINESS, <https://www.allbusiness.com/why-you-should-get-a-small-business-prenup-15479441-1.html> (last visited Sept. 27, 2018).

310. *Id.*

311. *E.g.*, UNIF. P’SHP ACT §18 (1914), 6 U.L.A. 526 (1995); REV. UNIF. P’SHP ACT § 401 (1997), 6 U.L.A. 74 (Supp. 2000). Which makes those provisions applicable “subject to any [contrary] agreement between [the partners].” The UPA and the RUPA are basically the same. However, the RUPA contains a few minor differences. A discussion of those differences is beyond the scope of this article.

312. *Id.*; *Uniform Partnership Act Law and Legal Definition*, US LEGAL, <https://definitions.uslegal.com/u/uniform-partnership-act>. (last visited Sept. 27, 2018).

313. Esterson, *supra* note 309.

distribution agreement; and an expansion agreement.³¹⁴

A *management agreement* describes how the business will operate and what each partner's duties and responsibilities will be in the day-to-day operations of the business.³¹⁵ Examples of items to include in the management agreement are: who will be in charge of employees; who will purchase equipment for the business; and who has the daily financial responsibilities of the business.³¹⁶

A *buyout agreement* describes what the process will be if a partner wants to leave the business and how that partner will be compensated.³¹⁷

A provision that imposes *restrictions on alienation* describes how equity shares in the business may be transferred and to whom.³¹⁸

A *distribution agreement* describes how losses and profits will be shared among partners and when they will be distributed.³¹⁹

Finally, an *expansion agreement* describes the process for admitting new partners into the business partnership.³²⁰

4. Personal Prenuptial Agreements

Persons who are contemplating a legally binding personal relationship *should* also consider whether to enter into a prenuptial agreement. Such agreements address in advance how the parties will resolve prospective problems if they should arise. Indeed, the disclosures involved in drafting such agreements may very well result in the parties going their separate ways. And, significantly, these agreements may prevent bloodshed. Indeed, when the Centers for Disease Control (CDC) analyzed the 10,018 murders of women in 18 states from 2003 to 2014, it determined that more than 55 percent were intimate partner-related violent deaths.³²¹

314. *Id.*

315. *Id.*

316. *Id.*

317. *Id.*

318. *Id.* Ms. Esterson uses the term Buy-Sell provision to describe what this author refers to as "restrictions on alienation." What Esterson refers to as a Buyout Agreement is actually the equivalent of what she refers to as a Buy-Sell provision. Courses in Corporations and Business Organizations use the term "restrictions on alienation" to avoid confusion with Buyout Agreements and By-Sell Provisions which are basically the same thing. The purpose of restrictions on alienation is to ensure that owners in closely held firms can prevent a co-owner from selling his or her ownership units to someone with whom they have issues or do not like for one reason or another; *see* Roger, *supra* note 5, at 170.

319. Esterson, *supra* note 309.

320. *Id.*

321. Camila Domonoske, *CDC: Half of all Female Homicide Victims are Killed By Intimate Partners*, NPR, (July 21, 2017), <https://www.npr.org/sections/thetwo-way/2017/>

The agreements that this article proposes—both personal and business—do not indicate a lack of trust. To the contrary, such agreements reflect the reality that no matter how hard people may try to be fair and just, people often change over a period of time (and sometimes dramatically) for a variety of reasons.

Moreover, conflict, disagreement, separation, divorce, and even death can occur at any moment. You cannot force a person to like you and you likely cannot bring anyone who has died back to life. Yet, each of the occurrences just listed—conflict, disagreement, separation, divorce and death—all have potentially significant consequences.

Therefore, because people know certain things will happen (death and disagreements) and other matters could happen (separation and divorce), it makes sense to openly communicate with others and to be prepared.

According to the Uniform Premarital Agreement Act (UPAA), a prenuptial agreement or premarital agreement is “an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.”³²² Such an agreement “must be in writing and signed by both parties.”³²³ As of October 2018, 26 states and the District of Columbia have adopted the UPAA, allowing couples to enter into legally valid prenuptial agreements. However, state common law also recognizes the legitimacy of prenuptial agreements even in the absence of a statute.³²⁴

The main function of a prenuptial agreement is to determine the financial responsibilities owed to a partner (including alimony and property settlements) in the event of a divorce.³²⁵ Typically in a divorce, the laws of the state in which a couple resides determines how their property will be divided.³²⁶ However, if a couple has a prenuptial agreement, the state laws will essentially be inapplicable. Instead, the terms of the agreement will determine how the property will be divided.³²⁷

A prenuptial agreement can also address matters such as the manner in which a couple will raise their children; whether a spouse can pursue career opportunities; where a couple will reside, and similar subjects.³²⁸

07/21/538518569/cdc-half-of-all-female-murder-victims-are-killed-by-intimate-partners.

