

# LAW AND DEVELOPMENT IN THE UNITED STATES: A NEXUS WITH CIVIL RIGHTS

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## ABSTRACT

Several decades have passed since the civil rights movement began. The movement achieved historic success owing to the efforts of so many who dedicated their lives to the call of justice and equality. This remarkable success has led to an improved society that accords the legal protection of equal rights among different races, genders, and ethnic groups. Despite this important achievement, we still have a long way to fulfilling the full promise of the civil rights movement, which at its core lies the protection and promotion of equity and dignity of all people. The Reverend Martin Luther King, Jr., in one of his last speeches before his assassination, stated: "Now our struggle is for genuine equality, which means economic equality." Growing economic disparities that exist along racial lines and across the country indeed pull us away from the ideals of the civil rights movement. Structural economic problems in the United States, such as chronic employment issues persisting in many regions and deepening economic polarization across the country, have exacerbated inequalities and social problems that divide the country. A fundamental change of paradigm is required to meet this challenge. These economic problems can no longer be overcome solely by individual efforts and self-reliance. The governments, including the federal, state, and local, must address them by facilitating economic development in our communities, in cooperation with the private sector, as has been successfully implemented elsewhere. Successful economic development that vitalizes economically depressed regions and bridges the economic gaps must be achieved before we can fully meet the objectives of the civil rights movement.

## Keywords

Law and Development, Civil Rights, Economic Inequality, Economic Development, Carbondale

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## I. INTRODUCTION: LAW AND DEVELOPMENT IN THE CONTEXT OF CIVIL RIGHTS

This essay discusses law and development in the context of civil rights based on my previous work.<sup>1</sup> Law and development is an area of scholarly inquiry as to how law impacts social and economic development. Scholars in this area have focused on development issues in less-affluent countries (“developing countries”). However, the changing economic conditions in recent decades in wealthier countries (“developed countries”), such as widening income gaps among individual citizens and regions, stagnant economic growth deepening economic polarization, and institutional incapacity to deal with these issues, resemble chronic problems in developing countries and render the approaches adopted in law and development, which are applied to address development issues in developing countries, also relevant to developed countries such as the United States.<sup>2</sup>

The economic problems in the United States include growing economic disparities that exist along racial lines and along different regions across the country. As discussed in this essay, a disproportionately larger rate of poverty has existed among racial and ethnic minorities for decades, creating serious social problems for regional communities, the individual states, and the nation. This economic inequality pulls us away from achieving the ideals of the civil rights movement, which at its core lies the protection and promotion of equity and dignity of all people. The civil rights movement, owing to the heroic sacrifices of numerous individuals under the leadership of the Reverend Martin Luther King, Jr., has led us to a better society in which there is a legal protection of equal rights among all races, genders, and ethnic groups. Despite this achievement, however, the growing economic inequality, as well as the existence of significant poverty among racial and ethnic minorities, detracts the United States from the ideals of the civil rights movement. Dr. King, acknowledging this problem, stated in one of his last speeches before his assassination: “Now our struggle is for genuine equality, which means economic equality.”<sup>3</sup>

The traditional American motto, individual autonomy and self-reliance, is admirable in its spirit and has set the mental foundation for this great nation but is no longer sufficient to lift those in need from poverty. It is a structural problem that cannot be overcome by individual effort alone but requires a

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<sup>1</sup> Yong-Shik Lee, *Law and Economic Development in the United States: Toward a New Paradigm*, 68 CATH. U. L. REV. 229 (2019).

<sup>2</sup> *See id.*

<sup>3</sup> New Orleans Workers’ Center for Racial Justice, *Excerpts from a Speech Given by Rev. Martin Luther King, Jr. to Sanitation Workers Striking in Memphis, March 18, 1968* (Jan. 18, 2017), <http://nowcrj.org/wp-content/uploads/2015/01/King-Speech-Excerpts-1968-03-18-FINAL.pdf> [https://perma.cc/6EE3-4GWU].

fundamental paradigm change; there is a need for the federal government, with its largest resources among all governments in the world, to play a more active role in the economy, facilitating economic development in close cooperation with state and local governments, as well as with the private sector. The need is analogous to the one in which the federal government had to be called upon to play an active role in protecting political rights of minorities through legislation and enforcement. With pro-development legislation and an institutional framework, which will be discussed later in this essay, the government can promote economic development. Successful economic development will be essential to realize the goals of the civil rights movement: the protection and promotion of equality and dignity of all people.

The essay is organized as follows. The next section discusses the growing economic inequality in the United States. Section III examines the case of Carbondale, Illinois, a local economy in stagnant economic development. Section IV proposes a new legal and institutional approach (“law and development approach”), in which the federal government plays an active role for economic development by enacting pro-development legislation and setting up institutional frameworks. The government is expected to play this role in close cooperation and coordination with state and local governments, as well as with the private sector. Section V draws conclusion.

