1

Introduction

In the United States since the turn of the millennium, we have witnessed wild swings in the public's reaction to economic instability. In the wake of the Great Recession of 2008, the Occupy Wall Street movement ballooned into a national conversation about increasing income inequality. The jobless recovery that followed touched off a severe "populist" reaction that resulted in the election of Donald Trump. From Brexit, to Trump's wall, to elections in the Netherlands and elsewhere, anger and frustration about joblessness and income loss became associated with anti-immigrant campaigns. One thing has been clear in what may seem to be an irrational series of responses. Most of us – policymakers and members of the public alike – crave economic stability. And for most of us, economic stability starts with a stable income for ourselves and for our families.

This book provides three examples of enduring economic stability. They are examples that teach a set of lessons that originate in American cities. They are examples about things that have been happening in the shadows, but that have the potential to contribute to large-scale economic improvement in the city, and perhaps beyond. Indeed, some readers may have heard about these examples before. Yet what most of us have heard are fragmented pieces of the whole picture. No one has linked these examples together to define a larger pattern or to draw broader lessons.

The most basic lesson these examples teach is that sharing and collaboration can fuel business development and growth. Sharing among businesses can be critical for their economic survival. Sharing can also produce a particularly stable form of economic growth by virtue of the economic stability it can generate for those who work for those businesses. As these examples show, sharing can allow American businesses to remain competitive while returning more wealth to their employees. It can be the basis for a collaborative form of American capitalism.

On the basis of these three examples, this book offers a list of action items – areas for law reform – that have two key advantages. First, these action items advance core objectives that have long been the subject of interest and desire by politicians and policymakers across the political spectrum. Second, many of these action items can be enacted at the state and local levels even if, and to the extent that, there is too much division at the national level. Collaborative capitalism in American cities can be a source of economic stability, inclusion, and gain. This book explains how.

For decades, American cities have been the source of tremendous economic growth. It is distressing, then, that at the core of many of these cities lie areas of entrenched underdevelopment and poverty. Whatever the surrounding conditions of employment, development and mobility, these "inner cities" experience a distressingly constant level of unemployment, economic stagnation, inequality, and lack of mobility. In their embodiment of economic instability, American cities are a microcosm of the national economy. Current poverty and unemployment statistics may provide the best shorthand for this phenomenon. According to the well-respected Initiative for a Competitive Inner City, across the United States the average poverty rate for inner cities is 32 percent,[1] more than twice the poverty rate in the United States as a whole.[2] These statistics are constant across the nation, in the more well-known hot spots of urban distress as well as those that are largely invisible. Chicago's inner city neighborhoods have a poverty rate of 31 percent.[3] Inner-city Albany, New York, has a poverty rate of 42 percent.[4] Inner-city Peoria, Illinois, has a poverty rate of 41 percent.[5] Unemployment rates tell a similar story. Inner-city Detroit, Michigan, has an unemployment rate of 28 percent, more than four times the national average, which has hovered around 6 percent.[6] Inner-city Camden, New Jersey, has an unemployment rate of 23 percent.[7]

Moreover, these statistics defy trends in the broader metropolitan areas that surround the inner cities. Although the poverty rate across US inner cities is 32 percent, the average poverty rate in the surrounding central cities is 9.4 percent, even lower than the national average.[8] Indeed, since the 1980s, as the social safety net has been dismantled, urban cores seem to have borne the worst brunt of economic downturns and recessions. But they also have remained defiantly depressed during better economic times, contributing significantly to the nation's worsening scores on

1 *Key Battlegrounds for the War on Poverty*, Initiative for a Competitive Inner City (2014), http://icic.org/key-battlegrounds-war-poverty; Lena Ferguson, *In America's War on Poverty, Inner Cities Remain the Front Lines*, Initiative for a Competitive Inner City (Feb. 3, 2014), www.icic.org/connection/blog-entry/blog-in-americas-war-on-poverty-inner-cities-remain-the-front-line.

2 Carmen DeNavas-Walt & Bernadette D. Proctor, *Income and Poverty in the United States: 2013*, US Census Bureau, Current Population Reports 12 (2014), www.census.gov/content/dam/Census/library/publications/2014/demo/p60-249.pdf.

