

Michigan Business & Entrepreneurial Law Review

Volume 10 | Issue 1

2021

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Robert Hockett, *An FSOC for Continuous Public Investment: The National Reconstruction and Development Council*, 10 MICH. BUS. & ENTREPRENEURIAL L. REV. 45 (2020).
Available at: <https://repository.law.umich.edu/mbelr/vol10/iss1/3>

<https://doi.org/10.36639/mbelr.10.1.FSOC>

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AN FSOC FOR CONTINUOUS PUBLIC INVESTMENT: THE NATIONAL RECONSTRUCTION AND DEVELOPMENT COUNCIL

*Robert Hockett**

ABSTRACT

The crisis our nation presently faces does not stem from COVID-19 alone. That was the match. The kindling was that we have forgotten for decades that “national development” both (a) is perpetual, and (b) requires national action to guide it, facilitate it, and keep it inclusive.

Hamilton and Gallatin, Wilson and Hoover and Roosevelt all understood this and built institutions to operationalize it. Although the institutions were imperfectly operated, they were soundly conceived and designed. Abandoning these truths and institutions these past fifty years has degenerated not only our public health, but also our nation’s industrial and infrastructural muscle to a critical point. The same now increasingly holds for our social fabric.

Full national regeneration—Reconstruction in both the post-Civil War and the mid-20th century senses of the word—has thus become a matter of urgent, even existential, necessity. Continuous national development, in the perpetual renewal sense of the phrase, must follow that Reconstruction. This is what “Building Back Better” must mean. Key to any such national project is how it is organized and then orchestrated.

This paper proposes means of both organizing and orchestrating. These means are simultaneously incrementalist in their reliance upon existing institutions, while also regenerative in enabling new synergies among those same institutions—much as our Financial Stability Oversight Council (FSOC) is meant to enable our post-Lehman financial regulators to develop. An FSOC for national reconstruction and development will better use what we already have and augment it with a financing arm linked to the Federal Reserve and the Treasury.

I call the resulting synthesis a National Reconstruction and Development Council (NRDC) and National Investment Council (NIC), which will both rebuild capacity now, and perpetually renew such capacity going forward, as

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knowledge and technology progress as they always do. Building Back Better means Building Back Now and Forever.

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I. INTRODUCTION: RECONSTRUCTION & DEVELOPMENT

In the midst of the present pandemic, it is not controversial to suggest that the US could do with a tonic or shot in the arm. But it needs more than that—something more long-term, and something that we used to have.

Our nation stands now in dire need of both a coherent national development strategy and the institutional means of formulating and executing such a strategy. We require, in other words, a contemporary analogue to our earlier Hamiltonian Bank of the United States and Reconstruction Finance Corporation—or, what comes to much the same, an American rendition of Japan’s vaunted Ministry of Trade and Industry (MITI) or J.M. Keynes’s proposed Board of National Investment (BNI), both of which were patterned on prior American models.¹ The longer we wait to address these needs, the more fitting the observation that we need these things not merely for national *development*, but for national *reconstruction and development*.

1. More on these institutions below. See ROBERT C. HOCKETT, FINANCING THE GREEN NEW DEAL: A PLAN OF ACTION AND RENEWAL 37–41 (2020) [hereinafter FINANCING THE GREEN NEW DEAL] (noting the similarities between a National Investment Council and the Bank of the United States and the Reconstruction Finance Corporation); see also Hockett, *Spread the Fed: Distributed Central Banking in Pandemic and Beyond*, *infra* note 62; Robert Hockett, *A Jeffersonian Republic by Hamiltonian Means: Values, Constraints, and Finance in the Design of a Comprehensive and Contemporary American “Ownership Society”*, 79 S. CAL. L. REV. 45 (2006) (noting that member institutions were capitalized by invested federal funds that were later converted into capital subscriptions of the Reconstruction Finance Corporation).

Reconstruction and development—these two words independently, along with the phrase that conjoining them yields, should ring familiar. The period of national healing, rebuilding, and renewal on which we embarked after our mid-19th century Civil War—a rebuilding we never completed and now must resume—is of course known as “the Reconstruction.”² The public financial institution that Presidents Hoover and Roosevelt established and employed to rebuild and mobilize during the Great Depression and Second World War eras, in turn, were called “the Reconstruction Finance Corporation.”³ And the global financial institution that the US did more than any other nation to establish after the Second World War, both to reconstruct Europe and to develop the rest of the world, still operates under the name of “the International Bank for Reconstruction and Development”—better known as the World Bank.⁴

As these institutional monikers suggest, we have typically used the words “reconstruction” and “development” during or after periods of cataclysm or revolutionary change. Against such a backdrop, it is hardly surprising that we don’t use the same words in describing our needs in more ordinary times.⁵ We have after all been developed, at least on orthodox development economists’ understanding of the word, for well over a century. And our last national cataclysm conceded by all to necessitate reconstruction—the Great Depression—is now nearly eighty years past.

But this terminological quirk, it turns out, has both manifested and perpetuated a costly strategic mistake. Productive practices and technologies do not simply switch on and then rest in stasis thereafter. No, they continuously develop *and so must we*. I say “we” here, moreover, deliberately. It is we, in our collective national capacity, acting through institutional forms of collective agency, who must plan, oversee, and coordinate our own national develop-

2. See, e.g., Robert Hockett, *The U.S. Needs To Complete Its Reconstruction Efforts. Here’s How.*, FORBES (June 7, 2020, 1:34 PM), <https://www.forbes.com/sites/rhockett/2020/06/07/reconstruction-10/#3149e9307e40>.

3. See FINANCING THE GREEN NEW DEAL, *supra* note 1, at 28; Robert Hockett, *Public-Private Partnering in Crisis and Beyond: Why Now for a National Investment Authority, a National Investment Council, or a Health Finance Corporation*, 65 CHALLENGE (forthcoming 2020); Robert C. Hockett & Saule T. Omarova, *Private Wealth and Public Goods: A Case for a National Investment Authority*, 43 J. CORP. L. 101 (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2939309; Robert C. Hockett & Saule T. Omarova, *White Paper: A National Investment Authority* (Cornell Legal Stud. Res. Paper No. 18-10, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3125533; Robert C. Hockett & Saule T. Omarova, *‘Public’ Actors in ‘Private’ Markets: Toward a Developmental Finance State*, 93 WASH. U. L. REV. 103, 112 (2015).

4. See, e.g., Robert Hockett, *Bretton Woods 1.0: An Essay in Constructive Retrieval*, 16 N.Y.U. J. LEGIS. & PUB. POL’Y, 401, 415 (2013); Robert Hockett, *For a Global Shareholder Society*, 30 U. PA. J. INT’L ECON. L. 101 (2008); Robert Hockett, *Three (Potential) Pillars of Transnational Economic Justice: The Bretton Woods Institutions as Guarantors of Global Equal Treatment and Market Completion*, 36 METAPHILOSOPHY 93, 111 (2005).

