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# Time to Step Up: Modeling the African American Ethnivestor for Self-Help Entrepreneurship in Urban America

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# TIME TO STEP UP: MODELING THE AFRICAN AMERICAN ETHNIVESTOR FOR SELF-HELP ENTREPRENEURSHIP IN URBAN AMERICA

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*When the United States Congress passed legislation in late 2000 to revitalize the urban core with incentives for equity investors, African Americans were inconspicuously absent as stakeholders in the enterprise. Subsidies in the form of tax credits were instead gobbled up by investor groups who developed upscale hotel-convention centers, high priced condominiums, and symphony orchestra venues that the pre-existing poor residents could not afford. The focus of this Article is not to blame those investors who took advantage of the opportunity, though they perverted the purpose of the subsidy. Rather, this Article seeks to identify a new substrata of the African American middle class who can step up to seize the opportunity for the benefit of the low income residents in the low income communities as the law was designed.*



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*"I believe the federal government can play a positive role in helping African Americans achieve the goal of owning their own business . . . We've provided $8 billion in new market tax credits to boost investment and community development in low income areas."*

—President George W. Bush[1]

## INTRODUCTION

Approximately $820 million in taxes paid by the American people have been rather ubiquitously placed in the hands of a federal subsidy program for investors in low income communities.[2] The subsidy is in the form of a tax credit. The program is entitled the New Markets Tax Credit ("NMTC") initiative.[3] Under the program, the tax credit is used to entice investors to provide equity capital into low income urban and rural areas.

The primary focus of my companion law review article, "*The De-Gentrification of New Markets Tax Credits*," was to provide a clarification of the legislative intent and purposes of the federal tax credit program. The overall issue concerns how public funds can be more efficiently used for their stated purpose by amending the existing law to formulate an urban tax credit policy that prioritizes and effectively implements the goals of the NMTC program. I have previously asserted that the purposes of NMTC legislation are to revitalize low income areas for the primary benefit of low income residents, but that this purpose has been usurped in part by investors who establish gentrifying projects such as venues for symphony orchestras, upscale hotel convention center complexes, and high priced condominiums for the financially well healed who migrate to urban low income areas.

These projects prioritize the "wants" of the wealthy gentrifiers, while the NMTC legislation, in design, champions the needs of the existing low income residents who have suffered the effects of poverty. The statute requires that the entity most responsible for development of the project, receiving the equity investment and distributing the tax credit back to the investors have the "primary mission" of serving low income

1. President George W. Bush, Address at the Indiana Black Expo Discussing Education, Entrepreneurship, and Home Ownership (July 14, 2005), http://www.whitehouse.gov/news/releases/2005/07/20050714-4.html.

2. Community Development Financial Institutions Fund, U.S. Dep't of the Treasury, http://www.cdfifund.gov/who_we_are/about_us.asp.

3. *Id.*

residents.[4] I have termed those gentrifier projects, like those that construct Residence Inns or Marriott Hotels and convention centers, "Problematic Purposed Projects" since it is difficult to consider such projects as having a primary mission of benefiting the low income urban residents.[5] At most, this author has urged that those projects transform low income residents from primary beneficiaries to incidental or residual beneficiaries on a morphed trickle down economics model.[6] As such, gentrifier investors are using federal subsidies for a purpose inconsistent with the congressional intent.

This Article contends that an alternative type of investor is more likely to establish projects consistent with the congressional intent of revitalizing the community for its low income residents. That alternative is an African American substrata of the middle class, which I term the Ethnivestor.[7] It is past time for such a reconfigured African American middle class on its own collective volition to be part of the revitalization of the urban core cities through a revitalization of its own, fostering a reunion of sorts with low income residents of common ethnicity. The accepted definition of ethnicity for this Article is "self-identification in a sociopolitical grouping that has both recognized public identity and a conservationist/activist orientation."[8]

Part I of this Article examines the historical development of ethnic enclaves in the United States, and how ethnic entrepreneurship gave rise to an ethnic enclave economy that can provide a valuable template for a

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4. I.R.C. § 45D (c)(1)(A)(2006). That important entity is termed a "Community Development Entity" (CDE) under section 45D of the Internal Revenue Code. To qualify as a CDE, the entity must have the primary mission of "serving, or providing investment capital for, low-income communities or low-income persons." *Id.*

5. *See* Roger M. Groves, *The De-Gentrification of New Markets Tax Credits*, 8 Fla. Tax Rev. 40, 40–44 n.6 (2007). Table B contains a chart describing the projects by type, the total amount of equity contributed by investors and the amount of the tax credits to be received from the federal government. *Id.* From reviewing governmental profiles for each of the 230-plus entities awarded subsidies under the program, I have estimated billions of dollars in tax credits for the Problematic Purposed Projects. *Id.* And it is the hope of this Article that an Ethnivestor is more likely to generate "Properly Purposed Projects," which are projects consistent with the congressional intent of servicing low income residents (e.g. charter schools, quality grocery stores and health care facilities, and affordable housing complexes).

6. *See id.* (asserting that trickle down tax credits are inefficient and not well designed to make low income residents the primary beneficiaries of the projects). A $100 million hotel complex or $500,000 condominium provides a minuscule residual benefit to low income residents compared to the gentrified purchaser of the condominium, or the substantial financial returns to the investors and owners of the hotels.

7. The Ethnivestor is one who incorporates and is motivated by his or her ethnicity in making investment decisions. The characteristics of an Ethnivestor will be detailed later in the Article.

8. MARGARET D. LECOMPTE & JEAN J. SCHENSUL, DESIGNING & CONDUCTING ETHNOGRAPHIC RESEARCH 24 (AltaMira Press 1999).

modern day Ethnivestor. I maintain the NMTC target communities are also ethnic enclaves. Part II sets forth the conceptual precepts and then the Ethnivestor model, including various characteristics and investment motivations that make an Ethnivestor well suited for a NMTC transaction. Part III applies economic principles to further explore whether the Ethnivestor model may lead to increased utility for low income residents and the Ethnivestor in a NMTC transaction beyond that of investor groups not similarly engaged in social entrepreneurship. Finally, Part IV applies the theoretical model and provides concrete illustrations of how the Ethnivestor more efficiently meets the congressional purpose of assisting low income residents without marginalizing them in the process. This discussion emphasizes the importance of small business modeling that incorporates the experiences of other ethnic enclave economies. The NMTC structure and transactional scheme is also explained, followed by a discussion of how the Ethnivestor can seamlessly operate within that structure.

## I. THE ETHNIVESTOR FOR THE ETHNIC ENCLAVE

One likely challenge to the "Ethnivestor" concept is the rhetorical question, "What makes you think an African American is motivated any differently than any other investor whose first priority is to receive an adequate return to justify the investment?" The short answer is that a properly configured Ethnivestor should have a different definition of adequate return based on a different risk and reward analysis. Before addressing that issue, some historical context is first required because the experience of other immigrants provides valuable lessons and insight for the formation of the Ethnivestor.

The historically popular notion was that turn-of-the-century immigrants would join the mainstream through the generations, and enjoy the bountiful fruits of America in rough proportion to the extent of assimilation, losing their distinctive group characteristics as a byproduct.[9] There is now a substantial body of empirical evidence that immigrant upward mobility has depended instead on *not* assimilating completely into the mainstream, but rather, maintaining a common cultural identity that "compensate[s] for other disadvantages such as racial discrimination or a lack of sufficient start-up capital."[10] Past immigrants have utilized their small businesses as culturally customized schools for future generations of entrepreneurs and financially independent professionals.[11] Several case

9. *See* MARILYN HALTER, NEW MIGRANTS IN THE MARKETPLACE 2 (University of Massachusetts Press 1995).

10. *Id.*

11. *See id.* at 9.

studies in Boston, Massachusetts, a premier modeling site,[12] consistently found those involved in ethnic enterprises later became owners of businesses themselves, and that future generations entered the mainstream through professional occupations as owners rather than paid staff. The studies revealed Greek entrepreneurs, Soviet Jews, Haitians, and British West Indians all gaining in economic and social resources as a result of family enterprises built on ethnic foundations.[13]

In the early 1990's, one half of the Miami Florida population was of Cuban origin, and a study found that there were not just co-ethnic self-employed owners with ethnically aligned employees, but also "locational clusters" of ethnic entrepreneurs (e.g. "Little Havana" and concentrated Cuban business districts).[14] Miami's ethnically Cuban economy was "hyperefficient"[15] because of its "vertical and horizontal integration, ethnically sympathetic suppliers and consumers, pooled savings, and rigged markets."[16] The evolved term for this economic dynamic is the "ethnic enclave economy," consisting of two components: spacial clustering in a location and a critical mass of immigrant owned business firms that employ co-ethnic workers to serve their own ethnic market and the general population.[17]

Those ethnic immigrants were motivated for entrepreneurship within an ethnic enclave. By exploring their motivations, can we learn whether a newly configured African American group can become similarly motivated? An established theory (attributable to Max Weber in 1930, hereinafter the "Weber Theory") is that culturally-based entrepreneurship within the enclave is primarily a reaction to exclusion from the larger marketplace due to discrimination.[18] That is to say, hostility from a host country is a driving force encouraging economic solidarity and increased entrepreneurship among the oppressed groups, which becomes a self-help mechanism for survival and growth.[19] More specific study of the

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12. *Id.* at 5. There have been numerous case studies in Boston, Massachusetts because of an immigration explosion in the late 1980's resulting in the fifth largest influx of refugees and seventh largest total immigration increase in the US according to the 1990 census. *Id.* at 9. Boston was thus diversifying faster than most of America without one single ethnic group dominating the increase. *Id.* One study by Ivan Light highlighted the "multiplier effect" of ethnic entrepreneurship. *Id.*

13. *Id.*

14. *Id.* at 29.

15. The efficiency in the ethnic enclave economy is discussed in greater detail in the section on Application of Economic Principles.

16. *See* HALTER, *supra* note 9, at 30.

17. *Id.*

18. IVAN LIGHT & CAROLYN ROSENSTEIN, RACE, ETHNICITY, AND ENTREPRENEURSHIP IN URBAN AMERICA 19 (Aldine Transaction 1995).

19. MAX WEBER, THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM 39 (Dover Publications 2003) (1930) (espousing the theory of the acknowledged founder of entrepreneurship research, Max Weber). Weber's context in 1930 involved religious oppression

relationship between ethnicity and entrepreneurship brought a theory of "Middleman Minorities."[20] That is to say, in a capitalist system, a certain class of minorities becomes a "go-between" group, filling a gap between the elite ruling class or host society and the poorer oppressed masses.[21] They are typically not owners of large capital enterprises. They provided a conduit or negotiating function, passing goods and service as a broker, rent collector, labor contractor, distributor or wholesaler from the host society elite to the masses.[22] The middlemen among African Americans evolved to our current notion of the "black middle class."[23]

Much of the older literature of the African American middle class is curiously devoid of the self-help contributions of the group. Still, the most evolved and emerging theoretical framework for racial enterprise in an oppressive society asserts that the African American experience, though fraught with some unique challenges, is nonetheless consistent with the Weber principles and the Middleman model for minorities. They too responded to racism and oppression by establishing self-help businesses

among German Catholics by Protestants, rather than ethnically based hostilities. *Id.* In his words: "National or religious minorities which are in a position of subordination to a group of rulers are likely, through their voluntary or involuntary exclusion from positions of political influence, to be driven with peculiar force into economic activity. Their ablest members seek to satisfy the desire for recognition of their abilities in this field, since there is no opportunity in the service of the State." *Id.* His examples include Poles who had a more rapid advance in Russia than in their own lands of Galicia. *Id.* Also noted were Huguenots in France under Louis XIV, the Nonconformists and Quakers in England, and "last but not least," the Jews for two thousand years. *Id.* The self-help mechanism found among immigrants is two-fold: (1) a clustering of self employed immigrants often serving their own ethnic market, and (2) those self employed ethnic entrepreneurs hiring co-ethnic workers. See HALTER, *supra* note 9, at 27–28.

20. HALTER, *supra* note 9, at 27.

21. JOHN SIBLEY BUTLER, ENTREPRENEURSHIP AND SELF-HELP AMONG BLACK AMERICANS 241–43 (State Univ. of N.Y. Press, rev. ed. 2005)(1991). They also incorporate pre-migration experiences in business that are carried over to the United States and are part of an economic ethos that leads to the development of an ethnically indefinable middle class. HALTER, *supra* note 9, at 104–105.

22. This theory is authored in large part by Edna Bonacich and Jonathan H. Turner. *See* Edna Bonacich, *A Theory of Middleman Minorities*, 38 AM. SOC. REV. 583 (1973). Some recent examples include Asians in East Africa, Japanese and Cubans in the United States, and Chinese in Southeast Asia, all of whom developed a Middleman group. *Id.*

23. While some historians, most notably E. Franklin Frazier, contemptuously viewed the black middle class as isolating themselves from the working class by building institutions to educate the black bourgeoisie rather than the masses and buttressing the differences through Greek letter organizations and social clubs, a more recent group has opined that a wider group of the black middle class may well have demonstrated connectivity with the working class. We just lack the theoretical framework to objectively analyze their contributions. *Compare* BUTLER, *supra* note 21, *with* E. FRANKLIN FRAZIER, BLACK BOURGEOISIE (First Free Press Paperbacks 1997)(1957).

which in fact thrived during the years of segregation when they could not depend on upward mobility from the host society.[24]

In the case of African Americans, freed slaves in Philadelphia in the late 1700s developed a critical mass of small businesses to survive economically, serving black and white clientele. In the early 1900s, the proliferation continued despite the fact that African Americans were forced to do business primarily with each other for a period after the passage of *Plessey v Ferguson* with its separate but equal doctrine in 1899.[25] By 1911, when segregation was still in its glory, Atlanta had approximately 2,000 black-owned establishments, representing over 100 business types.[26] This included a bank, 3 insurance companies, 12 drug stores, 60 tailor shops, 83 barber shops, and 85 grocery stores.[27] It is important to observe that this forced self-help entrepreneurship existed 126 years before the City of Atlanta granted its first government contract to an African American owned enterprise.[28] In fact, it appears that in 1929, African Americans were the only ethnic minority group to compile their own national ethnically separated retail store census, and they begged the United States Bureau of Census to do the same.[29]

With banking in particular, African Americans were spurred by the rejection of the hostile host to establish at least 134 banks between 1888 and 1934.[30] In contrast with modern times, as of 1986, with principles of assimilation and integration diluting the African American interdependence, there were only 39 African American banks, with total assets of only 12.53% of the total from 60 years earlier.[31] "[T]welve out of the twenty-five banks on *Black Enterprises Top 100* were founded between 1895 and 1956, or during the days of official segregation."[32] And each of the top ten

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24. BUTLER, *supra* note 21, at 263. In his critique of the Frazier theme of failed integration, Butler said, "if Frazier had understood, as Weber did, the importance of the relationship between being excluded from a society ... and business activity, he would have understood that the [African American response and adaptation to America] has been seen for hundreds of years." *Id.*

25. *See id.* at 42 (referencing earlier works of W.E.B. Dubois, *The Negro in Business* (1898) and Joseph Pierce, *Negro Business and Business Education* (1947)). Butler includes the systematic establishment of social organizations, religious and educational institutions, both pubic and private. *Id.* at 276–80. In one case in 1869 freedmen raised over $200,000 for a schoolhouse and teacher support. *Id.* at 264.