3 *Chicagoland: Key Battleground for the War on Poverty*, Initiative for a Competitive Inner City (2014), www.icic.org/ee_uploads/pdf/ICIC_infographic_chicago.pdf.

4 *Key Battlegrounds for the War on Poverty*, Initiative for a Competitive Inner City.

5 *Id.*

6 *Labor Force Statistics from the Current Population Survey*, Bureau of Labor Statistics (2014), http://data.bls.gov/timeseries/LNS14000000.

7 *Key Battlegrounds for the War on Poverty*, Initiative for a Competitive Inner City.

8 *Id.*

indexes measuring wealth inequality.[9] Hence the contemporary debates about the costs and benefits of gentrification in urban cores.[10] Gentrification is a phenomenon that revitalizes the infrastructure and wealth in urban neighborhoods, but often at the expense of its lower-income residents, who are marginalized or even displaced in the process.[11] As compelling as these statistics are, they tell only part of the story. The additional layers of segregation, educational disinvestment, and violence in many inner cities contribute to the sense of marginalization in the urban core.

Experts in a variety of fields have diagnosed the problem of urban economic instability more specifically. Leading historians and sociologists point to the enormous relevance of segregation, migration, and immigration in shaping contemporary inner cities. They describe the devastating effects of racism, ethnic strife, and violence, arguing that these are often determinative factors in the development of cities.[12] Whether in the course of outflow by more economically privileged whites to the suburbs during the early part of the twentieth century or in the gentrifying return of wealthier people to urban areas more recently, such movements have manifested distinctly racial and ethnic patterns.

The degradation of both labor markets and educational systems forms a vicious cycle with these segregationist patterns. Despite the programs for bussing, vouchers, common cores, and charter schools, educational opportunities follow wealth. Thus the overlay of housing segregation on educational opportunity yields a distressing picture of exclusion of those who are systemically unable to leave the inner city – even for educational opportunities that are in close proximity in wealthier parts of the city.[13]

Those who study labor markets and labor organization depict a similar pattern. Theirs is a story dominated by the increasing power of corporations and the decreasing power of labor unions. The corollary declines in the values of wages, pensions, and other labor and workplace protections lie at the heart of the devastating conditions in cities such as Detroit. It is also a story in which both suburbanization and globalization whisk away jobs from inner-city workers, leaving them with no easy path for retraining and reengagement in the work force.[14]

9 *See* Emmanuel Saez, *Striking It Richer: The Evolution of Top Incomes in the United States* (2013), http://eml.berkeley.edu/~saez/saez-UStopincomes-2012.pdf.

10 *Compare* Rolf Goetze, Understanding Neighborhood Change: The Role of Expectations in Urban Revitalization (1979); *and* Maureen Kennedy & Paul Leonard, Dealing With Neighborhood Change: A Primer on Gentrification and Policy Choices (2001).

11 Hannah Weinstein, *Fighting for a Place Called Home: Litigation Strategies for Challenging Gentrification* 62 UCLA L. Rev. 794, 801 (2015).

12 Prominent accounts of these phenomena can be found in William Julius Wilson, The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy (2d ed. 2012) and Douglas S. Massey & Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass (1993).

13 For a historical account, see Kathryn M. Neckerman, Schools Betrayed: Roots of Failure in Inner-City Education (2007).

14 For a range of perspectives on these claims, see Paul Osterman, Securing Prosperity: The American Labor Market, How It has Changed and What to Do About It (1999); Michael L. Wachter, *Labor Unions: A Corporatist Institution in a Competitive World*, 155 U. Pa. L. Rev. 581 (2007).