5. See DORIS KEARNS GOODWIN, *NO ORDINARY TIME: FRANKLIN AND ELEANOR ROOSEVELT: THE HOME FRONT IN WORLD WAR II* (1994), for an illuminating and inspiring meditation on ordinary versus extraordinary times, with particular attention to the New Deal and Second World War eras.

ment.⁶ And after both decades of *not* doing this on the one hand, and two consequent calamities traceable to our not having done so on the other, this means planning, overseeing, and coordinating our own reconstruction—our own national “Building Back Better”—as well.⁷

This paper shows how to do this: how to rebuild, reconstruct, renew, and never grow backward again. How to Build Back Better, in Joe Biden’s words. It shows how to complete our incomplete Reconstruction of the post-Civil War Era, to retrieve lessons lost after the New Deal and Second World War, and in so doing return to redeeming our national promise and never be underdeveloped or atavistic again.

Key to any project of such scale and scope is its organization. Any mode of such organization is, in a sense, simply the form or the structure of a practice or institution—the shared “how” to a shared “what.”⁸ This paper also accordingly sets out a mode of such organizing, and hence an institution, well suited to the task of restoring, revitalizing, and henceforth maintaining the American economy after some fifty years of devolution and twelve years of outright crisis.

I call the resultant institution a National Reconstruction and Development Council (NRDC), which amounts to a functional synthesis of existing federal instrumentalities. The NRDC is supplemented by a financing arm, what I call an NRDC Investment Committee and coequal National Investment Council (NIC),⁹ which are functionally situated between our Federal Reserve (the

6. The nature and need of collective agency figure prominently below and in much more of the present author’s work. *See, e.g.*, Robert Hockett, *Recursive Collective Action Problems: The Structure of Procyclicality in Financial and Monetary Markets, Macroeconomics and Formally Similar Contexts*, 3 J. FIN. PERSP. 1 (2013) [hereinafter *Recursive Collective Action Problems*]; Robert Hockett, *Rousseauvian Money* (Cornell L. Sch. Legal Stud. Res. Paper Series No. 18-48, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3278408; FINANCING THE GREEN NEW DEAL, *supra* note 1; Robert Hockett & Rhiana Gunn-Wright, *The Green New Deal: Mobilizing for a Just, Prosperous, and Sustainable Economy* (Cornell L. Stud. Res. Paper Series No. 19-09, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3342494 [hereinafter *The Green New Deal*]; Robert Hockett, *A Fixer-Upper for Finance*, 87 WASH. U. L. REV. 1213 (2010).

7. *See* Hockett, *supra* note 2. It bears noting that such a project resonates well with Vice President Biden’s catchy call for the nation to “Build Back Better.” *See also Joe’s Vision*, JOE BIDEN, <https://joebiden.com/joes-vision/#> (last visited November 8, 2020).

8. *See generally Recursive Collective Action Problems*, *supra* note 6 (noting the form of “sharing” envisaged here).

9. A separate NIC arm, as distinguished from an in-house Investment Committee, of the NRDC would, thanks to a shared designer, bear several similarities to the National Investment Authority (NIA) that Professor Omarova and I developed six years ago and have been advocating ever since. There is enough similarity, at any rate, to underwrite the present author’s hope that any such instrumentality would include my earlier co-author on its founding board. I nevertheless think now, however, that it is a mistake to think in terms of an investment institution alone when thinking about making a permanent practice of nationally developing and executing a national development policy. A better model pairs an FSOC-reminiscent planning board with an RFC-reminiscent financing arm, much as President Roosevelt paired a War Production Board with the RFC during the 1940s, and as President Wilson paired a War Industries Board with a War Finance Corporation (“WFC”)—the RFC’s predecessor—during the First World War. For more on these pairings and their significance, *see* HOCKETT, FINANCING THE GREEN NEW DEAL, *supra* note 1; Hockett, *Public-Private Partnering*

“Fed”) and our Treasury thanks in part to its unavoidably combining aspects of both allocative fiscal and aggregative monetary policy.¹⁰

Instead of simply replacing existing national institutions, which are themselves forms of organization and hence collective agencies meant to achieve national goals, the NRDC *organizes the organizations*, recognizing in so doing that the task of national reconstruction and development is a perpetual meta-project subsuming most if not all of the narrower mandates of existing federal instrumentalities. It is a means of both ensuring coherence and capitalizing on synergies among agencies that on the one hand already have well defined missions, but on the other hand also have what are now separate missions that henceforth will be synchronized.

In this sense, the NRDC can be likened to the Financial Stability Oversight Council (FSOC), for both national reconstruction now and continuous national development ever after.¹¹ Like the FSOC, it will use and optimize existing

in Times of Crisis and Beyond, *supra* note 3; Robert Hockett, Opinion, *The U.S. Must Take Equity Stakes in the Companies It Rescues*, FIN. TIMES, (Mar. 28, 2020), <https://www.ft.com/content/86a333d0-6dc3-11ea-89df-41bea055720b>; Robert Hockett, *The U.S. Needs to Tackle the Coronavirus Pandemic with a Playbook out of the Great Depression and World War II, not the Financial Crisis*, BUS. INSIDER (Mar. 29, 2020, 9:42 AM), <https://www.businessinsider.com/coronavirus-pandemic-us-should-ramp-up-ventilator-mask-manufacturing-2020-3>; Robert Hockett, *We're at War and Need Wartime Institutions to Keep Our Economy Producing What's Necessary*, THE HILL (April 4, 2020, 2:00PM), <https://thehill.com/opinion/white-house/491166-were-at-war-and-need-wartime-institutions-to-keep-our-economy-producing>.

10. The distinction between and relations among what the author calls “credit-aggregative” or “-modulatory” policy on the one hand and “credit-allocative” policy on the other hand are fundamental to this author’s work of the past twelve years, and failure to attend carefully to their relations accounts for a surprisingly large portion of the most salient financial and macroeconomic disasters of the past century. See generally Hockett, *A Fixer-Upper for Finance*, *supra* note 6 (introducing the distinction and proposing “regulation as modulation” as preferred model of financial supervision); Robert Hockett, *The Macroprudential Turn: From Institutional ‘Safety and Soundness’ to Systemic ‘Financial Stability’ in Financial Supervision*, 9 U. VA. L. & BUS. REV. 201 (2015) [hereinafter *Macroprudential Turn*] (interpreting the move toward macroprudential finance oversight as reflecting long-awaited implicit recognition of the distinction’s regulatory importance); Hockett, *Recursive Collective Action Problems*, *supra* note 6 (uncovering and explicating the structure of joint and several action that produces the distinction); Hockett, *Rousseauvian Money*, *supra* note 6 (uncovering and explicating the structure of joint and several action that produces the distinction); HOCKETT, FINANCING THE GREEN NEW DEAL, *supra* note 1 (developing a full GND finance plan that studiously hews to the distinction and the practical challenges it raises). For a searching analysis of the practical inseparability of the conceptually distinct allocation and modulation functions, and of the consequences of this inseparability for the sustainability of our present practice of assigning allocation to Treasury and modulation to the Federal Reserve, see generally Robert Hockett, *The Capital Commons: Digital Money and Citizen Central Banking in a Commercial Republic*, 39 REV. BANKING & FIN. L. 345 (2019–2020). See also Robert Hockett, *Money in Context, Part 1*, LAW & POLITICAL ECONOMY PROJECT (Apr. 9, 2020), <https://lpeproject.org/blog/money-in-context-part-1/> (discussing the conceptual distinction and the practical difficulty of maintaining it); Robert Hockett, *Money in Context, Part 2*, LAW & POLITICAL ECONOMY PROJECT (Apr. 9, 2020), <https://lpeproject.org/blog/money-in-context-part-2/>.