26. BUTLER, *supra* note 21, at 318.

27. *Id.*

28. *Id.*

29. *Id.* at 311.

30. *See id.* at 319 (citing W.E.B. DU BOIS, ECONOMIC CO-OPERATION AMONG NEGROES 111 (1907)).

31. *Id.* (citing Martin Fred, *Navigating Rough Waters, Buffeted By a Sea Of Economic Woes, Black Banks Discover That Their Size Can Be a Liability—Or Their Greatest Asset*, Black Enterprise, June 1988 at 206).

32. *Id.*

African American insurance companies was established during this proliferation of self-help entrepreneurship or no later than 1960.[33]

Obviously, a return to segregation is not advocated, but the economic evidence from that era leads to questions: If self-help entrepreneurship had vitality when African Americans were more directly forced together, can a model be created for achieving the same result in the current environment? What role can the NMTC play with ethnic Middlemen of today? To answer those questions we must describe the current environment in comparison with the years of forced segregation and assess which, if any, of the prior economic circumstances have current applicability.

One benchmark for comparison is the second of two significant migrations of African Americans from the South to the North.[34] The first was during World War I. In the three short years between 1915 and 1917 approximately 400,000 African Americans migrated north.[35] World War II brought the second wave from the South.[36] The impact was more profound. Between 1940 and 1950 roughly 2.5 million African Americans moved to 168 of America's cities from rural environs.[37] In the major industrial cities of the northeast, the influx of African Americans brought a flight of white Americans.[38] As a result of the continued vestiges of racism, combined with substandard public schools preventing African Americans the same mobility as non-minorities, the urban "ghetto" became entrenched by the 1950's.[39] One study in 1963 concluded that while European immigrant groups experienced decreasing residential segregation, African Americans still suffered from systematic segregation and poorer public education.[40] As a result, segregation patterns accelerated rather than diminished for African Americans in those cities.[41] In response to the blighted condition of urban African American communities, government programs established urban renewal projects that not only rebuilt, but also displaced or removed people from prior locations.[42] Thirty

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33. *Id.* (noting particularly the North Carolina Mutual Life Insurance Company founded in 1898, Atlanta Life in 1905, Golden State Mutual Life insurance in 1925 (Los Angeles), and Booker T. Washington Insurance Company (Birmingham Alabama) in 1932).

34. *See* BUTLER, *supra* note 21, at 267.

35. *Id.*

36. *See id.*

37. *See id.*

38. *See id.* That period between 1940 and 1950 saw dramatic white flight from major northeastern cities. *Id.* For example, in Newark, New Jersey the African American population increased by 29,000 while the white population decreased by 20,000. *Id.*

39. *See id.* at 267–68.

40. BUTLER, *supra* note 21, at 268 (citing Karl E. Taeuber & Alma F. Taeuber, *Is the Negro an Immigrant Group?*, INTEGRATED EDUC., 1963, at 25).

41. *Id.* Even the racially distinct Japanese in northern cities experienced lessened rather than increased segregation. *Id.*

42. *Id.* at 310.

percent of African American businesses were also swept away by renewal projects and never reopened; of those who did, 50 percent failed within the first five years.[43]

A myriad of other factors contributed to a continued deterioration of the urban core and impact the modeling of the modern Ethnivestor. Factors include a social disorganization of the black family structure,[44] and, by the mid-1960's, an exodus of middle class and working class African Americans from the inner cities (also termed "core cities") leaving an underclass with fewer role models.[45] As one study found, the African American middle class had previously been a "social buffer" that could "deflect the full impact of the prolonged and increasing joblessness that plagued inner-city neighborhoods in the 1970's and 1980's."[46] The void created a higher concentration of desperation among the remaining urban core residents.[47]

Another current challenge to self-help entrepreneurship among African American entrepreneurs involves the lack of sustained educational institution-building. Unlike the experience of the segregated South, the migration north did not lead to the re-creation of historic African American institutions. Those institutions provided historical nurturing and served as launching pads to adapt to and more fully participate economically in larger American society.[48] Without that tradition, Butler rhetorically asks, "What are the lessons and values passed on from former generations? . . . What are the lessons or values which guide the offspring of the [African American Middleman]?"[49] And unlike the modern ethnic enclaves, Butler opines that African American enterprise was at one time the "very center of communities during the days of segregation" and

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43. ARTHUR I. BLAUSTEIN & GEOFFREY FAUX, THE STAR-SPANGLED HUSTLE 71 (Doubleday 1972), *cited in* BUTLER, *supra* note 21, at 310.

44. *See* DANIEL P. MOYNIHAN, THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION 12 (1965), *cited in* BUTLER, *supra* note 21, at 269. As a caution against blaming the victim, one student of criminology stated: "Treating changing African American family structure as a causal agent within a vacuum raises an important problem. One cannot assume that all else in society remained constant while black families and juvenile crime rates changed. In fact, as noted below, societal change has influenced family structure and, in turn, crime rates. Directing policy at lower-class African American family structures without addressing the larger forces shaping that structure treats symptoms rather than causes." Joseph F. Sheley, *Structural Influences on the Problem of Race, Crime, and Criminal Justice Discrimination*, 67 TUL. L. REV. 2273, 2280–81 (1993).

45. BUTLER, *supra* note 21, at 269.

46. *Id.* (quoting WILLIAM J. WILSON, THE TRULY DISADVANTAGED 56 (The Univ. of Chicago Press 1987)).

47. *Id.* at 251.

48. *Id.* at 271.

49. *Id.* at 270.

"there was always a reality that business enterprise ... was the shoulders on which to build for future generations."[50]

Another challenge to returning to earlier self-help mechanisms is the current pattern of disproportionate consumer spending and the lack of wealth accumulation. African Americans make up about 12% of the population, and comprise over $631 billion in annual earnings. However, only 50% of African American adults own their own homes, while 70% of white Americans own theirs.[51] Approximately "30% of the African Americans that earn $100,000 a year had less than $5,000 in retirement savings."[52] When white and black households were compared, whites saved almost 20% more each month for retirement.[53]

Perhaps most fundamentally challenging for the modern African American investor is identity ambivalence, the struggle to define oneself contextually both externally among white America, and then internally amongst other African Americans. Externally, a common race practice involves a minority group member presenting oneself differently in front of a majority white audience than when amongst members of one's own group.[54] An evolving model, which is both internal and external in establishing norms for African Americans, is that of a re-defined notion of "opportunity" beyond "the civil rights legacy of equality of opportunity."[55] "Opportunity is a concept of enablement rather than possession; it refers to doing more than having."[56] In the NMTC context, the well-suited African American investor must view the opportunity to invest as enabling him or her to achieve goals beyond pecuniary gain (a position). The goal is to invest in a re-invented social entrepreneurial way akin to African Americans during periods of earlier ethnic enclaves. At the core is an issue of self-identification and solidarity. If a group is not self-identified, it cannot achieve solidarity on the issues otherwise thought to be common. One could ask whether skin color alone is the primary source of self identification and solidarity among African Americans. Perhaps there are some African Americans who claim skin color is of no

50. *Id.* at 311. *See also* W.E.B. Du Bois, Conference at Atlanta University: The Negro in Business (Mar. 30–31, 1899).

51. Marc H. Morial, *The State of Black America: The Complexity of Black Progress*, 2004 THE STATE OF BLACK AMERICA 12 (2004).

52. Yolanda Young, *Tough Choice for Tough Times*, U.S.A. TODAY, Apr. 2, 2004, at 9A (citing The Ariel Mutual Funds/Charles Schwab & Co., Inc., *Black Investor Survey: Saving and Investing Among High Income African American and White Americans*, June 2003).

53. *See id.*

54. *See* John O. Calmore, *Whiteness: Some Critical Perspectives: Whiteness as Audition and Blackness as Performance: Status Protest from the Margin*, 18 WASH. U.J.L. & POL'Y 99, 109 (2005). Calmore called the process one of "re-interpretation, re-invention, re-presentment, and re-definition of one's racialized identity." *Id.* A colloquial term is "code-switching."

55. *Id.* at 109–10.

56. *Id.* at 110 (quoting IRIS M. YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE 26 (Princeton Univ. Press 1990).

relevance in the current American society because by and large discrimination based on race is no longer prevalent - hence there is no need for self identification and solidarity based on skin color. But other scholars note a "putative solidarity" among some African Americans based on how the host society has discriminated against a group based in part on race and skin color, regardless of the variations in skin tones.[57] This "putative solidarity" among African Americans is viewed by leading scholars in the field as requiring a recognition that although African Americans are a mosaic in skin tones and ethnic origins, in this country there is a need for an overarching common identity, in part because adverse consequences still flow from being identified as part of that group.[58] In the context of this Article, only those who have such a self-identification are deemed likely to be appropriate investors in the MNTC transaction. Ethnographers engraft the putative solidarity concept in their scientific studies, defining ethnicity as incorporating "self-identification in a sociopolitical grouping that has both recognized public identity and a conservationist/activist orientation."[59]

Having laid bare some of the deepened adverse circumstances for African American-based entrepreneurship in our core cities, the next question is what characteristics are required from the African American Middleman of today to achieve that rekindled entrepreneurial spirit for investing in the current urban core? There are certainly some who assert that no such motivation exists, but to conclude that a whole segment of America is monolithic in investment behavior would be too broad sweeping of a conclusion. As this Article will discuss in detail, there is a method of modeling for certain behavioral characteristics that can match investing with social causes, with ethnicity and cultural connectivity as a component of the investment strategy. Many immigrant groups have entered America and risen beyond the bottom rung of society based in large part on such commonalities.[60] History can and often does repeat itself, and certain lessons from other ethnic economies can be incorporated into the model for the envisioned Ethnivestor in an NMTC transaction. The intent is to rekindle the entrepreneurial spirit that existed when forced self-help circumstances fostered interdependence and solidarity within the core cities without marginalizing the core people in the process.

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57. *See* Calmore, *supra* note 54, at 110.

58. *Id.*

59. LECOMPTE, *supra* note 8, at 24.

60. See BUTLER, *supra* note 21, at 31. Butler states that 21.2% of the "Cuban enclave" of refugees in Miami, Florida commenced their own businesses between arrival in 1973 and 1979. *Id.*

## II. ETHNIVESTOR CRITERIA

Regarding Ethnivestor criteria, there are three cornerstone precepts that lay a foundation for the more specific modeling discussed thereafter: (1) one's perception of risk, (2) the degree to which social entrepreneurship is part of the risk analysis, and (3) an Ethnivestor's access to investment capital.

### A. *Risk Analysis*

Established literature asserts that at the core of risk analysis is culture and cultural perceptions.[61] According to leading theorist, Mary Douglas, "anything whatsoever that is perceived at all must pass by perceptual controls. In the sifting process something is admitted, something rejected and something supplemented to make the event cognizable."[62] She concludes, "The process is largely cultural."[63] Over two decades ago, Douglas developed a paradigm of cultural constraints, fitting behaviors and outcomes into a grid with groups designated therein.[64] Her intention was to develop a way of identifying and categorizing the causes for the "self-sustaining perceptual blinkers" and biases we all have, which give rise to how we perceive our environment and our role within it.[65]

Investing too is based on perception including, but not limited to, the perception of risk before one's money is spent. The typical investor is attempting to increase her economic well-being as a primary motivation for the endeavor—using her money to make more money. With that quest in mind, she prudently compares one opportunity for making money with other opportunities before deciding which vehicle best suits her. That decision requires a risk analysis—what level of risk of losing my money am I willing to take in my quest for more money? If the perceived risk is less for those culturally connected with the community in which the business operates, the culturally connected investor is more likely to make the investment than one who is not culturally connected, and thus perceives that same investment as a higher risk. Someone accustomed to driving in a major city may be more willing, for example, to bear the risk of an accident on the very busy Beltway around Washington DC than a visitor from rural Wyoming who has never driven on the Beltway. The Wyoming driver is predictably more likely to say, "no thank you" to that

61. *See* ESSAYS IN THE SOCIOLOGY OF PERCEPTION 1–2 (Mary Douglas ed. 1982). As will be discussed below, African American entrepreneurs must incorporate risk in making investment decisions, and that risk component has cultural aspects.

62. *Id.* at 1.

63. *Id.*

64. *See id.* at 1–2.

65. *Id.* at 2.

degree of risk. Why? The perception of risk and the familiarity with the environment is different; the culture is different. Similarly, an investor who is unaccustomed to the experience of the existing urban core housing or commercial market is, like the Wyoming driver, likely to perceive the risk as higher than the urban businessperson or one who is culturally connected with that urban core.