Law has been central to these forces of urban underdevelopment. Urban segregation was a product of laws establishing racial zoning and protecting racial covenants. The legal production of educational inequality ranges from a clear refusal to recognize a right to education to the extraordinary influence of local tax and housing laws and policies.[15] And of course, from the recognition of corporations as persons, to the legal disinvestment in unions, to the regulatory support of corporate moves to the suburbs, and beyond, the legal construction of the current labor market is well known. As recent accounts by Elizabeth Warren, Edward Glaeser, and countless others have shown, the enormous investment by lawmakers and policymakers in suburban development has been accompanied by disinvestment in urban cores.[16]

Experts from a range of fields have also observed that the economies in many inner cities do not seem to work as well as the broader economies that surround them in the suburbs, in the larger metropolitan regions, and at the state and national levels. The combination of labor and employment laws, business laws, and the educational focus on transferable skills have created a highly mobile workforce that can move from region to region as businesses choose ideal locations. However, workers in urban cores have remained much less mobile, adaptable, and able to take advantage of new opportunities. Similarly, the industries that have thrived over the last several decades, such as the financial and high-technology industries, have built their successes on systems of investment, knowledge, education, and employment that rely on arm's-length relationships, public information, and globalized competition. These systems have been produced and shaped by a sophisticated legal infrastructure. The successes of these industries have rendered superfluous the possibilities of close ties, thick knowledge networks, and dense infrastructure that inhere in urban cores. Even worse, their successes seem somehow to exclude the inner cities from participation in the systems upon which they are built.[17]

It is as if the very institutions and structures that have led to what many Americans perceive as glittering success in the national and regional economies are somehow irrelevant in urban cores. This apparent truth is especially puzzling given the importance of location. For businesses that have the mobility to choose locations with a stable and well-developed infrastructure of housing, schools, public transportation, hospitals, and city services, urban cores ought to be a natural attraction. Instead, many businesses opt out of the infrastructure that is built and available,

[15] Myron Orfield, *Milliken, Meredith, and Metropolitan Segregation*, 62 UCLA L. Rev. 364, 372, 459 (2015).

[16] *See, e.g.*, Edward Glaeser, The Triumph of the City: How Our Greatest Invention Makes Us Richer, Smarter, Greener, Healthier, and Happier (2012); Elizabeth Warren & Amelia Warren Tyagi, The Two-Income Trap: Why Middle-Class Mothers and Fathers are Going Broke (2003).

[17] For a range of perspectives on these claims, building from Michael Porter's claims about the competitive advantage of the inner city, see The Inner City: Urban Poverty and Economic Development in the Next Century (Thomas D. Boston & Catherine L. Ross eds., 1997). *See also* Enrico Moretti, The New Geography of Jobs (2013); David Dante Troutt, *Ghettoes Revisited: Antimarkets, Consumption, and Empowerment*, 66 Brook. L. Rev. 1–69 (2000).

choosing locational blank slates and thereby often contributing to regional sprawl and other inefficiencies.[18]

Faced with these recurring examples of economic underdevelopment and instability, lawyers and policymakers often struggle. Their predominant response to what they perceive as inner-city failure has been to emulate models from outside the inner city as a means of fixing problems in the inner city. Despite their well-intentioned efforts to open up markets for participation by workers in urban cores, however, such participation still remains limited. Well-funded programs ranging from inner-city entrepreneurship projects to low-income housing tax credits are regularly criticized for helping a few relatively empowered inner-city residents at the expense of many others who are less empowered and less well off.

Rather than focusing on what has failed in the urban cores, this book begins by examining what has worked. It describes three ventures that have produced economic stability in the inner city for those involved over the course of decades. Private businesses and organizations undertook these ventures, at times with very little governmental involvement. One venture involves two of the largest worker-owned cooperatives in the country. The largest community development bank in the country catalyzed the second venture. A large nonprofit organization initiated the third. All three are pioneers. They succeeded not only in growing competitive businesses in supposedly failing markets, but also in providing a stable source of income for the workers involved in those businesses. All three have done this in quite different ways.

Yet there is a strong common pattern in their approach. The most important commonality is that the ventures involve networks of businesses that collaborate with each other. Their collaboration typically entails the sharing of key resources – such as training and vocational education, labor, financing, market data, suppliers and supplies, management expertise, and physical space – as a means of reducing costs for the network as a whole and for each business in the network. The sharing also typically makes use of local ties to instill a strong connection to a local community. Often this means that the businesses in the network have multiple "bottom lines." And the sharing within these networks consistently produces long-term, stable income for the workers.