11. See Robert C. Hockett, *Oversight of the Financial Stability Oversight Council: Due Process and Transparency in Non-Bank SIFI Designations 1* (Cornell Legal Stud. Res. Paper Series No. 16–20, 2015); see also Hockett, *Macroprudential Turn*, *supra* note 10.

agencies' strengths by coordinating their use and assuring finance at the same time. It will, again, like the FSOC, add on or superimpose a new "coordinating layer" over existing layers, thereby satisfying Occam's Razor in tweaking no more, but also no less, than must be to once-again meet recognized national needs.¹²

The paper continues as follows: Section II first provides a brief reminder of why national reconstruction and development require concerted national action, rather than being left to households, business firms, or even sub-federal levels of government acting on their own in uncoordinated fashion. It also notes various forms that such agency can take, including forms that the present author has developed in the past. Thereafter, it turns to elaborating the form and operational details of the NRDC itself and assessing a menu of structural options in so doing. Section III then proposes next steps for establishment of the NRDC, NIC, and possible regional branches.

II. A NATIONAL RECONSTRUCTION AND DEVELOPMENT COUNCIL

While the desirability of national reconstruction and development in the abstract might be obvious, the reasons for making a national policy of these things might at first appear less so. The same goes, a fortiori, for any national institution or instrumentality charged with crafting and executing a national reconstruction and development policy. This section accordingly briefly rehearses the mentioned reasons, then details an institution made to order in response to them.

A. National Development and National Agency

As noted above, the present author has been advocating and provisionally designing development institutions—means of collective agency in the cause of perpetual national and transnational development—for a decade now.¹³ The present proposal simply applies the design principles that shaped the earlier proposals, while reflecting the general reasons that prompted them. It differs from those earlier proposals only in attending to the most salient attributes of the *present* predicament of the US in particular.

12. See FINANCING THE GREEN NEW DEAL, *supra* note 1; see also Section III *infra*. The author has drafted legislation to similar effect that is now before the State Assembly and Senate of the State of New York. See S.B. S8459, 2020 Legis. Sess., Reg. Sess. (N.Y. 2020); see also Robert C. Hockett, *What to Make of Community QE: Look Now to New York*, FORBES (May 24, 2020, 2:00 PM), <https://www.forbes.com/sites/rhockett/2020/05/24/what-now-to-make-of-community-qelook-to-new-york/#14ce8beee466>.

13. See, e.g., Robert C. Hockett, *The Nation Building Here at Home Act of 2012* (Cornell Legal Stud. Res. Paper Series No. 12–10, 2012); ROBERT C. HOCKETT, ET AL., *THE WAY FORWARD* (New America, 2011); Robert C. Hockett & Robert H. Frank, *Public Investment, Renewed Growth, and the US Fiscal Position* (Cornell Legal Res. Stud. Paper Series No. 2–04, 2012).

The considerations that first prompted the present author's proposing and continuing to recommend a national development institution are several. First and foundationally, as noted above, our polity fell into grave error when it began treating national development as a done deal or one-off affair, something that nations do once and for all in transitioning from underdeveloped to developed status and then never take up again. This assumption is clearly erroneous because development is always implicitly understood in relation to a time-dated technological state of the art on the one hand, and that technology itself standing still on the other hand. Just as knowledge and technical capacities develop perpetually, so must nations and their economies.

Then it follows that whatever considerations prompted our own and other nations to make concerted national projects of development in the past likely also warrant our making a coherent national project of national development now, in the present—indeed in *every* present.¹⁴ As it happens, such considerations are neither hard to find nor difficult to recognize. They are just as compelling today as they were in our nation's more distant and more recent past. All of them, moreover, are rooted in familiar coordination and collective action challenges, meaning that one need not even be economically heterodox to appreciate the necessity of collective agency in addressing and solving them.¹⁵ Market failures that they are, markets can't fix them. Only we can do that. Examples are readily adduced, particularly in the realms of industrial and infrastructure policy.

Where productive industry is concerned, individual households and firms are unable to control the background conditions, such as full employment in high quality occupations, steady effective demand, or secular price stability, which are requisite to long-term investment profitability.¹⁶ Hence they will often find it individually rational to bet on price movements in secondary financial and tertiary derivatives markets rather than invest 'patient capital' in projects that take longer to materialize.¹⁷ But such individually rational decisions aggregate into collectively irrational outcomes—in particular, underinvestment, underdevelopment, and over-speculation. In this sense they account for our

14. Notably Germany, Japan, the "Tiger Economies" and modern China. See, e.g., Hockett & Omarova, *Private Actors in Private Markets*, *supra* note 3.

15. See Hockett, *supra* notes 1, 6 (sources and associated text).

16. See *id.*; see also Hockett, *The Capital Commons*, *supra* note 10; Robert Hockett, *Finance without Financiers*, 47 POL. & SOC'Y 491 (2019); cf. Robert Hockett & Saule Omarova, *The Finance Franchise*, 102 CORNELL L. REV. 1143 (2017). On 'high quality' employment, which has been steadily dwindling in the US for fifty years even when official 'unemployment' was low, see Daniel Alpert, et al., *The US Private Sector Job Quality Index* (Cornell Legal Stud. Res. Paper Series No. 20–33, 2019) (developing and applying a practical measure of 'job quality' and demonstrating steady decline since the early 1970s).

17. The importance of this explanation of 'financialization' and associated macroeconomic dysfunction cannot be overstated yet appears to be entirely overlooked. Private capital *cannot find yield* in contemporary primary markets. Hence quite rationally speculates on movements in securities prices and secondary market indices, often through taking derivative positions. See Hockett, *Finance without Financiers*, *supra* note 16.

economy's dysfunctional and counterproductive 'financialization' of the past fifty years.¹⁸

Meanwhile, where infrastructure is concerned, the gains to national income to be had from state-of-the-art infrastructure are generally diffuse and individually uncapturable, and manifest over long time horizons exceeding individual human lifespans.¹⁹ This means they are difficult for individual investors to capture and profit by. Thus, it can again be individually rational for private sector agents to underinvest in productivity-enhancing infrastructure, a classic public good, while engaging in over-speculation.²⁰ Hence again, individually rational decisions to refrain from investing will aggregate into collectively irrational underinvestment on the part of the polity as a whole. Crumbling infrastructure is but one conspicuous consequence.²¹

The foregoing are reasons for collective agency and government action. But why national planning by a single national development institution?

Here, the answer is that national development in any complex economy or geographically extended political unit, especially an economy and polity as complex as our own, cannot but implicate multiple industries, multiple firms, multiple sectors, multiple regions, multiple states, multiple cities, and of course multiple households and communities. This means, in turn, that any development policy that is truly comprehensive and national in scope will be vulnerable to counterproductive operational inconsistencies and inefficient operational overlaps. At least that is so unless actions are planned and executed coherently, as if by one collective agent—that is, a government or instrumentality of government. It also means that no level of collective agency short of our national government will be fully up to the task.