322. UNIF. PREMARITAL AGREEMENT ACT § 1(1) (1983) (Nat’l Conf. of Comm’rs on Unif. State Laws 1983)

323. *Id.*

324. *Legislative Enactment Status-Premarital Agreement Act*, UNIF. LAW COMM’N., <https://www.uniformlaws.org/committees/community-home?CommunityKey=77680803-bd1c-4f01-a03b-64db132a35fa> (last visited Feb. 7, 2020).

325. Tracy Craig, *3 Good Reasons to Stop Stalling and Get a Prenup*, TIME (Feb. 11, 2016), <http://time.com/money/4216559/prenup-marriage-wedding-planning/>.

326. *Id.*

327. *Id.*

328. Lisa C. Johnson, *Prenups: What They Can and Cannot Protect*, LEGAL ZOOM (June

Prenuptial agreements cannot violate criminal law or public policy.³²⁹ Additionally, the parties cannot include provisions regarding child support in a prenuptial agreement.³³⁰ And while a party may waive his or her rights to spousal support in a prenuptial agreement, a court may set aside such a provision if it causes a spouse to be eligible for welfare.³³¹

Finally, each person must reasonably and fairly disclose all financial commitments and property and enter into the agreement voluntarily.³³² If a court should determine that these two prerequisites have not been met, then the court may find the prenuptial agreement to be invalid.³³³

VIII. CONCLUSION

African Americans can significantly expand the level of social and human capital in the black community by: (1) increasing strategic relationships; (2) increasing the practice of cooperative economics; (3) increasing the black marriage rate; (4) increasing the operation of businesses with multiple owners; and (5) increasing other forms of cooperative behavior.

Cooperative efforts among black people offer great promise in solving the economic riddle confronting black Americans. The pooling of resources has helped to solve the problems of people since the beginning of time. There is much wisdom in a decision by people to act cooperatively and unite forces for a common good.

W.E.B. Du Bois saw that black people acting cooperatively could establish a self-supporting economy. Indeed, democratic management of black economic enterprises could allow groups of black cooperatives to supply everything black people consume including amusement, recreation, and education. Accordingly, another reason why black people should increasingly explore the establishment of cooperatives as a means of economic cooperation is to provide the black population with independence in political and economic matters.

Some of the solutions to the economic challenges facing the black community through the use of the cooperative form of business organization include the establishment of: (1) worker cooperatives, producer cooperatives, consumer cooperatives and/or other forms of cooperatives that teach its

2010), <https://www.legalzoom.com/articles/prenups-what-they-can-and-cannot-protect>.

329. *Id.*

330. *Id.*

331. *Id.*

332. *Id.*

333. *Id.*

members “specific industry skills; business planning and accounting; strategic planning; and skills of democratic participation;”³³⁴ (2) cooperative housing and land trusts that provide affordable housing; (3) cooperative grocery stores; (4) food buying clubs; and (5) cooperative child-care services.

Other types of cooperative activity include an increase in: (1) worker-owned and managed businesses; (2) community-owned businesses; (3) programs that support individual and community entrepreneurship; (4) pooling capital and other resources through lending circles and solidarity groups.³³⁵

The cooperative form of organization does have potential flaws. Indeed, cooperatives are likely inferior to corporations and other forms of business organization when the cooperative’s membership is composed of a heterogeneous group of members. For example, workers who perform different types of work, producers who produce different types of products, and consumers who possess different lifestyles and values. These differences among members sometimes lead to conflicts between members that render the cooperative incapable of effectively and efficiently moving forward.

However, it is important to remember that only people produce wealth. The government, markets, corporations (and other types of business organizations including cooperatives) are only mechanisms through which people coordinate their production and consumption of wealth.

In any case, black people must still seek to increase strategic relationships, cooperative economics, the black marriage rate, businesses with multiple owners, and other forms of cooperative behavior. As the African proverb teaches: “If you want to go fast, go alone. If you want to go far, go together.”

334. NEMBARD, *supra* at 7, at 86.

335. *Id.* at 224.