Indeed, the business models developed by these three networks, while worth studying each in its own right, are in combination more than just models. They are a distinct form of capitalism. The *Oxford English Dictionary* defines "capitalism" as "an economic and political system in which a country's trade and industry are controlled by private owners for profit, rather than by the state."[19] A robust scholarship has recognized that capitalism can take a range of forms, at both the national

18 Glaeser, Triumph of the City, 165–193; Peter Dreier, John Mollenkopf & Todd Swanstrom, Place Matters: Metropolitics for the Twenty-First Century 99–132 (2001).

19 *Capitalism*, Oxford English Dictionary, https://en.oxforddictionaries.com/definition/capitalism.

and local levels.[20] This book describes the common pattern among these three examples as a distinct form of capitalism in recognition of this more generalized pattern of behavior. The networks described in this book exercise control within local industries and markets, but they do so qualitatively differently from businesses outside their networks. They share key resources rather than maintaining exclusive control over those resources. Thus in calling out this distinct business style as a distinct form of capitalism, I am using the term "capitalism" to describe an economic system rather than merely a cultural approach. I am acknowledging that a range of capitalist forms exists. I am arguing that the key variable distinguishing different forms on the capitalist spectrum is the extent to which property ownership and contract rights are used either to promote sharing or to maintain exclusive control over resources by individual businesses in a given industry. Most importantly, by defining this distinct pattern of capitalist behavior, I am calling for law reforms that support a broader range of capitalist behaviors than our current laws support.

The businesses described in this book demonstrate that business in America can be done differently. These are businesses that contribute to economic health in a way that some have been trying to achieve by means of benefit corporations and corporate social responsibility. Those ideas are important and well worth continuing to explore. But the businesses described here are already achieving many of the same goals as those kinds of nascent efforts. Moreover, while each of the networks described in this book is unique in important ways, they are three among many collaborative business networks that operate around the country. In the course of describing these three networks, I will give a range of examples of collaborative networks that are well worth studying and supporting.

This book argues that current responses to urban economic underdevelopment fall short partly because their proponents misunderstand the reasons for economic instability in the inner city. On the one hand, some experts have framed the problem too narrowly, thereby accepting the prevailing assumptions that the challenge is not macroeconomic in nature. Such assumptions are characterized by statements such as the following: the national economy is functioning well, and so the problem must be one of market failure in the inner city. In response, lawyers have worked hard to support inner-city market actors in deploying the tools of successful market actors. On the other hand, some experts define the problem so broadly that they are compelled to argue for unnecessarily extreme and somewhat idealistic prescriptions that focus on replacing certain market actors (such as corporations), legal structures (such as tax laws) and even the economic system (namely capitalism itself).

[20] *See* Varieties of Capitalism: The Institutional Foundations of Comparative Advantage (Peter A. Hall & David Soskice eds., 2001) (this book is the foundation of a vast literature on "varieties of capitalism"); William J. Baumol, Robert E. Litan & Carl J. Schramm, Good Capitalism, Bad Capitalism, and the Economics of Growth and Prosperity (2007).

This book argues instead that economic instability in American urban cores is a product of regulatory failure more than of market failure. The primary problem is the failure to recognize – *and support* – a range of business models and practices, some of which have produced tremendous economic stability and gain for their participants. This failure of recognition has inhibited the growth alternative forms of capitalist behavior. It has starkly narrowed the options for jobs and income available to inner-city residents. And it has made the options that are available more difficult for workers to navigate successfully. In exploring three successful examples of collaborative capitalism, this book calls for policymakers to make room for a broader range of market practices, and in doing so, to deploy law to meet the needs of urban America.

The book begins, in Part I, by defining collaborative capitalism. It does so first, in Chapter 2, by exploring a case study that exemplifies collaborative capitalism in action in the Bronx and in Philadelphia. In those two urban cores, an extraordinary network of businesses has taken root. Cooperative Home Care Associates (CHCA) in the Bronx is the largest worker-owned cooperative in the United States, with more than 2,000 employees, most of whom are owners. CHCA works in close collaboration with two affiliated organizations in New York City, including a nonprofit managed care provider (Independence Care System [ICS]) and a second nonprofit that focuses on training for direct care workers, consulting services, and research and policy development in the areas of eldercare and disability services (Paraprofessional Healthcare Institute [PHI]). These organizations have an affiliate, Home Care Associates in Philadelphia, which is also a worker-owned cooperative, with over 200 employees.