Another major risk variable with important implications for the NMTC investor is how long the investor must wait (i.e. the holding period) before the anticipated return is achieved. From a pure finance perspective, this author opines that the longer the wait on the return, the larger the required amount of the return and often the more risky the investment. The NMTC program has attracted investors over the short term (i.e. over the 7-year tax credit period).[66] The NMTC statute does not require an investor to commit resources beyond that period, even if a longer commitment is in the long term interests of the community or the remaining economic life of the subsidized assets.[67] It appears to this author that a typically motivated investor may consider a commitment beyond the 7 years of the tax credit to be a greater risk because the tax credit will no longer compensate the investor for taking that risk. The point is that investment criteria for an Ethnivestor should include a longer term commitment because it is in the interests of the target community and more aligned with the purpose of the NMTC program.[68] It is therefore a more mature model to engage as NMTC investors those who (perhaps atypically) perceive the low income urban core communities as less of a long term risk, or at least a risk that for cultural and non-economic reasons, he or she is willing to take beyond the seven year tax credit haven.

### B. *Social Entrepreneurship*

Equally important, the economic return may not be as high a priority if the investor's goal is to achieve a blend of economic returns and social benefits to the target community. This incorporates the burgeoning study of "social entrepreneurship."[69] This term is defined as the pursuit of innovative investment strategies, including profit-making ventures, to serve a social mission typically found in the nonprofit sector or within private hybrid business organizations mixing nonprofit and for-profit

66. *See* I.R.C. § 45D(a)(3)(A)(B) (West 2006).

67. *Id.*

68. As stated by the US Department of Treasury, the NMTC investments "will be expected to result in the creation of jobs and the material improvement in the lives of residents of low-income communities." I.R.S. News Release IR-X (Mar. 14, 2003), http://www.cdfifund.gov/news/pdf/pr2003_news_03142003.pdf

69. *See* Gail A. Lasprogata & Marya N. Cotton, *Contemplating 'Enterprise': The Business and Legal Challenges of Social Entrepreneurship*. 41 AM. BUS. L.J. 67, 69 (2003) (asserting that the investors well suited for NMTC investments are social entrepreneurs).

social purposes.[70] This is a "double bottom line."[71] The Bill and Melinda Gates Foundation applies the concept in controlling approximately $60 billion toward its own charitable enterprises.[72] The Foundation's underlying goal is "improving the lot of [the world's poor] without regard to their color, religion or other differences."[73] Its results-oriented approach led to the selection of projects they could actually envision making a meaningful change in the world, such as improving global health through research, "prevention and treatment for AIDS, tuberculosis, malaria and vaccine-preventable childhood diseases."[74]

Modifying a venture capital model, the Gates Foundation leverages its investments to achieve that double bottom line.[75] Its concept is to identify measurable and achievable outcomes, which though they may require a large initial outlay of capital, can produce a desired result with a low cost of sustaining the benefit.[76] Like software, the up front costs of vaccinations globally are very high, but the ongoing manufacturing costs are low. The Gates observed that three million children a year were dying from vaccine-preventable diseases. According to the World Health Organization, the foundation has saved 670,000 children, "and will save millions more in coming years."[77] The true genesis of this social entrepreneurship model was the Gates' mindset to be "audacious" where they "believe these things actually can be solved."[78]

It is that type of audaciousness that is required for an Ethnivestor model to effectively make a difference in the urban core communities. Bill Gates urged his foundation staff to think "outside the box."[79] As will be discussed under the specific Ethnivestor model, the qualified investor must have a similar perspective to avoid the rigidity of externalities and be guided more by the group's greater good.

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70. *Id.*

71. *Id.*

72. So impressed was the world's second wealthiest man, Warren Buffett (Chairman, Berkshire Hathaway, Inc), with the social entrepreneurship of the world's wealthiest man, Bill Gates, that he donated $31 million to the Bill and Melinda Gates foundation, which previously had assets of an approximately equal amount. Donald G. McNeil Jr. & Rick Lyman, *Buffett's Billions Will Aid Fight Against Disease*, N.Y. TIMES, June 27, 2006, at A1.

73. *Id.*

74. Susan Stamberg & Steve Inskeep, *Morning Edition: Gates Aims for Major Philanthropic Impact* (National Public Radio June 27, 2006), *available at* http://www.npr.org/templates/story/story.php?storyId=5514403.

75. *See id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

### C. *Access to Capital*

Finally, it is of little value to discuss a model for investors if it includes those with little or no money to invest. African Americans have $631 billion dollars in earnings per year.[80] And there are a few with gorilla wealth. To name a few, Usher Raymond IV, known worldwide musically in the rap genre as "Usher," established his own record company (Sony BMG) that paid him $20 million in 12 years.[81] In early 2005 he earned another $20 million from his 64-city tour.[82] Usher asserts that only 10% of his income is devoted to consumer spending, with the remainder invested in "fixed income investments, blue-chip stocks, and real estate."[83] Included in the portfolio is a $1 million investment in a bank.[84] In February 2005 he became a minority owner of the Cleveland Cavaliers of the National Basketball Association with a $9 million investment.[85] In his words, "wealth accumulation is at the top of the list."[86] Rapper Jay Z (a.k.a. Shawn Carter) co-owns Rocawear clothing, with $350 million in sales.[87] There are more African Americans in America than there are people in Canada,[88] and census data reveals a 46% increase in African American owned firms between 1987 and 1992 compared to a 26% increase in the larger society.[89] The opportunity for investment in the NMTC program and other vehicles is within reach if the collective vision of a few extends to grasp it.

### D. *Specific Model*

A host of influences affects economic investment goals and choices. Akin to the Douglas model, this Article urges that there are essentially two dimensions of control over an individual's decision making. One

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80. Young, *supra* note 52, at 9A.

81. Brett Pulley, *Diamonds, Cars and Confessions*, FORBES, May 9, 2005, at 95.

82. *Id.*

83. *Id.* at 96.

84. *Id.* at 98.

85. *Id.*

86. *Id.* at 96.

87. *Id.*

88. According to the US Census Bureau, there were 36.4 million African Americans (12.9%) within the US population as of April 1, 2000. JESSE MCKINNON, U.S. CENSUS BUREAU, THE BLACK POPULATION: 2000, CENSUS 2000 BRIEF (2001), http://www.census.gov/prod/2001pubs/c2kbr01-5.pdf. According to Canada's census agency, Canada had an estimated population of 32,270,500 in 2005. STATISTICS CANADA, POPULATION BY YEAR, BY PROVINCE AND TERRITORY, (last modified May 29, 2006), http://www40.statcan.ca/l01/cst01/demo02.htm.

89. BUTLER, *supra* note 21, at 325. The raw numbers for the African American owned firms are from 424,165 to 620,912. *Id.*

influence module is the impact of forces outside oneself and outside of the small group of common believers. These are major principalities such as the government, corporations, and the larger institutional entities that regulate us in one fashion or another. We must have driver's licenses, car notes, mortgages regulated by financial institutions, and employers who regulate employee behavior for assigned tasks. These are termed "External Regulators." As the chart below depicts, the lower left corner is the low level of influence by the External Regulators on a person. As the influence grows, that growth is measured vertically so the top left of the square reflects the highest extent of external regulation.

The other influence module is the group dynamic where people have commonalities in areas they consider important. The group has a self-defined pattern of allegiance, criteria for admission, and varying levels of commitment to that group.[90] For African Americans, indicia of membership as a general group include the shared historical context of slavery and segregation, cultural aspects that are either self-defining (e.g. speech, music, phrases of art), or ascribed to them in stereotypes that they commonly rail against, and of course skin pigment. For the specific purpose of the NMTC investing analysis, the group influence is defined more particularly as that group of investors that are self motivated with a non-traditional sense of social entrepreneurship where the investment goal is not only to make money as an individual, but as importantly, to be committed to the betterment of the ethnic enclaves of the NMTC target community. The group dynamic is therefore the "Ethnivestor" factor because of the role ethnicity plays in the investment analysis.[91] The extent of influence of this group factor is increased horizontally from left to right. So the greater the extent of influence by the group on the individual, the further to the right that person falls.

From this initial construct, the range of interaction among these influence factors can be illustrated through four categories, depicted as boxes within quadrants on a grid. The grid is shown below.

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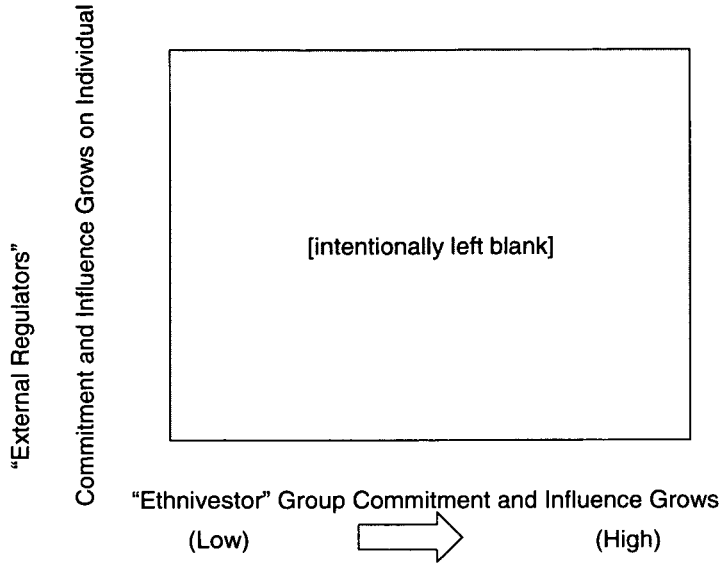
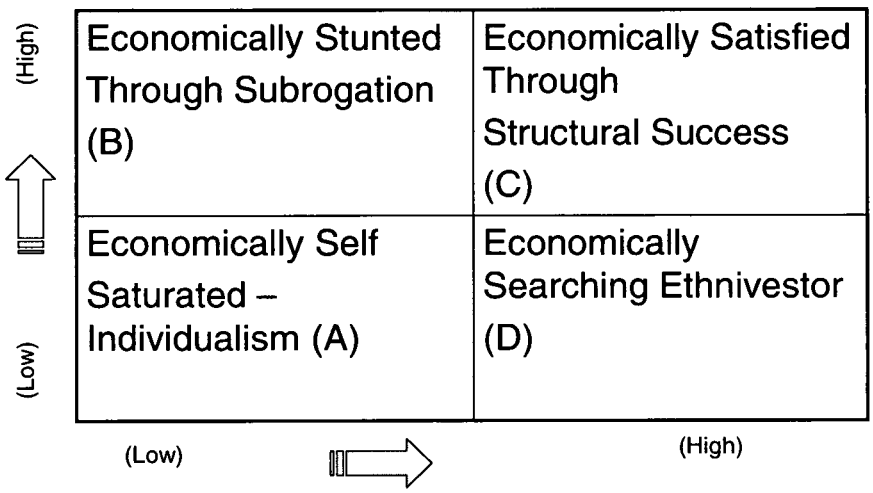
90. Douglas, *supra* note 61, at 2.

91. The Douglas model used generic terms as part of the notion that the theory is applicable to innumerable circumstances. *Id.* at 4–5. She termed the E.I.I. influence as a "Grid," and the Ethnivestor Group as "Group." *Id.* at 4. Douglas asserts that this grid/group theory "predicts or explains which intellectual strategies are useful for survival in a particular pattern of social relations." *Id.* at 7. As applied to this publication, the social patterns for NMTC investors and the intellectual strategies sought to be explained are for those investors with allegiance to the NMTC purpose of assisting the low income residents of urban America.




1. Group A: The Economically Self Saturated

Investor Group A, at the bottom left corner, represents those with the least amount of influence from any group dynamic, be it external regulators (low vertically in the grid) or a common internal ethnic group influence (horizontally low at the lower left of the grid). Accordingly, Group A is highly individualistic, being without a significant influence from any group. They are less inclined to follow the group perspective and

prefer to "do their own thing." They are "saturated" by their individualistic goals, or simply put "self saturated." There is little room left to absorb the social entrepreneurial spirit to sacrifice profits for people. They are less likely to donate significantly to the NAACP or similar entities unless a corresponding personal benefit (return on investment) appears likely. Similarly, these persons are less likely to make personal sacrifices for, and would therefore have less tolerance for the working class masses as employees in a small business under a NMTC project. Saliently, this category of investor is least likely to have the Weber-modeled self-help ethnic group solidarity for entrepreneurship in response to a hostile societal host. That self-help model brought the most successful periods of entrepreneurial success by African Americans in this country. For these reasons, Group A persons among the African American middle class do not meet the Ethnivestor criteria and are not the ideal candidates for the transactional entities on NMTC projects.[92]

### 2. Group B: The Economically Stunted Through Subrogation

Group B from the African American middle class has high controls from external sources, (vertically high in the grid) but minimal influence from the ethnically inspired self-help group (horizontally low—i.e. on the left of the grid). What prevents Group B from investing in Properly Purposed Projects is some source external to the investor that has a high level of influence over investment decisions. For example, a career military person may be so ensconced in the culture of military thinking that his only investment comfort is from whatever is available through the federal government's Department of Defense. There is an ability to invest, but an inability or unwillingness to go beyond what the external regulators proscribe.