This is not to say that state and local levels of government or private sector households and firms are not themselves critically necessary agents in national development, any more than saying an orchestra needs a conductor is saying it doesn't need violinists and cellists. It is only to say that the task of comprehensive coordination and mobilization is the task of the most inclusive and least financially constrained level of governance. The same goes for the matter of development finance. For federal republics like our own, only the national government is monetarily and hence financially autonomous; cities and states are not.²²

The consequences of our having forgotten or overlooked these simple truths are all around us. To fly into an airport, drive on a highway, or take a train in near any other developed country right now is to marvel at how backward we in

18. See Hockett, *supra* notes 1, 6.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

the U.S. have become.²³ To visit a bank branch, ATM, or post office in one of these countries, in turn, is to wonder why the nation that hosts the financial capital of the world—Lower Manhattan—is as monetarily backward as it is, with fully one quarter of its population unbanked or underbanked.²⁴ And of course to grocery-shop or to dine, or to seek non-emergency medical attention in any of these countries is to wonder why Americans are the only developed country citizens in the world to be as malnourished and chronically ill as we are, a condition that partly accounts for our greater morbidity during the COVID-19 pandemic than that of our peer nations.²⁵

The foregoing are of course longstanding deficiencies of American national development and one could have cited them easily 30 to 50 years back. But now, as noted in introducing this paper, we face reconstruction and rebuilding challenges too. This is partly because we have been falling developmentally behind for so long, but it is also because we have suffered two national calamities in just over a decade, all while global climate conditions now hurtle toward mass-catastrophe.

The crash of 2008 and its debt-deflationary aftermath, for example, not only destroyed many trillions of dollars of accumulated American wealth, but also set the national economy on a slower growth path that it has yet to outgrow.²⁶ In so doing it simply destroyed, without replacing, millions of small banks, small businesses, and well-paying construction and manufacturing job opportunities.²⁷ As if that were not trouble enough, the current pandemic has, within months, killed far more Americans than did nearly all of our past wars com-

23. *Id.* Indeed in some cases we are behind nations that we ourselves occupied and rebuilt. See Hockett, *The Nation-Building Here at Home Act*, *supra* note 13.

24. See, e.g., Robert Hockett, *Digital Greenbacks: A Sequenced 'TreasuryDirect' and 'FedWallet' Plan for The Democratic Digital Dollar*, 18 J. L. & TECH. (forthcoming 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3599419; Robert Hockett, *The Democratic Digital Dollar: A Peer-to-Peer Savings and Payments Platform for Inclusive State, Local, and National Money and Banking Systems*, 10 HARV. BUS. L. REV. 1 (2020); ROBERT HOCKETT, THE INCLUSIVE VALUE LEDGER: DIGITAL DOLLARS AND DIGITAL PLATFORMS FOR DIGITAL PUBLIC BANKING (The Justice Collaborative Institute & Data for Progress 2020), <https://tjc.institute.com/research/the-inclusive-value-ledger-digital-dollars-and-digital-platforms-for-digital-public-banking/>; Robert Hockett & Lawrence Rufrano, *Digital Dollars for All*, WALL ST. J., (Apr. 6, 2020), <https://www.wsj.com/articles/digital-dollars-for-all-11586215100>.

25. See, e.g., Abdulzahra Hussain et al., *Obesity and Mortality of Covid-19: Meta-Analysis*, 14 OBESITY RSCH. & CLINICAL PRAC. 295 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7346803/>; Fabian Sanchis-Gomar et al., *Obesity and Outcomes in Covid-19: When an Epidemic and a Pandemic Collide*, MAYO CLINIC PROC. (SPECIAL ARTICLE) 1445 (2020), [https://www.mayoclinicproceedings.org/article/S0025-6196\(20\)30477-8/fulltext](https://www.mayoclinicproceedings.org/article/S0025-6196(20)30477-8/fulltext); Tanya Albert Henry, *Data from 10 Cities Show Covid Impact Based on Poverty, Race*, AMA (Aug. 5, 2020), <https://www.ama-assn.org/delivering-care/health-equity/data-10-cities-show-covid-19-impact-based-poverty-race>.

26. See Robert Hockett, *Ten Years On: What Have We Learned? What Have We Done? What Must We Do?*, 63 CHALLENGE 31, 35–36, 42–43 (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3298833.

27. *Id.*

bined: all while shattering every past record, including those previously set by the Great Depression, where lost lives, lost wealth, lost enterprises, and lost gainful employment are concerned.²⁸

Add to this climate change. As has been widely discussed since last year, especially in connection with the Green New Deal that this author helped to develop, the world is now approaching a tipping point—a point of no return.²⁹ Climate scientists have determined that there is no more than a decade to prevent an irreversible and catastrophic climatic tipping point, beyond which neither our own nor many other species can be assumed likely to survive.³⁰

On the way to that dark ending, extreme socio-economic injustice and associated political breakdown can be expected to hasten as well. Such injustice is now well underway in nations already hard-hit by environmental crisis, as well as in bordering nations toward which literally millions of climate refugees are mass-migrating. Indeed, if recent police-prompted racial unrest in the U.S. is any indication, that hastening is already happening. Environmental disaster and associated social, economic, and political dysfunction, in consequence, could ironically come to stand in the way of collectively addressing the processes driving these breakdowns in the first place. Clearly, we are urgently due for national reconstruction and development alike.

The NRDC sketched below is meant simply to give institutional expression to that form of collective agency which the foregoing “parade of horrors” necessitates. It aims to do so in a way that makes maximal use of modalities and institutions we already have, supplementing and reconfiguring them just enough, but no more than is needed, to do what needs doing. Hence, instead of constituting an entirely new entity and associated bureaucracy from scratch, the NRDC will combine existing cabinet-level federal agencies in a more productive arrangement than is presently found. It will amount, in other words, to a synergistic partial re-combining of instrumentalities we already have, to enable them to act collectively in addressing that massive collective action challenge which is our project of national reconstruction and development.

Inasmuch as the Council takes existing instrumentalities as it finds them, simply facilitating and optimizing their necessary collaboration, it is in one sense a merely incremental reform. In another sense, however, its promise is far reaching indeed. For it turns out that a truly remarkable number of contemporary dysfunctions, recognized by Americans of all political stripes, are attributable to remarkably poor organization. In that sense, the present proposal can be viewed as a contribution as much to Applied Organization Theory as to

28. See *Covid Hospitalizations and Deaths by Age*, CTR. DISEASE CONTROL & PREVENTION (Aug. 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-age.html>.

29. See FINANCING THE GREEN NEW DEAL, *supra* note 1; *The Green New Deal*, *supra* note 6.

30. See generally 2 U.S. GLOB. CHANGE RSCH. PROGRAM, FOURTH NATIONAL CLIMATE ASSESSMENT (2018), https://nca2018.globalchange.gov/downloads/NCA4_Report-in-Brief.pdf.

our nation as we presently find it—immeasurably blessed, immensely resourced, but remarkably poorly constructed for purposes of contemporary reconstruction and development. On, then, to the design.