This network has the dual function of providing home care and other long-term health services (often to low-income individuals) while also providing long-term and livable jobs to local, low-income residents. The network has found a way to share (and thereby reduce) some of the costs of doing business that so burden many start-up businesses in the United States. For example, PHI serves as a research and development organization, developing curricula for training direct care workers and their supervisors and testing them in home care agencies and long-term care facilities in New York and beyond. CHCA serves as a learning laboratory for such curriculum development. Meanwhile, ICS is the major contractor or customer for CHCA's home care services. The Bronx network also works closely with the local chapter of the Service Employees International Union and city and state agencies to standardize wages and other employment terms for paraprofessional health care workers in New York.

Chapter 3 uses the example of this home care network to describe the features of collaborative capitalism that are also apparent in the other case studies discussed in this book. The chapter begins by discussing the two prevailing diagnoses of economic instability and underdevelopment in American urban cores, namely market failure and unequal distribution. Chapter 3 describes how these two different diagnoses have converged in their prescriptions by developing programs to encourage individuals in the inner cities to emulate market actors and institutions outside the inner cities. The goal of these programs is to learn from and copy the successes of businesses and industries outside of urban cores that have succeeded. However, as this chapter discusses, these programs have failed to systematically produce greater economic stability and development in urban cores.

Chapter 3 then sets forth the core theoretical framework for my claim that the home care network and the other case studies in this book exemplify a collaborative form of capitalism that is distinct from capitalism as most Americans understand it. These collaborative business networks use a markedly different approach from those seeking to make inner-city economies more like the economies outside the inner city. They operate using different rules, standards and norms of market behavior. The key characteristic of collaborative capitalism is the level of sharing of key resources among the businesses engaged within a given collaborative network. There are other characteristics as well. Collaborative business networks have institutions designed to promote the sharing that occurs within the network. They are highly local in mission, community, and even financing. They often have multiple bottom lines. And they typically operate within well-defined market niches.

The chapter concludes by comparing collaborative capitalism as a theoretical concept to other forms of capitalism that operate successfully in other parts of the world. The purpose of this comparison is to support my argument that collaborative capitalism is indeed a distinct form of capitalist behavior that can produce significant wealth and that is worthy of regulatory support. My analysis in this section of Chapter 3 is grounded in a rich literature that has developed around the theory of "varieties of capitalism." The theory, first propounded by Peter Hall and David Soskice in 2001, describes a range of capitalist forms that fall along a spectrum from the "liberal market economy" represented by the United States to the "coordinated market economies" of Germany, France, and Japan. In contrast to liberal market economies, businesses in coordinated economies engage in a high level of sharing of resources horizontally within any given industry. Critically, they do so with the help of what I term intermediary organizations and institutions that facilitate sharing. I adopt the same definition of "institution" as that used by Hall and Soskice and other institutional economists, namely "a set of rules, formal or informal, that actors generally follow, whether for normative, cognitive, or material reasons."[21] This sharing among businesses in a given industry is in sharp contrast to the more competitive, arm's-length relationships that we see between businesses in US markets, where such businesses privatize more information for their own market gains.[22]

[21] Peter Hall & David Soskice, *Introduction*, *in* VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE 9 (Peter A. Hall & David Soskice eds., 2001).
[22] *Id.*

Part II of the book provides empirical support for my claim that collaborative business networks in some American cities are a distinct form of collaborative capitalism by examining two additional examples of such networks. Developed through documentary evidence and interviews, these case studies provide a great deal of information about how collaborative capitalism works in local contexts. These examples also highlight the constraining effect of our regulatory framework on the development of these networks, a framework that I discuss in detail in Chapter 5. I provide more information about my methodology for data collection and analysis both at the end of this Introduction and in the Appendix. Part II concludes its exploration of collaborative capitalism by providing a cross-cutting analysis of all three of my case studies.