A more blurred line of demarcation, and thus more deserving area of discussion, is where the external and internal influences are mixed. There have been external influences such as financial parasites or even

92. The parties to the NMTC transaction are the CDE, the QCB, and the investor. I.R.C. § 45D(c)(1)(A) (West 2006). The CDE is the statutorily defined "community development entity". *Id.* That entity is certified by the federal government's CDFI as described *supra*, at note 4. The CDE receives an equity investment from the taxpayer investor, and then distributes the investment to the qualified small business within the low income community. I.R.C. § 45D(a)(1) (West 2006). The QCB refers to the statutory term: "qualified active low-income community business." I.R.C. § 45D(d)(2)(A) (West 2006). This is the small business from within the low income community that receives a "qualified low-income community investment," including capital, equity or loans from the CDE. I.R.C. § 45D(d)(1)(A) (West 2006). The investor is the taxpayer that provides an equity investment into the NMTC program, for use by the CDE, who in turn provides the investment to the QCB. I.R.C. § 45D(a)(1) (West 2006). The investor is also the party that receives the tax credit. *Id.* This Article asserts that it is past time for more ethnically-inspired taxpayers to become tax credit investors under this program.

legitimate financial firms that have led to oppressive debt obligations on African American investors.[93] Once the oppression is internalized (i.e. a secondary self subrogation), the debt leads to such a level of apprehension and discomfort that they become gun-shy and fail to invest in Properly Purposed Projects. This author maintains that inexperience or past financial failures are causes of that stunted investment perspective in conjunction with the lack of ethnic influence.

For example, the apprehensiveness about investing in securities has been tied to several factors, including less exposure to capital markets, inexperience, and less disposable income which results in a more risk averse investment strategy.[94] More particularly, African Americans are among several ethnic groups who have been the target of "affinity fraud" schemes, where crafty sales pitches of nefarious wrongdoers consciously target ethnic groups that lack investment experience and appeal to their cultural values and beliefs.[95] As a result, the Securities and Exchange Commission has pursued prosecutions for millions of dollars scammed.[96] These scams account for more than $2 billion in losses over a recent three year period.[97] African Americans, among others, also have fallen prey to "Ponzi" schemes which promise investors high rates of return, only to find that the funds were used to simply pay earlier investors.[98] Subprime lending has also contributed to this investment malaise. Upper and middle income African Americans are twice as likely as low-income Caucasians to turn to subprime refinancings in the real estate market.[99] The lack of investing

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93. Isaac C. Hunt, *A Message on Investing*, 42 How. L.J. 387 (1999). This Article contends that those causes for apprehension also affect the investment risk analysis for other investments such as real estate. See *supra*, Part IIA.

94. Hunt, *supra* note 93, at 388.

95. Lisa M. Fairfax, *The Thin Line Between Love and Hate: Why Affinity-Based Securities and Investment Fraud Constitutes A Hate Crime*, 36 U.C. Davis L. Rev. 1073, 1074 (2003) [hereinafter Fairfax, *Thin Line*].

96. Lisa M. Fairfax, *"With Friends Like These . . ." Toward a More Efficacious Response to Affinity-Based Securities and Investment Fraud*, 36 GA. L. Rev. 63, 74 (2001) [hereinafter Fairfax, *"With Friends Like These"*]. Fairfax notes that the SEC obtained a $4 million disgorgement order against a schemer who targeted almost two thousand African American investors (The "Zurich scheme"). *Id.* at 74. A similar action was brought against Hispanics who fraudulently raised $1.5 million from over 200 members of the Houston Hispanic community. *Id.* at 74–75. Immigrants from the Dominican Republic, people of Middle Eastern descent and German speaking Europeans were similarly targeted. *Id.* at 75. *See also* Hunt, *supra* note 93, at 389 (citing Liz Skinner, *Affinity Fraud Scams Increasing*, Hous. Chron., Apr. 5, 1998, at 2.)

97. Fairfax, *Thin Line*, *supra* note 95, at 1086.

98. Hunt, *supra* note 93, at 389.

99. Baher Azmy, *Squaring the Predatory Lending Circle: A Case for States as Laboratories of Experimentation*, 57 Fla. L. Rev. 295, 328–29 (2005). There is a disproportionate amount of subprime lending in African American communities, evidenced by a HUD analysis that over half of all mortgages in those communities were subprine, leaving a Black borrower five times more likely than white Americans to receive such a disadvantageous loan. *Id.*

acumen has also left many African American middle class uncomfortable with their ability to manage debt.[100] Similarly, a significant part of the African American middle class has income, but has yet to invest. Despite the collective $671 billion in annual earnings, and the 100,000-plus African Americans that make over $200,000 per year, much is squandered in consumer spending.[101] The 2002 median wealth for black households was $5,988 per year, which is "paltry" since it includes homes, retirements, and investment portfolios.[102] Some 30% of African Americans earning $100,000 annually have retirement savings of below $5,000.[103] The first comprehensive estimate of African American stock ownership revealed that of the net wealth accumulated by African Americans, only .09 percent was in corporate stocks.[104] These figures suggest that many African Americans may currently fall into Group B investors and have not reached the investment maturity well suited for a NMTC project, though sufficient income exists. Such investors, already reeling from a history of bad investments or otherwise uncomfortable with investing, are likely to perceive a Properly Purposed Project as a high risk and view it with great suspicion. For some, those prior failures may be so internalized that the fear of failure stunts any future investment activity that may be considered risky. The result is that the actor can become unduly passive, dooming himself to inaction.[105]

This "what's the use?" attitude has been empirically shown in university student testing where three groups were subjected to two tests.[106] The first test concerned the ability to turn off loud noises.[107] One group could control the noise through a lever, another group could not control the noise at all, and a third group had no noise at all.[108] The second test was to place them in settings where a simple act could eliminate the

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100. T. John Simons, *Even Amid Boom Times, Some Insecurities Die Hard – Black Middle Class Gains Ground, But Still Finds Its Situation Shaky*, WALL ST. J., Dec. 10, 1998, at A10.

101. Keith Reed, *State of Black America, Part Two: Our Financial Insecurity*, Jan. 13, 2005, http://www.blackamericaweb.com/site.aspx/bawnews/sobapart2.

102. *Id.*

103. *See* Young, *supra* note 52.

104. Andrew F. Brimmer, *Income, Wealth, and Investment Behavior in the Black Community*, 78 AM. ECON. REV. (PAPERS & PRO.) 2, 154 (1998). This is not to say that African Americans are doomed to investment failure. There are numerous encouraging signs, including the fact that African Americans are making more money than ever before and overall earning power is rising. *See* Hunt, *supra* note 93, at 390.

105. *See* George G. Triantis, *Debt Financing and Motivation*, 31 U. RICH. L. REV. 1323, 1337 (1997) (citing CHRISTOPHER PETERSON ET AL., LEARNED HELPLESSNESS: A THEORY FOR THE AGE OF PERSONAL CONTROL 228–29 (1993)); Lyn Y. Abramson et al., *Learned Helplessness in Humans: Critique and Reformulation*, 87 J. ABNORMAL PSYCHOL. 49, (1978).

106. Abramson, *supra* note 105.

107. *Id.*

108. *Id.*

noise.[109] The group that had the inability to control the noise at all in the first test was the most passive in the second test, even though it could have very easily accomplished the task.[110] Similarly applied to this Article, bad investment experiences or an otherwise skittish investment perspective can lead to internal doubt, which in turn leads to a lack of effort to meet the demands of the situation. This leads an individual to believe that he cannot control the circumstances and he then unduly generalizes that failure to new situations. The NMTC opportunity would be one such new situation. The profile of the Group B investor is one already disconnected from the ethnic common group, and therefore unlikely to heed the call for entrepreneurial spirit for the cause of the ethnic enclave. This investor type wallows in a pity party and self loathing, stunted from investing in such Properly Purposed Projects. Hence, Group B investors would not meet the Ethnivestor criteria.

3. Group C: The Economically Satisfied Through Structural Success

This group is identified as having high external regulators (vertically high in the grid), and high internal ethnicity influence (horizontally far to the right). The group is more likely than Group A or Group B to meet Ethnivestor criteria because of a higher affinity with the ethnic group influence. However, the group is less than ideal for Ethnivestor status because its investment goals have already been satisfied. Accordingly, they no longer have an appetite for additional investment, at least of the type to be found in Properly Purposed Projects under the NMTC program. To illustrate the typology, this group may include those who have already provided equity capital to Properly Purposed Projects in target communities. A Group C investor may have already established and funded endowments for that community.

The group could also include the corporate executive that has the house, automobile, and luxuries of choice, and has contributed significantly to both the NAACP *and* the country club. By way of example only, there are a few African American CEOs and approximately 275 senior executives of Fortune 500 companies.[111] And, as previously noted, over 100,000 African Americans earn more than $200,000 annually. Apart from possibly a few high cost of living cities, for such folks, the living is easy financially speaking. These are well healed people by any standard. Some

109. *Id.*

110. *See* Triantis, *supra* note 105, at 1337 (citing D.S. Hiroto, *Locus of control and Learned Helplessness*, 102 J. EXPERIMENTAL PSYCHOL. 187, 187–93 (1974) (defining the characteristics of learned helplessness)). *See also id.* at 1336 (citing Edwin A. Locke & Gary P. Latham, *Work Motivation: The High Performance Cycle*, *in* WORK MOTIVATION 3 (U Kleinbeck, et al. eds. 1990)).

111. Cora Daniels, *Most Powerful Black Executives*, FORTUNE, July 22, 2002, http://money.cnn.com/magazines/fortune_archives/2002/07/22/326294/index.htm.

of them may be satisfied just where they are, enjoying a peaceful relatively risk free existence after earning every penny and investing consistent with their social mission along the way.

So while Group B is unable to invest, and Group A is unwilling to invest, this group is ethnically influenced, but has concluded that its ethnically inspired investment mission has been accomplished.[112]

### 4. Group D: The Economically Searching Ethnivestor

This group is the most likely NMTC Ethnivestor because it has individuals with the highest level of motivation to invest based on ethnic solidarity akin to the Middlemen from prior generations (horizontally high on the far right of the grid), yet the lowest interference or dilution of that motivation by external regulators and influences (vertically low at the far left of the grid). Thus, corporate or governmental constraints, or even such traditional investment vehicles that abhor high risk ventures, would not likely stunt the potential ethnically-inspired investment.

If the investor linked his investment strategy solely to individualism, the greater good of the ethnic enclave would not induce the investment. He would be "economically self saturated." If the investor was overwrought by fear of failure, or the investing constraints of traditional corporate, governmental or financial institution culture, he would not likely utilize such a transformative investment strategy. The investor would be "economically stunted." If the investor had the ethnic identification to invest, but had already done enough after externally fulfilling experiences, the further investment into an ethnic enclave economy would not occur because it was already made. He would be "economically satisfied."

A high level of ethnic consciousness should also bring a higher sensitivity to current disparities that have been ineffectively addressed through status quo techniques. Group D is therefore more likely to still be searching for aggressive and innovative methods to address those issues. It may take an "audacious" approach in the mold of the Bill and Melinda Gates Foundation to embrace social entrepreneurship in the urban core. This is the group that may incorporate the lessons of ethnic enclave investing in the tradition of the Weber theory over 70 years ago. This group may be best suited to form a new version of credit associations and utilize small businesses to nurture employment for the underemployed African American males. Saliently, it may embrace rather than marginalize the ethnic enclave economy. The reason, simply put, is that this group has an investment influence common to all those techniques, the ethnically-inspired social entrepreneurship.

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112. No empirical studies have been conducted on this group dynamic. Future ethnographic research could provide a testing of the theory, as will be discussed below.

## III. APPLICATION OF ECONOMIC PRINCIPLES

Within the general rubric of law and economics, two camps are at theoretical war. Philosophical pundits in one corner are known as neo-classical economists with a fundamental premise that each *individual* will conform his or her behavior to make rational choices to maximize whatever causes satisfaction, i.e. self interest.[113]

Importantly, the search for satisfaction is not necessarily always economic. It is a function of utility, and how one attempts to increase it through behavior that achieves a goal of high value. So one may maximize her utility if she chooses to pay a lesser price for ground chuck in the face of price increases for the steak previously preferred. Behavior was adjusted to meet a higher level of satisfaction – the actor's perception that it is better to buy a slightly lesser grade of beef for a better price. This "self interest" is not only the negative connotation of selfishness. It could include a mix of personal happiness and pleasure. In the above example, the self interest in the ground beef purchase could have also been motivated by remembering that her spouse prefers ground chuck for the dish that was going to be prepared. The satisfaction is therefore more precisely termed by the neo-classical economists as "utility" to avoid broader commingled concepts of selfishness and self interest.[114]

From that premise, three economic principles are generated: (1) there is an "inverse relation between price charged [value of an item] and quantity demanded (the Law of Demand)";[115] (2) for denial of a resource, an opportunity cost is incurred, which has consequences on wealth of the individual and society;[116] and (3) "resources tend to gravitate toward their most valuable uses" if the open market is allowed to operate without

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113. *See* RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW, 3–5 (6th ed., Aspen Publishers, Inc. 2003). *See also* GARY S. BECKER, THE ECONOMIC APPROACH TO HUMAN BEHAVIOR 6–11 (1976).

114. POSNER, *supra* note 113, at 3–5.

115. *Id.* at 4.

116. *Id.* at 6. The opportunity cost is a benefit forgone by employing a resource in a manner that denies its use. *Id.* For example, one who attends college for four years has forgone the money he could have made as an employee over that period. Likewise, a homemaker who could otherwise be employed outside the home has incurred an opportunity cost for the value of her labor, though no pecuniary equivalent is established. *Id.* In economist terms, the type of "cost" can vary. There are "sunk" costs, which refer to resource expenditures for past values (e.g., throwing "good money after a bad idea"), and "forward" costs, where a rational actor is attempting to maximize utility and the resources are expended to bring satisfaction in the future. *See id.* at 7. These forward costs are advocated by the neo-classical economists. *See, e.g., id.* There are "social cost[s]," which "diminish[] the wealth of society," and "private cost[s]," which instead "rearrange[] that wealth." *Id.* at 6. Presumably, resources expended that decrease incentives to work are social costs diminishing wealth of the society. In contrast, when the buyer of a residence receives property and the seller gains money this is a private cost because it rearranges resources rather than generating a loss of resources.

undue interference from the government.[117] That is to say, a negotiated price between two individuals without undue pressures from external sources such as government price fixing will achieve a more valuable output through maximizing the self interest of the buyer. The value is the price paid by the buyer who presumably saw a value greater than the seller's economic cost.[118] Under this neo-classical economic theory, efficiency refers to the allocation of resources to maximize value or wealth.[119] As this Article will discuss particularly in the Ethnivestor analysis, when culturally compatible individuals employ these principles in the marketplace, they may lead to an overall greater "efficiency" than a gentrifier model for tax credits.