B. *A National Reconstruction and Development Council*

As noted above, the project of national reconstruction and development will implicate many distinct industries across our economy and multiple levels of government, not to mention both public and private sectors. The Green New Deal, to take one example, encompasses fully fourteen project fields. No serious national reconstruction project is likely to implicate fewer. We can accordingly use the terms Green New Deal (GND), Building Back Better (3B), and National Reconstruction and Development (NRD) more or less interchangeably in what follows.

In order to ensure optimal coordination among (a) multiple 3B, GND, or NRD project fields, (b) the multiple levels and units of government involved in realizing the redevelopment project, and (c) the public and private sector entities also involved in realizing that project, it will be necessary to establish a coordinative body charged with the task of overseeing and facilitating the project's many activities. That body will be the NRDC. It is in view of its structural similarities to the Financial Stability Oversight Council (FSOC), which aggregates information for and coordinates efforts among the nation's multiple finance-regulatory agencies, that I suggest we call this new institution a National Reconstruction and Development Council (again, NRDC, or just "Council").³¹

The NRDC will be charged with the task of developing and executing, first (a) a comprehensive yet coherent national pandemic response, then (b) a likewise comprehensive and inclusive but also coherent infrastructural reconstruction, and finally (c) an ongoing and continually updated national development policy. Let us formally recognize that a national development policy is every bit as essential as national defense policy, national economic policy, national environmental policy, and so on. Indeed, the first is prerequisite to all others.

In light of this mission, the Council should comprise the heads of the Fed, the Treasury, and all cabinet-level and other relevant Executive Agencies with jurisdiction over national industry and infrastructure, including the Department of Energy (DOE), the Department of Transportation (DOT), the Federal Trade Commission (FTC), the Small Business Administration (SBA), the Department of Education (DE), the Department of Labor (DOL), the Equal Employment

31. For more on the FSOC, its animating considerations and ongoing functions, see Hockett, *Macprudential Turn*, *supra* note 10. See also *Oversight of the Financial Stability Oversight Council: Due Process and Transparency in Non-Bank SIFI Designations: Hearing Before Subcomm. on Oversight and Investigations of the H. Comm. on Fin. Servs.*, 115th Cong. (2015) (statement of Robert Hockett, Professor, Cornell University); Hockett, *supra* note 12 (the New York State institution designed by the author and now under consideration by the State Legislature).

Opportunity Commission (EEOC), the Environmental Protection Agency (EPA), and so on. These persons will be charged with formulating long-term national development strategies within each of their respective jurisdictional mandates, and then synthesizing them into a single coherent and non-duplicative whole.

The NRDC will effectively constitute a contemporary analogue to both (a) the War Industries Board (WIB) and War Finance Corporation (WFC) pairing that oversaw and coordinated our national mobilization effort during the First World War, and (b) the War Production Board (WPB) and Reconstruction Finance Corporation (RFC) pairing that oversaw and coordinated first the New Deal, then the Second World War mobilization efforts.³² It will also continue to bear similarities to the First Bank of the United States, designed by the nation's first Treasury Secretary, Alexander Hamilton, to coordinate and facilitate our then-new nation's financial and economic development.³³ And it will do so with a "regulatory college" structure of the kind seen in the FSOC.³⁴

We can begin a more detailed treatment with more on the NRDC's functions and level of government, then flesh out its structure.

1. Role and Functions, 'Level' of Government

After post-COVID-19 Reconstruction, the NRDC will bear primary responsibility for developing and pursuing national industrial and infrastructural renewal at the federal level. It will not view or treat this as a mere exigency, important for now but not later. To the contrary, like MITI in Japan to this day and its multiple American exemplars in days past, it will treat our coherent and inclusive development as permanent tasks, continuing for as long as both theoretical and applied knowledge advance.

As noted above, this cannot but involve planning and coordinating in collaboration with other federal agencies, other levels of government, and the private sector, just as was done by Hamilton's First Bank of the U.S., the WIB/WFC pairing, and the WPB/RFC pairing during earlier periods of our history.³⁵ The Council will also coordinate and, in many cases, secure or provide

32. See HOCKETT, FINANCING THE GREEN NEW DEAL, *supra* note 1; GOODWIN, *supra* note 5.

33. See *supra* text accompanying note 32. These histories are fully elaborated in FORREST McDONALD, ALEXANDER HAMILTON (1979); Robert Hockett, *Pre-Liberal Autonomy and Post-Liberal Finance*, 77 J. L. & CONTEMP. PROBS. 105 (2015); JAMES STUART OLSON, SAVING CAPITALISM: THE RECONSTRUCTION FINANCE CORPORATION AND THE NEW DEAL—1933–1940 (1988); JESSE H. JONES, FIFTY BILLION DOLLARS: MY THIRTEEN YEARS WITH THE RFC (1932–1945) (1951).

34. For more on this model generically considered, see Hockett, *Macroprudential Turn*, *supra* note 10; see also Robert Hockett, *Implementing Macroprudential Finance-Oversight: Legal Considerations*, IMF (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2340316.

35. FINANCING THE GREEN NEW DEAL, *supra* note 1; see also *supra* text accompanying note 5.

funding for the many projects that will make up the national reconstruction and continuous development efforts: again, as both Hamilton's Bank and those pairings did.³⁶ This it can do partly with Congressionally appropriated funds and partly with bond issuances as well as, going forward, returns on its own investments managed by its own investment arm, again as was done by its predecessors.³⁷

Where securing or providing funding is concerned, the Council will have multiple options. It can lend directly to, or purchase equity stakes in or bonds issued by, targeted entities or enterprises.³⁸ It can also do so for syndicates of financiers, including private sector ones, that it itself forms.³⁹ Or it can recommend Fed purchases of such issuances.⁴⁰

As for its own funding, at the front end this can come through either or both Congressional appropriations and bond sales of its own. The latter in turn can include general purpose instruments, sector-specific instruments, and even project-specific instruments. Going the latter route can enable the Council in effect to employ markets' price discovery mechanisms to acquire preliminary information as to the likely success or otherwise of particular contemplated projects.⁴¹ Going forward, as NRDC investments begin yielding returns as did Bank of the U.S., WFC and RFC investments in their eras, the NRDC can plow those returns into further investments, generating a longer-term positive feedback or snowball effect.⁴²

The Council will work closely with the private sector in the grand project of rebuilding the national economy, and this in turn will involve bringing together the operations of many now-diffuse federal instrumentalities, many of which used to operate within one structure in the past, when they were themselves RFC subsidiaries.⁴³ It is easy to imagine the potential for thereby establishing a more seamlessly integrated network of public-private venture capital and small business financing operations. Multiple federal venture capital funds and other agencies and programs targeting innovative start-ups, such as the Telecommunications Development Fund (TDF)⁴⁴ and the aforementioned Small Business

36. *Id.*

37. FINANCING THE GREEN NEW DEAL, *supra* note 1, at 39.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. FINANCING THE GREEN NEW DEAL, *supra* note 1, at 40; *see generally* GOODWIN, *supra* note 5.