Part II opens, in Chapter 4, with my second case study in which I examine the famous example of ShoreBank in Chicago, Illinois, around which a network of mom-and-pop businesses developed to rehabilitate multifamily housing – and in the process to revitalize many of the neighborhoods on Chicago's South Side. For the decades during which the network flourished, it developed a particularly robust system of shared labor and financing that allowed each individual business not only to start up, but also to survive the ups and downs of the real estate market. ShoreBank played a central role, both in the development of the network and in its maintenance. Of course, financing was the most obvious form of support provided by the Bank, but it was by no means the only form. Through key personnel, larger strategic choices, and a sophisticated range of community relationships, the Bank acted as the glue that kept the network together. In addition – and critically – the businesses themselves developed a way to share labor with each other, supporting the myriad construction activities required for the completion of each building. The Bank also supported a network of Dunkin' Donuts franchisees that exhibited some of the same sharing characteristics as the rehabber network. In 2010, during the apex of the financial crisis, ShoreBank went out of business, and the rehabber network was deeply shaken. Numerous lessons can be learned both from the development of these extraordinary networks and from their current circumstances.

Chapter 5 is an interlude in my presentation of the case studies. This short chapter is about law. As I will demonstrate, laws at the local, state, and even national levels currently limit the efficacy of collaborative business networks. The chapter examines the dramatic extent to which property, contract, business, labor and employment, and financing laws are tailored to support particular capitalist institutions. For example, American corporations typically are not constrained by formal or informal rules or norms to hire local workers. This and other forms of corporate freedom limit opportunities for urban workers, for example by leaving them with few options other than to start their own businesses. More broadly, the regulatory framework limits the number of paths available to urban residents for earning income, and it makes those paths difficult to follow. As Chapter 5 discusses, because they are tailored to supporting a more "competitive" style of capitalism, American regulations largely fail to support the types of collaborative business networks described in this book.

In Chapter 6, I discuss my third case study. The collaborative business network that has developed in Austin, Texas, is a newer network of for-profit businesses that were started almost a decade ago by a large nonprofit organization, Southwest Key Programs. The central mission of the nonprofit Southwest Key is to serve immigrant youth and children by providing safe shelters, culturally relevant education, and other critical services. This organization used its own market needs to generate a small cluster of businesses to serve those needs. The network includes a café that provides catering for Southwest Key's charter school in Austin. It also includes a cleaning company that provides cleaning and landscaping services to the school and to Southwest Key's headquarters. And it includes a sizeable job placement company. As in my other examples, Southwest Key serves as an intermediary in the network that promotes the sharing of key resources. For example, it serves as a source of financing, shared management, and "back-office" support for the businesses. Its most important function may well be to have served as the initial source of stable demand for each of the businesses. In turn, the businesses contribute to Southwest Key's mission by employing a fair number of the parents of the children it serves. Like the other two case studies, Southwest Key is a pioneer. It developed a third model, distinct from my other two examples, for collaboration by a network of for-profit businesses. It is also useful as a basis for comparison with my other case studies because it is a newer network that includes a range of businesses in different industries rather than just in one or two market niches.

Chapter 7 closes Part II of the book by providing a cross-cutting analysis of the three case studies. My primary purpose in this chapter is to compare the three different forms of collaborative business networks described in this book. Each has intermediaries that serve different functions and that contribute differently to the networks' success. Each comes with its own advantages and challenges. Finally, as I elaborate more fully in Part III, each has benefited from, and been burdened by, a range of laws and regulations. Chapter 7 identifies critical needs that cut across all three sharing networks. It closes by articulating a number of core design principles that appear particularly efficacious (at least at this early stage of analysis) in the development of collaborative business networks, and in supporting urban workers more generally.

Finally, Part III addresses the question of how to deploy law and policy in support of collaborative capitalism in American cities. Chapter 8 begins by comparing and contrasting the collaborative business networks in this book with the so-called sharing economy, which has been the subject of much discussion in urban America. More recently, the sharing economy has been described as the "gig economy," and even the "taking economy." As Chapter 8 discusses, this is for good reason. The most critical factor that distinguishes the collaborative business networks in this book from the sharing economy is that the former return more