In the other corner of legal economic theorists are groups that focus not so much on individual behaviors as on group dynamics that impact a greater goal of the society—curing an injustice.[120] One such group is the "environmental justice" movement.[121] In their view, an allocation of resources by maximizing an individual's satisfaction and utility through pure market forces is "simply inapplicable" where the goal is to achieve justice because "land use . . . is not an unencumbered market" where people are free to choose their desired outcomes.[122] According to these theorists, social justice is the important goal, and governmental intervention may be required to achieve a more equal distribution of resources (i.e., distributive justice).[123] As applied in the land use context, these pundits assert that a disproportionately high number of industrial waste plants are placed in low income communities of racial minorities throughout the United States, and pure market forces does not cure the injustice.[124] Rather, governmental intervention may be required to force corporate decision makers to "do the right thing" and make a more equal reallocation of re-

117. *Id.* at 9.

118. *Id.* at 9–10.

119. *Id.* at 11.

120. *See* Alice Kaswan, *Distributive Justice and the Environment*, 81 N.C. L. REV. 1031, 1035 (2003).

121. *Id.*

122. *Id.* at 1081–82.

123. *Id.* at 1036. By way of example, one Camden, New Jersey neighborhood became the site for various industrial facilities. Those facilities include plants for sewage treatment, trash conversions, cogeneration, and two plants listed as superfund sites with potentially large releases of hazardous substances. Again, these facilities are all within one neighborhood. *Id.* at 1034. "Ninety-one percent of the residents. . . are persons of color. . ." are poor, and "suffer from a disproportionately high rate of asthma and other respiratory ailments." *Id.* at 1033 (quoting S. Camden in Action v. N.J. Dep't of Envtl. Prot., 145 F. Supp. 2d 446, 451 (D.N.J.), *rev'd*, 274 F.3d 771 (3d Cir. 2001), *cert denied*, 122 S. Ct. 2621 (2002)). It is a pattern repeated across the country. *Id.* at 1034.

124. *See id.* at 1035.

sources (i.e., more fairly distribute the waste plants so the adverse health effects do not fall disproportionately on the poor).[125]

Similarly, advocates of critical race theory embrace a discourse on the effect of discrimination on groups of America's citizenry and criticize neo-classical economics as "methodological individualism [at] fundamental tension with the concept of race, intrinsically a group concept."[126] These theorists consider it a fatal flaw for neo-classical economists to ignore the possibility that victims of discrimination could have psychic losses as part of the opportunity costs analysis and to likewise ignore the transactional costs for racial discrimination in commercial transactions.[127]

What appears common to those adversaries of neo-classical economics is their prioritization of a social humanistic goal through an analysis of how *groups* impact other groups rather than focusing on the science of individual behaviors. One scholar characterized neo-classical law and economists as those who "seek to make law appear more, rather than less, scientific and thus avoid references to the humanities."[128] Indeed, as a prominent theorist of neo-classical economics, Judge Richard A. Posner boldly admits that the theories advocated are an abstraction, "[but] abstraction is the essence of scientific inquiry, and *economics aspires to be scientific.*"[129] The counterclaim is that "[l]aw is not, however, a natural science. Even though references to the natural and social sciences can be helpful, law involves human practices and experiences that are not fully explainable or understandable in scientific terms."[130] For the law to be effective, it must address human need and fairness beyond profit motives.[131]

The Ethnivestor model and tax policy implications are a blend of both worlds. On the one hand the Ethnivestor model is designed to prioritize a social goal—revitalization of urban core America to primarily benefit the low income residents without increasingly marginalizing them. Yet the means of accomplishing that goal includes the infusion of neo-classical principles of opportunity cost and increasing market based

125. In the land use debate, one scholar was accused of using neo-classical principles to argue that disparities are not necessarily unjust, since a community could assert its preferences and "what might be undesirable to one community might be desirable to another." *Id.* at 1038. The Kaswan response was that the free market based model does not solve the problem of inequitable distribution of resources; nor is established public policy likely to solve the problem. *See id.* at 1038–39.

126. Robert E. Suggs, *Poisoning the Well: Law & Economics and Racial Inequality*, 57 HASTINGS L.J. 255, 259 (2005).

127. *See* Robert E. Suggs, *Racial Discrimination in Business Transactions*, 42 HASTINGS L.J. 1257, 1284–87 (1991).

128. Robin Paul Malloy, *Framing the Market: Representations of Meaning and Value in Law, Markets, and Culture*, 51 BUFF. L. REV. 1, 17 (2003).

129. POSNER, *supra* note 113, at 17.

130. Malloy, *supra* note 128, at 17–18.

131. *Id.*

behavior models so that over time the self-help ethnic entrepreneurship (market based) diminishes the need for public funding for this purpose.

The Ethnivestor model has an implicit premise that a governmental incentive subsidy alone shall not revitalize urban America in a way that maximizes the wealth of underutilized resources. Neither can we depend on gentrified projects to do for that group what it may do for itself. Those underutilized resources are both a segment of the African American middle class (Ethnivestors) and the urban core residents that are otherwise being marginalized by gentrified projects. By incorporating an Ethnivestor blended motivation of philanthropy and profit (social entrepreneurship), African American resources are made more productive, wealth is increased, and through the small business concentrations and school of entrepreneurship concepts, the resources of low income core residents are enhanced. The desired result is a more efficient market within the ethnic enclave.[132]

To explore the Ethnivestor model in economic terms we return to two important concepts: utility and efficiency.

### A. *Utility*

Under traditional neo-classical configuration, "utility" refers to "the value of an uncertain cost or benefit as distinct from a certain one" and satisfaction garnered from the behavior.[133] The Posner utility configuration is also expansive enough to incorporate the concept of group.[134] The label used is "utilitarianism," which is aggregating utility across persons, treating them as "cells in the overall social organism rather than as individuals."[135] As discussed below, the Ethnivestor and the gentrifier investor have a dif-

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132. Arguably, if purely market forces were in operation without governmental regulation or incentives, the Ethnivestor should come to the aid of the community with which he or she has the greatest cultural connectivity. The issue of whether a pure market based scheme to revitalize the urban community is superior to a federal program is a fight for another day. Since Congress has provided such an incentive, this author considers it more valuable to propose a framework that combines private forces with the reality of the NMTC incentive.

133. POSNER, *supra* note 113, at 10. Two components to utility are inextricably wed to risk and demonstrated by the classic Posner illustration of a person having a choice between $1 million outright and a 10% chance of receiving $10 million. *Id.* One form of utility is a measure of one's appetite for risk to determine what that person values most. *See id.* at 10–11. Does he take a low risk ($1 million) or does he increase the risk to get the chance to achieve the greater reward? The risk averse person would take the $1 million. *Id.* at 10. This is the value or expected benefit component of utility because the person values the $1 million now more than the increased opportunity later. *Id.* The second concept of utility is philosophical, meaning an approximation of happiness and satisfaction. *Id.* at 11.

134. *Id.* at 12.

135. *Id.*

ferent sense of utility, both in terms how they define value/satisfaction, and how they view utilitarianism in their investment decision making.

The Posner principle of value as a component of utility is that you value consistent with what you are willing to risk.[136] Importantly, there is no prescription that one must value pure pecuniary profit to the exclusion of all other motives.[137] Therefore one can still be motivated by non-financial purposes even if it makes the investment financially risky. In the Ethnivestor context, it could easily be perceived as a lower pecuniary risk to build a mixed use condominium unit with restaurants and high end units. Value is conceived through the buyers—gentrifiers who could afford to pay at a price beyond the developer's cost of producing the resource. It would be more risky to invest in a needs-inspired small business (Properly Purposed Projects) that assist primarily the target poor people within the community. For an Ethnivestor who values the higher risk for the greater good of the ethnic enclave, the value and satisfaction components of utility are found by investing in such Properly Purposed Projects. The social entrepreneurial motivation, though utilitarian in nature is nonetheless his "value" and utility.[138]

Conversely the non-Ethnivestor (termed gentrifier investor) would most likely invest, if at all, based on maximizing a financial or pecuniary return on that investment. The gentrifier investor[139] would have a different utility—maximizing profit—because that is what he or she values. The uncertain commodity desired by the gentrifier investor is increased wealth from a new market—the low income community. The certain item used for comparison is whatever other investment he could have made in an older market.

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136. *See supra* note 133 and accompanying text (discussing Posner's definition of utility).

137. POSNER, *supra* note 113, at 11–12.

138. In the Posner hypothetical of the person with the choice of $1 million now or 10% of $10 million, the person taking the $1 million was termed more "risk averse." *Id.* at 10. If, say, the interest rate he received compensated him for the higher risk, where his total return was greater than if he merely invested the $1 million on receipt, the risk averse choice would not "maximize" his *pecuniary* self interest. The important concept is that as long as his concept of value was to be risk adverse he maximized his self interest because he essentially defined self interest consistent with that value. Thus, simply making the most money possible is not always value and thus is not always the definition of utility. In the NMTC Ethnivestor context, the Mall of Needs type of investments may not generate a maximum financial return, but that is acceptable if it fits within his concept of value to incorporate non-pecuniary goals like revitalization of the ethnic enclave and its core citizenry. *See id.* at 10–11.

139. The gentrifier investor includes those of the same mind who own the CDE or the QCB.

### B. *Efficiency*

Another component of utility is diminishing marginal utility.[140] The concept is that a commodity means less to someone who already has a lot of it, e.g. a second million dollars to a millionaire is not as satisfying as the first.[141] In economic terminology, those who already have attained utility (value and satisfaction) from a certain item will likely attribute less value to getting more of the same.[142] Thus, the utility diminishes as he attains more of same of whatever he had.[143] There is also a reciprocal aspect in that while utility diminishes for one party of a voluntary transaction, there may be a corresponding increase in utility for the other party to the transaction. Simplistically stated by example, "[a] loss of a dollar hurts the millionaire less than the gain of a dollar pleases the pauper."[144] In the Ethnivestor context, I submit that the Ethnivestor will retain more utility when investing in the ethnic enclaves than the gentrifier investor if the NMTC program prioritizes Congressional goals of helping those in greatest need in the target community. An Ethnivestor who invests in part to help those target residents should have a correspondingly higher amount of satisfaction and value because it is tied to betterments of humanity, not just pecuniary rewards. If the Properly Purposed Project were mandated under the program, the Gentrifier investor's satisfaction and

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140. POSNER, *supra* note 113, at 10–11.

141. *Id.* at 11.

142. *Id.* at 10.

143. *Id.*

144. *Id.* at 470. Posner is quick to caution that this does not mean redistributing substantial wealth from higher income people to lower income people will increase total utility. *Id.* Posner's controversial assumption is that "people who work hard to make money and succeed in making it are, on average, those who value money the most, having given up other things such as leisure to get it." *Id.* Posner cites no empirical proofs for that assumption. It could just as easily be that those who have substantial wealth have it because of inheritance or because they were provided greater opportunities to make money from the labor of others. If a partner in a law firm bills out his own labor at $300 an hour, he could have gross revenues of $2,400 for an 8 hour work day. But if he also derives 50% of the billable time for three associates in his office who each bill at $200 per hour for 8 hours that day, his take for the day is an additional $2,400. Thus he has doubled his income, not because he worked harder, but because he was in a position to profit from the labor of others – others who may have even worked harder, and been just as talented or more, but were not yet blessed with the leveraging opportunity. The Posner model fails to recognize the effect to the value of privilege, class, legacy, or inheritance, and instead posits only the possibility that the difference is due to hard work and personal sacrifice as an "opportunity cost" of the wealthy. *See id.* The opportunity costs would be far greater for an associate who deserved to be partner but was denied because she was a woman, or because he was African American, or gay. This, again, reinforces the notion that neoclassical economics is not designed to solve social justice issues because it fails to explain or measure the opportunity costs of those who have been victims of such things as discrimination, legacy, and inheritance.

value would diminish more quickly because the financial returns would be more difficult to achieve.

Under neo-classical theory there is an important correlation between "utility" and "efficiency." Efficiency is the allocation of resources in which utility and value is maximized.[145] If indeed utility and value is not confined to pecuniary notions of wealth, then the non-pecuniary value is also part of increased efficiency. It follows that if one invests consistent with those values, utility should increase, or be reduced at a lesser rate, if the purposes of that investment are fulfilled. In the NMTC context, if Properly Purposed Projects are the only statutorily authorized ventures, the Ethnivestor is likely to achieve greater satisfaction and value from the investment because his investment behavior is aligned with the project's authorized purposes under the NMTC program. The greater the value and satisfaction, the greater the utility and value. That allocation of a resource, the investment in the Properly Purposed Project, is therefore more likely to bring greater efficiency in an economic sense than a gentrifier investment in a Problematic Purposed Project that falls outside permitted project goals. A gentrifier investor who seeks primarily individual profit would find more frustration than satisfaction if he (1) suffers in financial returns, (2) has to remain invested in the target community beyond the tax credit haven, or (3) is unwilling to hire target residents or incorporate target community ideas of proper projects, when he is really only interested in profitability. The lesser satisfaction and value is a lesser utility. The lesser utility is a lesser efficiency.