43. *Id.*

44. TDF is a federal venture capital fund created in 1996 for the general purpose of financing small businesses developing telecommunications technologies. 47 U.S.C. § 614. TDF's strategy focuses on equity investments in telecommunications start-ups. *See also* S. Jenell Trigg, *Telecommunications Development Fund: Making a Difference?* THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, https://web.archive.org/web/20160518033343/http://www.civilrights.org/publications/1996_telecommunications/section-714.html.

Administration (SBA),⁴⁵ can be organizationally incorporated into the NRDC structure just as they previously were in the RFC structure.

As suggested above, the Council will also work in particularly close collaboration with the Fed, the Department of the Treasury, and the specific cabinet-level departments of the federal government whose mandates embrace specific national reconstruction and development project fields. The reason for close collaboration with Fed and Treasury is that the NRDC's financial and fiscal operations will be adjacent to—and indeed operationally situated between and unavoidably interactive with—those of these two entities, respectively, and hence must be conducted in harmony with them. The reason for close collaboration with other cabinet level units of federal governance, in turn, is that the National Reconstruction and then Development project fields in many cases fall within the functional mandates of the corresponding Departments—much as particular pieces of the First World War, New Deal, and Second World War mobilizations did before them.⁴⁶

The 3B's, GND's, or NRD's efforts in the realm of transport infrastructure, for example, will be many. Our roads, rails, airports and the like are a global embarrassment. Restoring, augmenting, replacing, or upgrading them will implicate both the work and the expertise of the Department of Transportation (DOT). Massive efforts in the realm of energy infrastructures likewise will be necessary. We already have the capacity to retrofit literally tens of millions of American homes, business premises, and other buildings with solar panels, heat-trapping windows, and other technologies of building efficiency improvement—we invented these technologies and can employ literally millions of Americans in their manufacture, installation, and export. This will of course implicate the work and expertise of the Department of Energy (DOE), the Department of Housing and Urban Development (HUD), the Export-Import Bank (Ex-Im Bank), and a host of other cabinet-level agencies.

NRD, 3B, or GND efforts in the realm of pollution abatement and environmental cleanup, in turn, will implicate the work of the Environmental Protection Agency (EPA) and the Department of the Interior (DOI), while the administration of any 3B, GND or NRD job retraining, job-guaranteeing, or other employment programs will implicate the work of the Department of Labor (DOL), the National Labor Relations Board (NLRB), and the Equal Employment Opportunity Commission (EEOC). As the 3B, GND, or NRDC works to facilitate the establishment and mass proliferation economy-wide of new startup companies all across the private sector, meanwhile, they will implicate the work of the

45. SBA was established in 1953 to facilitate small business formation and growth via the so-called “three Cs” of capital, contracting, and counseling. *See About SBA*, U.S. SMALL BUS. ADMIN., <https://www.sba.gov/category/navigation-structure/about-sba> (last visited Oct. 17, 2020).

46. *See FINANCING THE GREEN NEW DEAL*, *supra* note 1, at 40–41.

aforementioned TDF and SBA.⁴⁷ And mass upgrading and expansion of our institutions of advanced research and higher learning, vocational and polytechnical education, and even ‘Head Start,’ kindergarten, primary and secondary education will of course implicate the jurisdiction and expertise of the Department of Education.

In all of these and countless other 3B, GND, or NRD projects far to numerous even to begin to catalogue here, which will bring redevelopment and untold prosperity to hundreds of millions of Americans, millions if not tens of millions of American businesses, thousands of American cities, and all states and territories, it will be critical that the NRDC on the one hand and other cabinet level Departments on the other not operate at crossed purposes. It will also be important not to waste or to overlook the incalculable expertise, and the many collaborative relations with other levels and units of government as well as private sector industries, that these Departments have developed over the decades. Much as the FSOC acts as a coordinating body among Treasury, Fed, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Federal Deposit Insurance Corporation (FDIC), and other financial regulators, leveraging their expertise and experience with their “silos,” so will the NRDC do in collaboration with its mandate participants.

2. Structure, Governance, Relations with Private Sector and Other Levels & Units of Government

There are many ways in which the NRDC might be composed, structured, and both internally and externally governed. One attractive prospect is to think of the NRDC as a system, by analogy with the Federal Reserve System, and to adopt either a three- or a four-tiered structure along the following lines.

2.1. Tier One: The Council Itself

The first option for the top tier would be the heads of the various departments and other agencies mentioned above, whose fields of expertise and mandates overlap with or are adjacent to those of the NRDC itself. This can be thought of as a sort of oversight and strategic planning board, comparable to the FSOC as noted above and to the Board of Governors of the Federal Reserve System.⁴⁸ It can accordingly be called “the Council,” as the FSOC is called, and as the Federal Reserve Board of Governors is called “the Board.”

Ideally, the Council will make decisions in a consensual manner, with voting conducted pursuant to the majority-rule principle only when consensus proves impossible to reach. This, too, would largely replicate FSOC and Fed

47. A specific proposal along these lines is May et al., *Encouraging Inclusive Growth: The Employee Equity Loan Act*, 62 CHALLENGE 377 (2019), <https://www.tandfonline.com/doi/abs/10.1080/05775132.2019.1668645>.

48. See FINANCING THE GREEN NEW DEAL, *supra* note 1, at 42.

practice.⁴⁹ It probably makes sense for the Council to be Chaired by a distinct person, appointed by the President for, say, seven-year terms with the advice and consent of the Senate. This would follow Fed practice, though the seven-year terms would of course exceed the four-year terms of Fed Chairs.

An alternative possibility is to make the Treasury Secretary herself the Chair, as is done in the case of FSOC.⁵⁰ The advantage offered by this mode of operation is that it subjects the Council to more direct Presidential control. But this can also operate as a disadvantage, inasmuch as the investment horizons of the NRDC must be long, and accordingly not overly vulnerable to sudden changes in politically sensitive Presidential administration.

In the final analysis, because the NRDC will in effect be functionally and operationally situated midway between the quite independent Fed and the less independent Treasury, it probably makes sense to confer upon it a degree of independence intermediate between those of the Fed and the Treasury.⁵¹ Appointing a separate Chair for seven-year terms, which is longer than those of Treasury Secretaries and Fed Chairs, while shorter than the fourteen-year terms of other Fed Board Governors, seems sensible against that backdrop. Changes can be legislated in future should seven-year terms come to seem too brief or too lengthy.

Similar considerations to those recommending seven-year terms might also militate in favor of appointing additional independent members to the Council, as a means of lessening the degree of dependence on the White House that the present FSOC model entails.⁵² In the alternative, the Council might be made to comprise only independent members appointed by the President for staggered seven- or ten-year terms with the advice and consent of the Senate, after the manner of the Federal Reserve Board (FRB). Under this scenario, which we can call the *second* option for the top tier, the other agency and Department heads mentioned above—those of the DOT, DOE, DOL, etc.—would be empaneled on an Advisory or Coordination Board, with authority only to make recommendations to, not actually control, the Council.

In the event that this more independent, FRB-reminiscent governance model is adopted, it would make sense to choose Council Governors on the basis of criteria analogous to those used in choosing Fed Board Governors. A seven- or fourteen-member Council might then be assembled, its members possessed both of expertise in the fourteen Green New Deal or National Reconstruction Project Fields and past experience in government, industry, the academy, or some combination of these. In essence, the idea would be for the Council's membership

49. *Id.*

50. *See* HOCKETT, *supra* note 1, at 42.