To buttress the point, I return to the studies of the Cuban ethnic enclaves in the early 1990s. Researchers concluded that when those of Cuban descent established locational clusters of ethnic enterprises, hired people from within the ethnic enclave, pooled their savings in rotating credit associations, and developed sympathetic suppliers and customer bases, a vertical and horizontal integration occurred (i.e. an ethnic enclave economy) that became "hyperefficient."[146] Part of the key findings was

145. POSNER, *supra* note 113, at 11. Again, Posner prefers to shy away from applying efficiency to doing good for a society and groups within it. In his words, efficiency "has limitations as an ethical criterion of social decision making." *Id.* at 11–12. The relevant question is: "whose limitations?" Why not modify an economic theory to have as its goal the curing of a social ill rather than an explanation of an individual's self interest? If that creates a "humanitarian" aspect, so be it, since it is as humans as a group that we hope to cope with our earthly existence. Isn't that the higher priority of a civilized society — peaceful coexistence where all people are treated fairly? I would call economic theories that incorporate such motivations "econo-realism." If instead the primary purpose of an economic theory is the explanation, prediction, and intervention of principles that only promote an individual's self interest, does that theory advance or retard our movement toward becoming a more civilized society?

146. HALTER, *supra* note 9, at 29–30.

that these businesses employ co-ethnic workers to "serve their own ethnic market and/or the general population."[147]

The ideal Ethnivestor is an African American investor with a combination of economic resources and an ethnic sense of solidarity. This Ethnivestor can utilize the gaming strategies of successful immigrants and African Americans prior to the integration era, when the self-help entrepreneurship was forced by externalities of discrimination or economic exclusion. Whether this newly configured African American group of Ethnivestors can become similarly motivated by choice, not by force, remains to be seen. There may be scholars who would dispute the premise that cultural connectivity can lead to this type of investment behavior. I submit that it is overbroad to apply such an assumption to all African Americans in the United States. I have described the narrowly drawn characteristics that would likely be required for such a group to come forward. They could not be so stunted by prior miscalculations that they are too fearful to invest. Nor could they be so satisfied by their prior successes that they no longer hunger for the investment goals. Nor could they be so saturated with individualism and self-interest that they have no behavioral motivation to help those less fortunate in the ethnic enclave. In short, the "Weber Theory" of culturally-based entrepreneurship should apply to African Americans, just as it has applied to other groups. For an Ethnivestor, economic efficiency increases with the combination of the following benefits (1) financial rewards as an investor (2) an increased ability to assist the community in employment, empowerment, and long term quality of life, and (3) achieving those goals without marginalizing those core residents. The NMTC scheme currently allows dilution of that purpose through gentrifier investment practices.

One could assert that for such a model to be viable there must be an analysis of opportunity costs, and that true efficiency cannot occur if the forgone costs exceed the benefit.[148] The Ethnivestor pays a financial price when investing in a Properly Purposed Project such as a health clinic required because of the disproportionate need for sickle cell or kidney dialysis treatment. Assume the same money could have been invested in some other manner with a greater financial return. If monetary return was what the Ethnivestor primarily valued there would be an opportunity cost to him because of the greater return forgone. But since the value, satisfaction, and therefore utility includes the social aspects of the entrepreneurship there is a minimal sense of loss, if any. Therefore, there is no material social loss to society, but instead a private rearrangement of resources from the Ethnivestor to the target resident within the ethnic

147. *Id.* at 27–28.

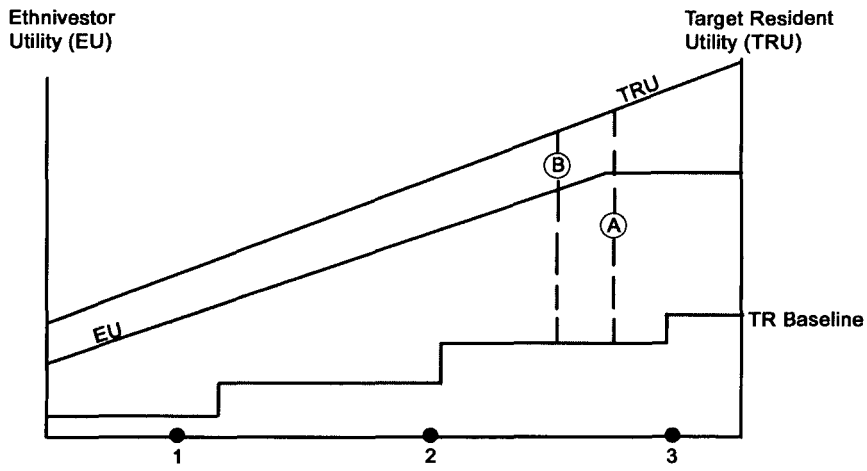
148. Recall that the opportunity cost was one of three principles that springs from the neo-classical bedrock assumption that a rational actor conforms his behavior to maximize his self interests, and that a social cost diminishes wealth in society, while a private cost merely rearranges that wealth. POSNER, *supra* note 113, at 6.

enclave. So while validating the general principle of diminishing marginal utility, the Ethnivestor has less of it because his reasons for investing match the results of a Properly Purposed Project.

### *C. Application of Utility and Efficiency*

The charts below graphically illustrate how efficiencies vary between the Ethnivestor and the gentrifier. Chart A traces utility and efficiency for the Ethnivestor. Chart B traces utility and efficiency for the gentrifier investor. In both charts, the benefits to the target resident (i.e. the low income residents) are measured. The result is that there is more economic utility and efficiency for the Ethnivestor than the gentrifier investor. There is also a greater value and utility for the target resident with Ethnivestor projects than with gentrifier projects.

CHART A




In Chart A, the Ethnivestor utility is measured on the vertical pole on the left of the chart. That utility includes all those Ethnivestor characteristics that motivated the investment behavior, including the desire for increased well being for target residents, despite lesser financial returns to the Ethnivestor. Utility for the target resident[149] who receives the benefit of the Properly Purposed Project is measured on the right vertical pole. That utility incorporates enhanced employment opportunities, greater access to role models, and of course whatever other residual benefits flow from having a Properly Purposed Project.

149. The use of "target resident" here is consistent with the NMTC statutory definition of "target population" found in I.R.C. § 45D(e)(2) (West 2006).

Across the bottom horizontally from left to right is the increase in Properly Purposed Projects. The horizontal line titled EU tracks the increase or decrease in the Ethnivestor utility as each project is built with investor funds. The horizontal line titled TRU tracts the increase or decrease in the target resident utility as each project is built. The horizontal line titled "TR Baseline" is the lower existing utility of the target resident prior to the development of each of the three projects. Since the Ethnivestor's motivations include a blend of financial profit and social well being for the ethnic enclave, the measured increase or decrease in utility as projects are built should also be measured against those variables.

Obviously it is difficult to quantify the extent of intangible benefits. It should be sufficient to employ the neo-classical assumption that the investor is rational in determining what opportunity costs he is willing to forgo, much like someone who pays more for an antique vase than any other bidder in an auction. The value is measured by what he is willing to pay. We assume the total of social benefits and profits forgone are included in his analysis of what to pay. Appraisers have developed methods to separate intangible assets such as copyrights, patents, and accounts receivable from the hard assets of plant and machinery in the price paid for a business. I have every faith that appraisers can formulate models for separating other forms of intangible assets as well. But to satisfy the economists' scientific urges, the conceptual model contains a baseline representing the extent of resident utility existing prior to the enhancement from the Properly Purposed Project. As noted, that baseline is horizontal line B.

Area A represents the total increase in utility for the target resident, i.e. the amount of increased utility from where he was prior to the project compared to where he was after each project. Notice that there should be some increased utility after each project, assuming it provides the benefits contemplated in the needs assessment for the target population as defined by the statute.[150] Area B depicts the Ethnivestor utility, which includes both the extent of value and satisfaction received from seeing increased well being for the target residents and the financial return on the investment. In this graph, the amount of satisfaction the Ethnivestor receives from the social enhancement to the target resident is assumed to be less than the sense of satisfaction received by the target resident. This is based on the reciprocal notion embedded in the concept of diminishing marginal utility that a pauper will value receipt of say a $10,000 dollar job from a well-healed Ethnivestor more than that Ethnivestor will value the increased incremental income and thanksgiving from the pauper. That could obviously be reversed where a wealthy person values his gift most when he sees the joy it brings. That is the essence of philanthropy. For purposes of illustration, however, I posit the circumstance where the combined benefits in utility to the Ethnivestor are less than the utility to

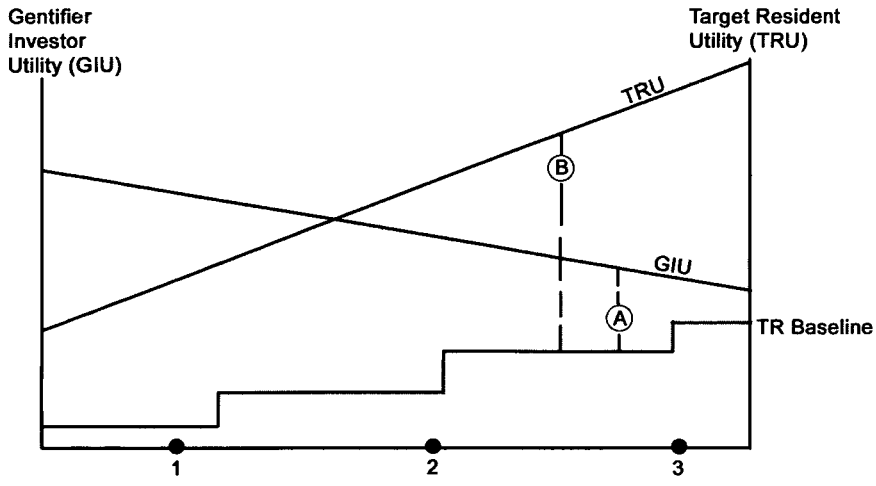
150. *Id.*

the target resident. The point remains the same. As long as the Ethnivestor's total utility is a net plus to himself, (i.e. the investment benefits, both social and financial, exceed the forgone opportunity costs of time, alternate investments, etc) there is increased efficiency.

If the Ethnivestor loses faith in the project or cares less about enhancing the ethnic enclave and its residents, the utility drops. This would be evidenced by selling of the investment because, in the Ethnivestor's formulation, the marginal utility decline reached a critical net loss level. Even in the success model, there is some assumed leveling of utility for the Ethnivestor after the third project. The assumption is that after a certain number of investments, more of the same bring a diminished marginal utility. Yet as long as a substantial part of the value of the investment is viewed as the social entrepreneurial benefit, the investment can continue to be an added efficiency to the enclave and the Ethnivestor.

Chart B represents the tracing of utility and efficiency for the gentrifier investor ("G.I."). The guideposts are the same as for the Ethnivestor in Chart A. However instead of parallel benefits between the G.I. and the target resident, the respective utility to the parties grow further apart over time. The target resident may receive roughly the same sense of satisfaction, though this is highly questionable if the investor does not have a personal commitment to the well being of the target community. Even assuming efficiency equivalence there is a probable loss of utility and efficiency from the G.I. An investor that defines maximization of self interest in purely financial terms and purely for self benefit without a corresponding value for the non-financial benefits to the target resident and ethnic enclave would likely grow increasingly dissatisfied with the investment. That again assumes the NMTC statute and regulations require a Properly Purposed Project designed for long term benefits to the existing target community and residents. Under those circumstances the gentrifier investor is likely to bring less efficiency in an economic sense and greater social costs because utility seepage occurs from the transfer of resources. As to personal utility, he could have invested in some other venture that was not hindered by social returns. The commodity of time and related resource losses are greater than the return.

CHART B




In a more macro view of utility and efficiency, there are opportunity costs that span various entities in a gentrifier project, governmental as well as private. Opportunity costs of gentrified NMTC projects are fundamentally no different than the observed byproducts of other gentrified urban redevelopment programs.[151] Those costs are substantial and have been enumerated in prior studies.[152] There are physical construction costs. This refers to actual construction that was ineffective at meeting resident needs, and thereby precluding construction that would have been better suited.[153] In theory, it is akin to the property appraisal concepts of the failure to build based on the "highest and best use" for the site. Also prominent is the lost time and effort of governmental actors for misguided development projects.[154] The staff time, including the huge resources associated with negotiating with private developers, creating and evaluating feasibility reports, holding public hearings, and then analyzing and publishing materials therefrom are all costs for gentrified projects that fail to primarily meet the needs of the target residents.[155] There are also costs from the nationalization of project types, where the cookie cutter format of office buildings, high-tech developments, and hotel-convention centers complexes have replicated themselves as a matter of policy.[156] That developer's strategy also compounds the error since, in many cases, the construction

151. Benjamin B. Quinones, *Redevelopment Redefined: Revitalizing the Central City with Resident Control*, 27 U. MICH. J.L. REFORM 689, 742–744 (1994).

152. *See id.* at 724–751.

153. *Id.* at 724.

154. *Id.*

155. *Id.* at 742–743.

156. *Id.* at 743.

would have occurred in any event and the subsidies were not needed.[157] The more obvious and devastating personal costs are to the low income residents themselves who suffer the inordinate risk of displacement or marginalization.[158]

Despite attempts to explain behavior in economic terms, the issue should still be raised: does the neo-classical economic theory advocate or reject the use of utilitarian ideals to help achieve social justice? If Posner is the voice box for neo-classical economics, the answer appears to be that achieving social justice is not a goal, only an incidental byproduct in route to finding an individual's self interest.[159] Posner readily admits that societal decisions of what is just and legal do not always hinge on economics, as when we make illegal private forms of discrimination based on race or sex.[160] In his words, "there is more to justice than economics."[161] On that point perhaps all scholars can agree. But Posner's abhorrence for sacrificing oneself for the greater good of a group seems to sidestep the inquiry into the effect, in terms of cost or utility, of discrimination by groups and the effect of overcoming it. This brings into question whether neo-classical economics is truly intent on solving issues of social justice, or whether its goal is to explain and prioritize maximization of individual wealth. In response to his own rhetorical question of how utilitarianism can be defended, Posner states:

> "One answer is that the things that make wealth possible—not only or mainly luxury goods, but leisure, comfort, modern medicine, and opportunities for self-expression and self-realization—are major ingredients of most people's happiness, so that wealth maximization is instrumental to utility maximization. This answer ties efficiency to utilitarianism."[162]

It may be the case that "most people's" happiness is tied to self. But the Ethnivestor model is a narrow class where pecuniary self-sacrifice may be part of the investment motivation in the NMTC program, and the scales of influence tip toward the goal of the greater good.