51. These differences are rooted in tacit recognition of the modulation/allocation distinction noted above, along with an associated judgment that more overtly distributive allocation decisions must be subject to proximate political control, while more aspirationally neutral as well as systemically critical modulation decisions both can and ought to enjoy more discretion.

52. *Id.*

to be diversified in a manner mirroring the diversity of the Green New Deal or National Reconstruction itself, which as noted will implicate multiple project fields, multiple levels of government, and private as well as public sector entities.

2.2. Tier Two: The Investment Committee or NIC

Whichever option for the NRDC's top tier we adopt, it will make sense to impanel just below it a more operationally focused tier. It would be at this level that more detailed planning and execution of project-specific NRDC financing is done. We might call this the NRDC Investment Committee, or simply a National Investment Council coequal with the NRDC as Wilson's WFC and Roosevelt's RFC were coequal with the WIB and WPB, respectively.⁵³ Either way, we can think of its role in rough analogy to the Open Market Committee of the Fed (FOMC), the finance committee of any large business concern possessed of a chief financial officer (CFO), or the investment or fund manager of any investment bank or investment fund.⁵⁴

The Investment Committee under this scenario would assess and develop multiple financing options for multiple 3B, GND, or NRDC projects or portfolios of such projects, with appropriations, retained earnings or bond sales on the income side, and running from grants through loans to bond purchases and equity investments on the output side.⁵⁵ It would then present these options to the Council for approval or selection, then execute on whatever options the Council ultimately opts for.⁵⁶

The Investment Committee might comprise a simple subcommittee of the Council itself, again partly reminiscent of the Fed FOMC model, or might comprise mainly or only persons with significant investment management experience, with the Chair of the Commission itself also serving as Chair, *ex officio* or otherwise, of the Committee.⁵⁷ Either way, in view of the mainly technical nature of its functions, the Committee members should have, jointly and severally, top level financial expertise and experience. For the Committee will, in effect, be conducting the NRDC's principal funding and investment operations like any finance committee or investment or fund manager.⁵⁸

One additional layer of possible nuance is worth noting: it might be well to subdivide the Investment Committee into two Subcommittees, one concerned primarily with direct 'primary' market investment, the other concerned with in-

53. *Id.*

54. These analogies are further elaborated and fully played out in HOCKETT, *supra* note 1, at 44.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

direct, secondary and tertiary market operations.⁵⁹ In such case, the Primary Market Subcommittee would act much as a contemporary infrastructure bank does in underwriting and capital-raising more generally.⁶⁰ The Secondary Market Subcommittee, analogously, would function more like a fund manager in purchasing various kinds of securities issued by private and public sector entities whose investment operations complement the Council's mandate.⁶¹

Needless to say, both Subcommittees would coordinate, as the departments of any complex institution do, under the auspices of the Investment Committee of which they are part. And the latter Committee, as noted above, would operate under the continuous oversight of, as a manner of financial agent of, the Council.

2.3. Tier Three: Regional NRDC Banks

The third tier of the NRDC System would be a cluster of Regional Banks, perhaps roughly patterned after the Fed system of regional Federal Reserve Banks. The idea behind this arrangement would be to afford the federal instrumentality in question eyes, ears, and operational capacity on the ground in regions of the country whose primary industries and economic conditions differ from one another in nontrivial ways.

The Federal Reserve Bank of New York (FRBNY), for example, has expertise in and jurisdiction over much of the nation's financial services industry, which is of course largely headquartered in New York. The Federal Reserve Bank of Dallas, by contrast, has more expertise in energy and agriculture, in keeping with its region's primary industries. It makes sense for the NRDC to operate out of regional locations that are similarly sensitive to regionally varying economies, financial practices, and both industrial and infrastructure needs. Indeed, in a number of what he calls "Spread the Fed" proposals, the present author has designed Federal Reserve reforms along similar lines, which bring the Fed back into closer conformity with its original mandate of 1913, as a system of regional development banks.⁶²

The Fed regional structure was developed over a century ago, when the nation's economy was less financially integrated than it is now, and its regional economic profiles were in many ways quite different both from one another and from what they have developed into since 1913.⁶³ This presents something of a

59. See HOCKETT, *supra* note 1, at 44.

60. *Id.*

61. *Id.*

62. See Robert Hockett, *Spread the Fed: Distributed Central Banking in Pandemic and Beyond*, 14 U. VA. L. & BUS. REV. (forthcoming 2020). Robert Hockett, *Spread the Fed, Part I*, LAW & POLITICAL ECONOMY (Aug. 12, 2020), <https://lpeproject.org/blog/spread-the-fed-part-i/>; Robert Hockett, *Spread the Fed, Part II*, LAW & POLITICAL ECONOMY (Aug. 12, 2020), <https://lpeproject.org/blog/spread-the-fed-part-ii/>.

63. See Hockett, *Spread the Fed: Distributed Central Banking in Pandemic and Beyond*, *supra* note 62, at 6–7.

dilemma where regionally structuring the NRDC's third tier is concerned. In view of the close coordinating that the NRDC will have to do with the Fed, it makes some sense for the NRDC's regional structure to mirror that of the Fed itself. Indeed, in one rendering that this author has proposed elsewhere, the Regional Fed Banks themselves would be restored to their original regional development bank mission and thus function as both regional Fed Banks and regional NRDC branches.

Because the latter structure has grown anachronistic in light of many changes in regional conditions since 1913, however, to mirror the Fed would be to lock in the same now-anachronistic division of regional labor at the NRDC, unless we were adding new Regional Feds to the many parts of the country that didn't warrant them back in 1913 but have since come to fill-in and need them.⁶⁴ This would reapportion and supplement the Fed's regional Reserve Banks in keeping with contemporary regional conditions, and then apportion NRDC regional functions isomorphically even within these revitalized Regional Fed Banks themselves, which were originally meant to be regional development banks in the first place.

That is effectively what the author's aforementioned "Spread the Fed" proposal would do, as would his recent "Capital Commons" proposal.⁶⁵ Short of that, the best option will be simply to establish NRDC *de novo* and distribute them as we would wish to do with the Fed Regional Banks under contemporary conditions. Then, where these do not coincide with established regional Federal Reserve Banks, the NRDC offices could coordinate with local offices of regional Fed Reserve Banks.⁶⁶ These latter exist in relative abundance, as they represent the Fed's own response to the regional changes that have unfolded over the last century.⁶⁷

However we decide to structure the NRDC's regional layer of distinct NRDC offices, it probably makes sense for their roles and internal governance structures to follow a pattern that either replicates or slightly varies on those of their Fed analogues. The ideal arrangement would probably be classified boards with one class of directors chosen by the NRDC, another by affected state and local governments, and a third by regionally important industries and labor organizations—all subject to NRDC veto as in the case of the Fed.