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157. *Id.* at 744.

158. *Id.* at 750–751.

159. The neo-classical theory at bottom depends on a notion of actors being "rational" with a "disposition to choose," POSNER, *supra* note 113, at 17, for "self interest." *Id.* at 3. Martin Luther King may have had premonitions of assassination, but his choice to continue his cause though it may cost his life was not self interest, but instead self sacrifice. This motivation for self sacrifice is not easily incorporated, and certainly not emphasized as part of the neo-classical economics view. As social justice is entwined with the notion of self sacrifice, at least by its leaders, neo-classical economics does not appear to this author as embracing those concepts.

160. *See id.*

161. *Id.* at 28.

162. *Id.* at 16.

Revitalizing urban America without marginalizing its urban low income residents, I submit, is not just a social goal, but a socioeconomic goal. The former African American mayor of Seattle did not characterize gentrification in his city as inherently racist, but rather as economic.[163] Whether racism is part of the phenomenon is not the focus of this Article. Rather, at issue here is what tax credit policy and private equity model will help solve the problem. The Ethnivestor model is an attempt to assist in achieving that goal, so it is utilitarian in that sense. And as such, it modifies the neo-classical economic design to expand the concept of utility and efficiency to incorporate such a goal. The modification is not entirely inconsistent with the Posner utility model at its root. Posner emphasizes at the outset of his seminal publication that his view of economics is broader than the rubric of inflation, unemployment, and business factors tied to profiteering.[164] Posner admits that the confusion could easily occur.[165] His bedrock assumption is that a person is a "rational maximizer of his self interest."[166] This could lead a reasonable thinker to equate self interest with increased "wealth" in pecuniary terms. To avoid that assumption, Posner says economists prefers to use the more precise term, "utility," to describe a broader concept of "self interest."[167] Utility is broad enough a term to include, as Posner states, "a rational utility maximizer in *all* areas of life, not just in his 'economic affairs'."[168] Posner considers this assumption as "central" to his entire neo-classical design.[169]

Thus, when this Article incorporates into the model the notion that an Ethnivestor's motivation for investment is to assist the ethnic enclave and the target residents even if it does not maximize his individual pecuniary sense of "wealth," it is nonetheless consistent with neo-classical economic theory, with the possible modification that the *goal* may be to help that community beyond merely a means of maximizing self interest. It really becomes almost a semantic issue of how one defines "utility" and "self interest." If those terms include social justice as a goal, then it is entirely consistent with neo-classical economics. If, as I suspect, achieving a socially just result is permitted by neo-classical economists only if it is a means to maximizing self interest and utility, then my theory is a modification of that view. More precisely, an Ethnivestor has a mix of motivations, both philanthropic and profit driven, and that is how he envisions "value" and "satisfaction" for the utility of his investment behavior. Regardless of whether it fits neatly into neo-classical definitions of utility,

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163. Blaine Harden, *In Parts of U.S. Northwest, A Changing Face*, THE WASHINGTON POST, June 19, 2006, at A3.

164. POSNER, *supra* note 113, at 3.

165. *Id.*

166. *Id.* at 4.

167. *Id.* at 3.

168. *Id.* at 4.

169. *See id.*

this Ethnivestor model should be viewed as a viable theoretical construct for increasing private equity funds from a previously under-committed source for a socially just goal. And even if we assume Posner's preferred non-utilitarian model for utility, the Ethnivestor includes in his *individual* investing behavior the notion that the greater good is part of his satisfaction and value.

## IV. APPLICATION OF ETHNIVESTOR MODEL

There are various outcomes that can be envisioned from infusion of the Ethnivestor into the NMTC transactions. The outcomes need to be achievable and measurable as they were for the Bill and Melinda Gates Foundation. The last section of this Article calls for empirical analysis of the model, but the theoretical basis is nonetheless grounded in common sense and prior research, just applied to different circumstances.

### A. *Reduced Marginalization Through Historic Small Business Hiring Practices: Structure of the Credit*

The current regulatory scheme for a general NMTC transaction can be described as follows:

1. The investor[170] must invest a qualified equity investment ("QEI") into a qualified community development entity ("CDE").[171]

2. The CDE must then take the investor's QEI and invest those sums into a low income community project, either directly, or through a qualified community-based organization ("QCB") or other approved entity that serves the low income area.[172]

3. The credit is considered for the period commencing with the date the initial investment was made and each of the 6 anniversary dates thereafter.[173] The credit is 5% for the initial three years, and 6% for the remaining 4 years, equating to a 39% credit over the total of 7 years.[174]

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170. The investor is also termed the "taxpayer" since that person is the recipient of the tax credits.

171. *See* I.R.C. § 45D(a)(1)-(3) (West 2006).

172. 26 C.F.R. § 1.45D-1(d)(1)(i)(2007).

173. I.R.C. § 45D(a)(3)(A)(B) (West 2006).

174. To illustrate the credit, assume an equity investment of $100,000 in year 1. For years 1, 2, and 3, the credit is $5,000 (5% of $100,000) for a total of $15,000. The 6% credit on the same $100,000 investment for the following four years is $6,000 per year for

Procedurally, the program is administered through the Community Development Financial Institutions Fund ("CDFI"). The application process requires a mini-business plan prior to certification of acceptance into the program.[175]

One threshold task prior to examining specific Ethnivestor criteria is to establish a more investment compatible environment under the NMTC program. There appear to be less than five African American owned CDEs among all the Allocatees granted in the several years of the program's existence.[176] One barrier to more African American CDEs is the same barrier that hinders minority entrepreneurship in general—a lack of capital and exposure to capital markets.[177] The current NMTC program has allowed many large scale projects in the range of $100 million and beyond. The majority of them are Problematic Purposed Projects like those described earlier. Without the money for such large scale projects, minority group CDE participation is practically non-existent. Practically all of the Problematic Purposed Projects are among the most

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each of the remaining four years, totaling $24,000. The combined credit is $39,000 ($15,000 plus $24,000).

175. I.R.C. § 45D(f)(2)(A) (West 2006). The procedural steps are summarized below:

> An application requesting an allocation from the total funds available in that round must be presented to the CDFI within the prescribed time period.
>
> The application must detail specifically how the investments of cash ("equity") will flow into a qualified entity which, in turn, will funnel substantially all of those equity investments into a low income community.
>
> The CDFI selects applicants for an allocation based on criteria that gives priority to any entity that either (1) has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, I.R.C. § 45D(f)(2)(A) (West 2006), or (2) intends to make qualified low income community investments in 1 or more businesses where the persons holding the majority equity interests are unrelated to the taxpayer, I.R.C. § 45D(f)(2)(B) (West 2006).
>
> The CDE then has a 5 year period to invest in qualifying low income community investments or be subject to reallocation of those funds to other CDE's.

*See* IRC § 45D (b)(1)(C) (West 2006); *see also* 26 C.F.R. § 1.45D(f)(2)(B)(2007).

176. Two Hundred Thirty Three CDE's have received allocations as of June 29, 2006 according to CDFI announcements on its website at www.cdfifund.gov. The CDFI has published profiles of the CDEs that received awards. Three appear on that list as "minority owned or minority controlled." See the website for current profiles. The 2006 profiles are no longer listed. U.S. DEP. OF THE TREASURY, THE COMMUNITY DEV. FIN. INSTITUTIONS FUND, NEW MARKET TAX CREDIT PROGRAM AWARD PROFILES (2007), http://www.cdfifund.gov/docs/2007/nmtc/NMTCProgramProfiles.pdf.

177. Hunt, *supra* note 93, at 388.

expensive to build, seemingly in large part because the purpose is to satisfy those accustomed to more expensive life styles, the gentrifiers, rather than the basic needs of the low income target population. The types of projects the target community/ethnic enclaves appear to need the most are not the most expensive. Rather, projects designed for non-conventional financing for small business start ups, health care facilities, and affordable housing are among the lower cost projects that are also more properly purposed for the low income residents. If a needs assessment of the statutory "target population" were primary when formulating the project, and part of the prioritized criteria by the CDFI, there are likely to be even smaller sized projects that can accommodate small business capitalization. The smaller projects should open the investment opportunity to those with comparative cultural advantages discussed above. That would be a component to the strategy that might help return these current NMTC target communities to bustling ethnic enclave economies which people like W.E.B. Dubois considered at the very center of the community. Various other attributes of the Ethnivestor common to the self-help heyday would have to exist as well, and will be discussed below.

Since the NMTC funds are public monies designed to assist this disaffected group, a potential NMTC investor in the core NMTC target communities should be cognizant of, and seek to eradicate rather than ignore this marginalization. The Ethnivestor model attempts to incorporate the successful self-help criteria that were historically successful for African American ethnic enclaves and others prior to the Civil Rights focus on integration in the 1960s. That model includes small business formations, hiring within the ethnic business class, and using the business as a training ground to grow entrepreneurial education and experience from within.

As to small business formations, the Ethnivestor's investment motives are aligned with the Weber model of self-help formations in response to hostility from the host society because of the strong ethnic influence on decision making. A lack of access to capital has been a major hurdle to establishment of enterprises among low income communities. The ethnic response historically was to establish an ethnic economy where revolving credit associations formed to provide the capital for the enclave's own businesses. The credit association is a collection of funds that are distributed to one business owner, and upon re-pooling of additional funds, rotated to the next business.[178] Consistent with the Weber model, those

178. HALTER, *supra* note 9, at 12, and 65–66. One of the many fertile Boston studies observed that among Korean and West Indian enclaves the men contributed to the pool, but the women were the bankers who handled and managed the funds. *Id.* at 12.

credit associations were a self-help response to the host society's bureaucratic hurdles imposed by the host society's formal banking system.[179]

The credit association strategy is essentially a finance technique with a modern application. Venture capitalists create pooled funds for investors. One form of entity that has utilized pooled funds is a limited liability limited partnership with a corporate general partner. This type of model is used by one of the few minority firm participants in the NMTC program.[180]

### B. *Increased Co-ethnic Employment*

The Ethnivestor model reduces marginalization by increasing employment among co-ethnics, including the chronically underemployed African American male youth. It should be a point of emphasis that these federal subsidies are attempting to address a crisis in America. By way of illustration, more than half of all core city African American men do not finish high school. Seventy six percent of African American males in Baltimore, Maryland do not graduate from high school.[181] As of 2004, 72% of African American dropouts in their 20's were unemployed, up from 65% in 2000.[182] Incarceration levels are at historic highs and increasing, where by their mid-30's, 6 in 10 of these high school drop outs have spent time in prison.[183] That rate is *four times* higher than that of Black men in South Africa under the apartheid regime.[184]

Leading scholars in ethnic economic research have found that those who are employed in the ethnic economy are more likely than others to become self-employed themselves, and therefore, those small businesses become a self-help de facto "school for future entrepreneurs."[185] Though

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179. *Id.* at 66. Proof of disparate lending practices is evident in the disproportionate predatory lending practices, or simply the failure to loan to minorities who have similar lending credit risks as non-minorities.

180. One of the Round IV allocatees was a limited liability limited partnership with a corporate general partner. A minority firm organized as a limited liability company was part of the LLLP. *See* U.S. DEP. OF THE TREASURY, supra note 176. The profiles now listed are for Round V (2007), while the profiles reviewed for this Article were Round IV (2006) and are no longer listed on the website.

181. Eric Eckholm, *Plight Deepens for Black Men, Studies Warn*, N.Y. TIMES, March 20, 2006, at A1.

182. *Id.* Eckholm was relying on data from a panel of experts at Columbia, Princeton, and Harvard, who opined that the rate of disconnectedness is "far" greater for these African American males than that of white and Hispanic men. *Id.*

183. *Id.*

184. Dash T. Douglas, *A House Divided: The Social and Economic Underdevelopment of America's Inner Cities*, 10 U. FLA. J. L. & PUB. POL'Y 369, 381 (1999) (citing *The Millennium Breach: The American Dilemma, Richer and Poorer* (The Milton S. Eisenhower Found.), July 28, 1998).

185. HALTER, *supra* note 9, at 9.

different ethnic groups have varied patterns, niche business types, "all stem from the initial exposure to the ethnic economy" and serve as "springboards to future rewards, both economic and social . . . [i.e. a "multiplier effect"].[186] This model increases the employment opportunities for those underemployed within the NMTC target population.

The argument can be made that funneling capital into major mainstream projects, rather than funding small businesses, is a better means of creating employment within low income communities. As one study concluded the causal connection between capital investment in large scale projects and job growth among low income residents is "untested and usually unproven."[187] Conversely, there is ample empirical evidence that redevelopment project areas normally become "gentrifying markets" without material increase in the quality of life of the low income residents.[188] Employing that chronically underemployed group realistically requires meeting them where they are in the employment spectrum. It does little good to offer jobs requiring a graduate degree in economics to those who are struggling with high school graduation requirements. It is of greater value to establish the types of businesses where those unemployed youth can be nurtured from those culturally connected role models in their own "school for entrepreneurs" in the tradition of other ethnic enclave economies.

### C. *Reduce Barriers of Entry from Transactional Costs*

One important byproduct of small business Properly Purposed Projects is that they cure existing barriers of entry for Ethnivestors in NMTC projects. Currently, the transactional costs[189] and professional fees for NMTC transactions are problematically high, and in many cases prohibitive of the types of cases that a target community wants and deserves.[190] The costs are high because the transactions are highly complex, since they are attempting to meet gentrification goals (i.e. a substantial return on the investment of Problematic Purposed Projects). Some projects have hundreds of millions of dollars in governmental allocations for projects that

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186. *Id.* at 10.

187. Quinones, *supra* note 151, at 746 (citing ROBERT MIER, SOCIAL JUSTICE AND LOCAL DEVELOPMENT POLICY 34 (Tara S. Mead ed., Sage Publications 1993)).

188. *See id.* at 748.

189. These are professional fees, typically top heavy with billed legal and accounting fees.

190. As noted by one NMTC analyst, "[a]n oft-repeated joke is that the program is a full-employment program for accountants and lawyers. The complexity and expense is in large part a function of the fact that the implementation of the program is in its early stages." P. JEFFERSON ARMISTEAD, PRATT INST. CENTER FOR COMMUNITY AND ENVTL. DEV., NEW MARKETS AND TAX CREDITS: ISSUES AND OPPORTUNITIES 26 (2005), http://www.prattcenter.net/pubs/nmtc-report.pdf.

appear to only marginally relate to the low income residents.[191] If the goals were aligned with the best interests of the target community, absent gentrification goals, the projects would not have to be as expensive. The transactions could be simplified to meet the more basic needs of the target community, and therefore the transactional costs would decrease proportionally.

Secondly, a Properly Purposed Project could thoughtfully consider less complicated entity choices that accommodate the NMTC project goals. As discussed elsewhere in this Article, the credit association version of pooled investments from historic ethnic economies could include a modified venture capital model for the CDE with a corporate general partner. The venture capital model is designed to avoid the high fee predicament. Additionally, the NMTC regulatory scheme is no impediment to this structure. There is no requirement that the NMTC project be a mega-million dollar deal. The criteria used to determine whether an award is granted do not have size or dollar volume requirements. With reduced fees, there are fewer expenses, which permits a higher return from a smaller investment. The smaller investment is more attractive to the ethnic investor who typically does not have access to large pooled funds.

### D. *Long Term Commitment to Target Community*

Another criterion for the Ethnivestor is willingness for long term commitment to the target community beyond the 7 year tax credit. The desire for long term commitment rather than mere short term gain is advocated as criteria for the Ethnivestor because it should provide longer term benefits for the target community, and thus a more qualitative use of the federal subsidy funds. While a NMTC project has tax credits that are spread over 7 years, if the project fails to maintain an enterprise with a permanent economic base, those left after the tax credit exodus are potentially left flailing as they were prior to the NMTC project, representing a failed use of taxpayer dollars to boot. Accordingly, the Ethnivestor model is conceptually not just a tool for current earnings or short term investment, but a platform—a spring board for future generations of those residents to rise, as have other immigrant groups. In essence the model is to have investors with a goal, beyond a short term return on their investment, to grow the target community. The result should aid in the quest to establish current and future generations from within, rather than being marginalized by those from outside. The outside gentrification model has, as a more likely byproduct of small benefits to the target residents, trickled down from the gentrified wealthy who build Problematic Purposed Pro-

191. *See id.* at 12 (describing one illustration of a limited liability company [Advantage Capital Community Development] that received a $110 million allocation, used at least in part for a project to develop fuel cell membrane technology in Honolulu, Hawaii).

jects. The long term commitment should flow from the Ethnivestor's investment motivation to serve the social entrepreneurial mission, to gain the type of solidarity exhibited by African Americans of prior generations.

To facilitate a long term commitment by the Ethnivestor, the type of entity for the CDE and a QCB should be carefully selected. The entities should be flexible enough to increase continuity between entities both during volatile periods within the 7-year credit period, and after the credit period when the entities can continue the business activity. The volatile transactional potential exists because there has only been questionable monitoring of the successes and failures of such ventures.[192] So there is very little empirical evidence from which to establish a best practices guide or roadmap as to the most effective business types under the NMTC scheme. It is like a stock market with no Morningstar, a bond without Moody's. Regarding continued business activity after the 7-year credit haven, the CDE could become an equity owner in the QCB during the 7-year credit period and thereafter. Thus, retaining flexibility and continuity between entities can provide increased opportunities for structuring future relationships between the CDE and QCB, both of which may be well stocked with Ethnivestors during or after the 7-year tax credit period.[193]

When structuring for long term commitments in a volatile or uncertain marketplace, some entity types have advantages over others.[194] LLC statutes generally provide the LLC with a greater ability of the LLC to negotiate and contract the relative liability rights between partners than the more rigid requirements of corporations. For example, there is no need to create special "surplus" accounts for dividends and no special requirement for management by a board of directors or equivalent

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192. Several commentators have observed that very little is known about the success rates of the program as monitoring and accessing performance data is an extreme challenge for the CDFI. *See, e.g.*, Dimitri Pappas, *A New Approach to a Familiar Problem: The New Market Tax Credit*, 10 J. AFFORDABLE HOUSING AND COMMUNITY DEV L. 323, 339–340 (2000–01).

193. *See* 26 C.F.R. § 1.45D-1(d)(6)(ii)(B)(2007); New Markets Tax Credit, 69 Fed. Reg. 77,633 (Dec. 28, 2004). Under specified conditions, the CDE many gain majority control through voting or management rights. *See* 26 C.F.R. § 1.45D-1(d)(6)(ii)(B)(2007); New Markets Tax Credit, 69 Fed. Reg. 77,633 (Dec. 28, 2004).

194. *See* Susan P. Hamill, *The Limited Liability Company: A Catalyst Exposing The Corporate Integration Question*, 95 MICH L REV. 393, 446 (1996). An LLC model is often particularly well suited for CDE and the QCD relationship, including the flexibility of sharing profits, losses, and even partners within the transactions. The QCB may strongly consider forming as a Limited Liability Company ("LLC") in large part because of the need for a mutually managed structure rather than the near autonomous general partner found in partnerships, and the concomitant need for flexible and tax favorable allocations of profits and losses beyond corporate formations. The CDE could similarly consider the LLC as the entity of choice for its flexible self determined management without restrictive statutory regulations, tax advantages, and the ability to infuse several Ethnivestors as passive investor "members."

body.[195] Thus, it is important that an Ethnivestor model be customized so that many African American middle class Ethnivestors can contribute the equity for the Properly Purposed Project based on the needs assessment of that target community.[196]

There is also a regulatory factor supporting the strategic need for a long term commitment to the community and a flexible structure that can be infused into the ethnic enclave economy. Obviously, the plasma of the entire NMTC program is the cash investment. It must be qualified (i.e. become a "QEI) as discussed above. The CDE does not have a perpetual opportunity to invest that QEI into the low income community. A CDE that receives an allocation from the CDFI must issue the investment within 5 years of the execution of its Allocation Agreement or those funds may be taken from the CDE and reallocated by the Treasury.[197] If a CDE does not meet the 5 year requirement, the target low income community loses the benefit of whatever could have occurred positively within those 5 years.

The Ethnivestor model has advantages in that a group with a cultural connectivity with the community is more likely to be attuned to qualitative opportunities in the first instance, and to be viewed favorably by that community in the same way a person with Chinese connectivity

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195. Robert R. Keatinge, et al., *The limited Liability Company: A study of the Emerging Entity*, 47 BUS. LAW. 378, 385 (1992).

196. *See* JOSEPH W. BARTLETT, EQUITY FINANCE: VENTURE CAPITAL, BUYOUTS, RESTRUCTURINGS AND REORGANIZATIONS 5 (2nd ed., vol. 1, John Wiley & Sons 1995). Consideration should also be given to a modified venture capital limited partnership model with a corporate general partner. *Id.* Typically, a general partner attracts limited partner investors because of the GP's expertise in financing and business acumen for the type of business undertaken. *See id.* at 4. The multiple limited partners (e.g. Ethnivestors) contribute funds but do not materially participate in management functions. *See id.* The corporate general partner owes a fiduciary duty to the limited partnership and the individual limited partners. ROBERT W. HAMILTON & JONATHAN R. MACEY, CASES AND MATERIALS ON CORPORATIONS: INCLUDING PARTNERSHIPS AND LIMITED LIABILITY COMPANIES 141 (10th ed., Thomson West 2007). So Ethnivestors, as limited partners, despite a lack of direct management power, can still bring actions against a corporate general partner for wasting assets or misappropriation of the partnerships' property, *In re USACafes, L.P. Litig.*, 600 A.2d 43, 48 (Del. Ch. 1991), or for intermingling of partnership assets and failure to maintain adequate records. HAMILTON & MACEY, *supra* note 196, at 144. Consideration should be provided for a Subchapter S corporation, but its flexibility and continuity is significantly impaired. It can only have shareholders who are individuals, estates, or certain types of trusts. I.R.C. § 1361(b)(1)(B) (West 2007). It cannot have a shareholder that is a C corporation, an S corporation (unless it is a wholly owned subsidiary of another S corporation), an LLC or a partnership. *Id.* at (b)(1). It should be remembered that an increasing number of states follow the model LLC act which authorizes a single member LLC. Uniform Limited Liability Company Act, § 202(a)(1996). So the future funding source of a QCB could be a financially well-healed Ethnivestor who owns her own LLC. If the QCB became a subchapter S corporation, it would unwittingly eliminate those important potential sources of new equity. Conversely, the LLC has no such restriction.

197. I.R.C. § 45D(b)(1)(C) (West 2007); 26 C.F.R. § 1.45D-1(c)(4)(A)(2007).

may have opportunity advantages in Chinatown. If the overwhelming motivation of the CDE is to maximize a return on the investment, the lack of additional tax credits may kill the transfer. But Ethnivestors or those otherwise engaging in social entrepreneurship with a long term commitment beyond the financial return are more likely to see a benefit beyond the short term financial returns and have an ear to the ground for investment opportunities, either upon the initial allocation, or on a reallocation from the Treasury.

African Americans within the core cities have ethnic enclaves, a clustering of businesses. It is certainly conceivable that, like Miami entrepreneurs of Cuban descent, an Ethnivestor-based CDE and QCB team could develop strategic plans that evidence vertical and horizontal integration, using culturally aligned suppliers and consumers and pooled savings, cross-pollinating markets where related markets become co-referral sources. There is also no prohibition in the NMTC statue or Regulations against rotating credit associations akin to those used in other ethnic enclave economies in this country.

### E. *Empirical Ethnographic Design Modeling*

Though beyond its scope, this Article urges scientific testing of the Ethnivestor model. Ethnography is a scientific approach to discovering *what* people actually do, what role, if any, culture and ethnicity play in those actions, and the reasons for those actions before interpretations are drawn from our professional or academic discipline.[198] Commonly used Ethnography research methods include data collection through focus group interviews, audio and video recordings, and elicitation techniques.[199] Definitions on such terms as culture and ethnicity should be clarified.[200] The inquiries could for example survey two groups of African Americans: one group that fits the proposed profile of an Ethnivestor and another group that does not. The questions would be designed to reveal the likelihood of investing in what is proposed as Properly Purposed Projects. If those fitting the Ethnivestor profile have a highly correlated answer to match the projected investment behaviors in Properly Purposed Projects then the results are indicative of the model's validity. If, on the other hand, the non-Ethnivestor profiles show a propensity for investing in those same Properly Purposed Projects, then the results indicate that the Ethnivestor model is flawed.

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198. LECOMPTE, *supra* note 8, at 1.

199. *Id.* at 127.

200. *See id.* at 24. The accepted definition of ethnicity for this Article is "self-identification in a sociopolitical grouping that has both recognized public identity and a conservationist/activist orientation." *Id.*

Criterion should include what the would-be investor considers her opportunity costs and the value of the ethnic group relative to regulator influences. Data can also be collected through interviews or hypothetical examinations from developers to determine the point at which the investor considered the opportunity costs to be greater than the utility of the investment. Groups of target residents that are part of communities affected by NMTC projects could also be examined to ascertain whether the projects added to their quality of life. That may provide a basis of comparison for the small business model in the Ethnivestor construct to test the notion of a modern day ethnic enclave economy. Have the Properly Purposed Projects already provided empirical evidence that target residents are indeed co-ethnically employed where the Ethnivestor-based employer operates a defacto school of entrepreneurship? Are target residents experiencing an enhanced well being from ethnic role models that passes along positive modeling for their offspring? Can a body of evidence be developed on the rate of decrease in the target resident's dependence on public funds under the Ethnivestor and gentrifier models? These are but a few of the questions that should be part of any larger ethnography study.

## CONCLUSION

The NMTC program has laudable goals of providing federally funded subsidies as incentives for equity investments to assist targeted low income residents and their communities. The process has been co-opted in part by those who prefer to benefit wealthy persons who come into the low income communities rather than benefiting the low income residents of those communities. Unintended loopholes have morphed Properly Purposed Projects into problematic opportunities for opera houses, convention centers, and high priced condominiums, in two words: subsidized gentrification.

But this Article does not merely highlight federal government failures. Instead it offers an alternative vision of what can be—greater support from the private sector to play a greater role in solving the urban crisis through a carefully configured substrata of the African American middle class of Ethnivestors. I hope seeds have been planted for future self-help techniques from a group of Ethnivestors that both uses its cultural connectivity to an ethnic enclave as an asset not a demerit, and learns from the entrepreneurship of its prior generations. These Ethnivestors can also learn from other immigrants groups who also faced hostility and exclusion, and who nonetheless formed vertically and horizontally hyper-efficient ethnic economies, armed with rotating credit unions and, most importantly, a trusting nurturing role within their respective small businesses for its otherwise marginalized co-ethnics. These

Ethnivestors can in turn help redirect billions of federal tax dollars to the intended beneficiaries.

There are several challenges to an Ethnivestor-modeled transformative self-help strategy. Unlike the Middlemen of the past among other ethnic and religious groups, there is no forced source for self-help. Can the Ethnivestor rekindle the self-help investment strategy on its own volition? Stated differently, is the lure of individual gain or are the financial insecurities derived from inexperience or prior failed experiences, too strong an influence compared to the social entrepreneurial goals to encourage investment in the ethnic enclave economy? Without amendments to the current NMTC legislation as proposed above, I doubt it. Without a collective vision of a relative few groups that culturally connects with the target communities, I doubt it. Yet there is hope and opportunity—hope because there is a pool of potential Ethnivestors with capable resources, and opportunity because the NMTC legislation provides the proper statutory goal, and with some tweaking, an accessible regulatory framework.