The function of the regional offices would then be to interface with subnational units of government, industry, and labor in their regions for purposes of both communication and finance allocation. In this connection, a particularly important role of the regional NRDC offices will be to work in collaboration with the system of public banks that the present author, with sundry state legislators, is working to develop. And now that the Fed has opened Municipal Li-

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

quidity and Main Street Lending Facilities to assist with state, local, and small business financing needs in the face of the spring 2020 COVID-19 pandemic, another such role might be to liaise between regional Federal Reserve Banks on the one hand, and states, municipalities, and small businesses aiming to build infrastructural, industrial, and smaller scale productive or service-provision capacity quickly while using the new Facilities on the other hand.⁶⁸

C. Visual Depiction

The following diagram depicts the components, organizational structure, and financial flows associated with the NRDC and its investment arm, along with the Fed, Treasury, and private sector entities. Line segments represent administrative linkages, while arrows indicate financial flows. “Appropriations” means Congressionally appropriated funds, “remittances” means possible remittances to Treasury, “liabs” means financial liabilities (i.e., payment obligations), and “\$” means money payment.

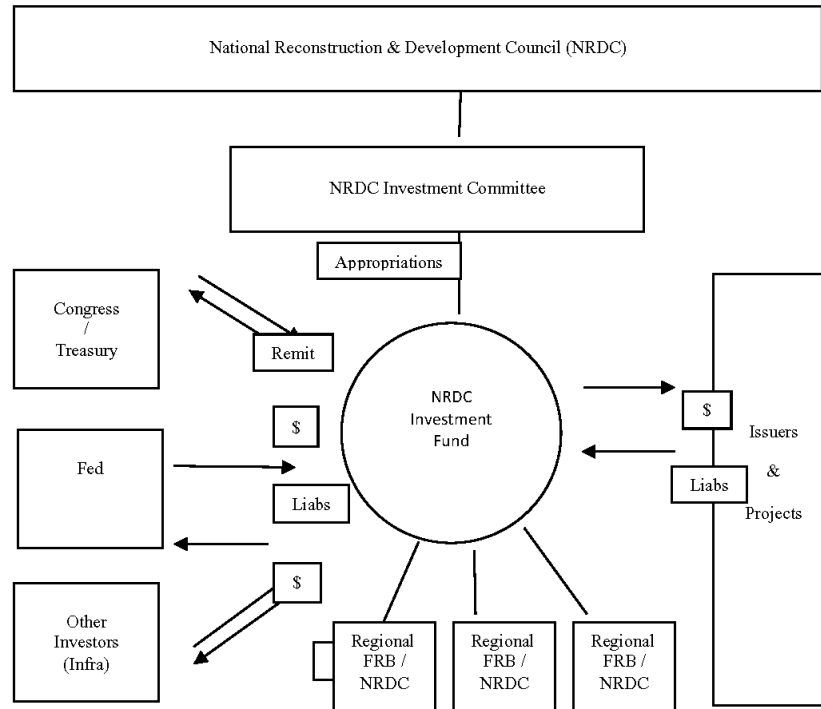
It should be noted that if the division of the Investment Committee into distinct Primary Market and Secondary Market Subcommittees suggested above is adopted, the NRDC Investment Fund depicted in the Diagram will be correspondingly bifurcated. There might, indeed, be multiple funds, according as the Committee judges prudent in pursuing multiple public investment avenues or strategies. This too would be a structure familiar to contemporary finance, in effect constituting a public sector analogue to the family of funds model found in the investment company (especially open-end mutual fund) industry.

It should also be noted that I have left the regional branches or offices at bottom of the depiction ambiguous as between Regional Federal Reserve Banks and regional offices of the NRDC itself. As noted above, I believe the former option preferable, and have written extensively why in other work—notably in connection with my “Capital Commons” and “Spread the Fed” proposals, which

68. For more on the Municipal Liquidity Facility (MLF) and the prospect for a form of “Community QE” that it opens, see, e.g., Memorandum from Robert Hockett, *The Fed’s Municipal Liquidity Facility: Present and Future Possibilities and Necessities* (May 10, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3597732; Memorandum from Robert Hockett, *Community QE2: New Key Provisions and an Updated ‘Game Plan’ for State and Municipal Action* (Apr. 28, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3589851; Memorandum from Robert Hockett, *Community QE: Key Provisions and a ‘Game Plan’ for Immediate State Action* (April 12, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3574157. See also Robert Hockett, *Community QE: An April Game Plan for States and Cities*, FORBES (Apr. 12, 2020), <https://www.forbes.com/sites/rhockett/2020/04/12/community-qean-april-game-plan-for-states-and-cities/#138495c03624>; Robert Hockett, *Optimize Community QE: An Open Letter to Fed Chairman Powell*, FORBES (June 14, 2020), <https://www.forbes.com/sites/rhockett/2020/06/14/optimize-community-qean-open-letter-to-fed-chairman-powell/>; Robert Hockett, *Community QE – Illinois Signs On, and Eligibility Further Expands, But ‘Penalty Rates’ Still Have to Go*, FORBES (June 5, 2020), <https://www.forbes.com/sites/rhockett/2020/06/05/community-qe-illinois-signs-on-and-eligibility-further-expands-but-penalty-rates-still-gotta-go/#5b593cfb18f2>; Robert Hockett, *Welcome to Community QE: Now Let Us Put it to Use*, FORBES (Apr. 9, 2020), <https://www.forbes.com/sites/rhockett/2020/04/09/welcome-to-community-qe/#1e84d9fcc415>.

would restore the regional Fed Banks to their original purpose as a network of FRB-overseen regional development banks. Barring that preferable development, however, regional NRDC offices, perhaps housed Regional Fed Banks, will have to do.

VISUAL DEPICTION: NRDC ADMINISTRATIVE & FINANCIAL FLOW STRUCTURE



III. CONCLUSION: ORGANIZE AND ORCHESTRATE TO “BUILD BACK BETTER”

National reconstruction and development will likely be high on the legislative and programmatic agendas of the next President and Congress. Things have simply deteriorated for too long, and to far too great an extent, for that not to happen. Whether we ultimately call it a Building Back Better, a Green New Deal, or a National Reconstruction and Development, action seems inevitable.

That raises the question: ‘what now?’ For the reasons elaborated above, it seems clear that matters of organization, and hence of institutional design, will have to occupy center stage at the outset of the national rebuilding project. The NRDC schematized in this paper seems an optimal mode of organization. On one hand, it capitalizes on all the strengths and comparative advantages that our existing instrumentalities possess. On the other, it brings coordination and,

therefore, mutual operational coherence to their operations. It also, in view both of its federated structure and public-private partnering, enables optimal coordination among all sectors of our economy and society, and all levels of our federal system of governance.

In short, it is precisely what is needed in order to address the unique coordination and collective action challenges that face any national development project, but no more than that. Hence it is simultaneously “incrementalist” and “transformative”—just as we are apt to hope in a nation as young yet tradition-minded as our own.

What next, then? The answer seems obvious. Next comes the bill that will work the rearrangements, which is what the present author is drafting right now. This need not and ought not discourage similar efforts far and wide. It would be not only vain, but insane, for any one author to think they knew all and only what the proverbial doctor is ordering. The present contribution should be viewed as no more than one of many opening gambits in what is sure to become a grand national deliberation ahead.