## II. GROWING ECONOMIC INEQUALITY<sup>4</sup>

### A. Regional Economic Disparity

Economic disparity in the United States is manifested by large differences in income levels along regional lines. Regional variance in economic performance and income level is not unusual and is observed in every country, but this variance becomes the regional economic disparity that divides a country when economic gaps are deep and persistent, as in the United States. In 2018, the median household income ranged from US \$25,385 to US \$140,382 among 3142 counties, the national median was US \$61,937,<sup>5</sup> and unemployment rates ranged from 1.3 percent to 19.9 percent.<sup>6</sup> The map below illustrates the large income gaps existing among the various

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<sup>4</sup> The discussion under this sub-section is drawn from the author’s previous work, Lee, *supra* note 1, at 234-39, 242-44, and 275-76. Cited data have been updated.

<sup>5</sup> See U.S. Census Bureau, *Small Area Income and Poverty Estimates*, <https://www2.census.gov/programs-surveys/saipa/datasets/2018/2018-state-and-county/est18all.xls> [<https://perma.cc/QB8P-KNH6>].

<sup>6</sup> United States Department of Labor, Bureau of Labor Statistics, *Local Area Unemployment Statistics Map*, <https://www.bls.gov/lau/laucnty18.xlsx> [<https://perma.cc/QEU3-5AXN>].

counties with the more affluent counties being located in the major population centers of the East and West Coasts, pockets in the West, and in the State of Texas; while the poorer counties are in the rural South, Southeast, Southwest, and in the Midwest.

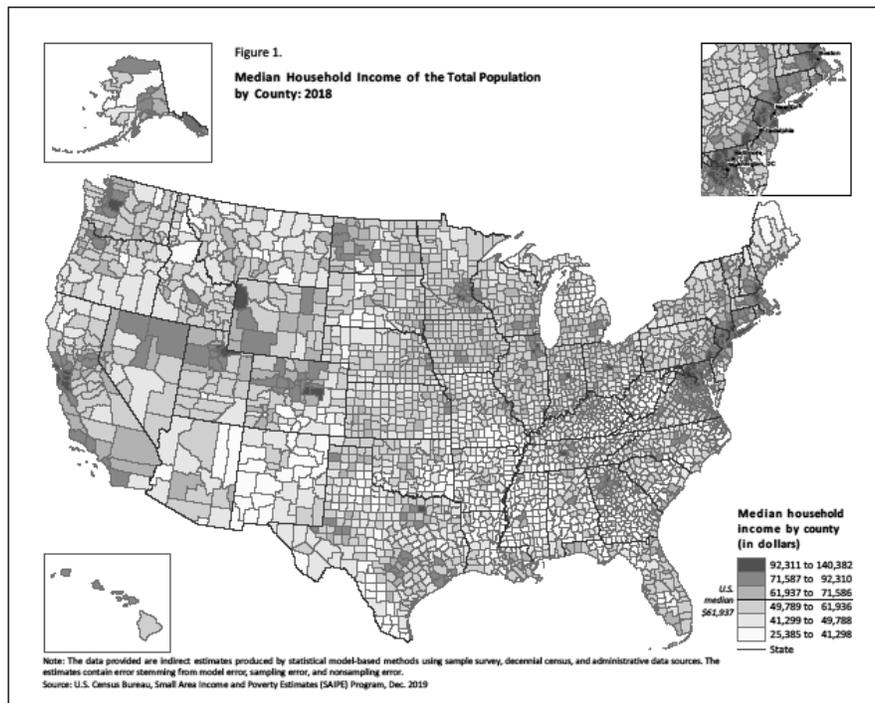


Figure 1: Median Household Income of the Total Population by County (2018)<sup>7</sup>

The regional economic disparity measured by the median household income is large; in the highest bracket, the median household income is over 220 percent of the national median and in the lowest they are below the poverty line.<sup>8</sup> According to a study by the United States Department of Agriculture (USDA), 11.2 percent of all counties (353 counties) in the United States are persistently poor. These counties have 20 percent or more of their

<sup>7</sup> U.S. Census Bureau, *Median Household Income of the United States by County (2015)*, <https://www.census.gov/content/dam/Census/library/visualizations/2019/demo/p30-06/f1-mp-18.pdf> [<https://perma.cc/R4G2-MXGJ>].

<sup>8</sup> U.S. Census Bureau, *Small Area Income and Poverty Estimates*, <https://www2.census.gov/programs-surveys/saipa/datasets/2018/2018-state-and-county/est18all.xls> [<https://perma.cc/7R39-3W23>]. The “poverty thresholds” identified by the U.S. Census for a family of four was \$25,465 – \$26,324 (depending on the number of children under the age of 18) in 2018, U.S. Census Bureau, *Poverty Thresholds*, (January 22, 2020), <https://www2.census.gov/programs-surveys/cps/tables/time-series/historical-poverty-thresholds/thresh18.xls> [<https://perma.cc/A4BH-VEMT>]. *See id.*

populations living in poverty over the last 30 years.<sup>9</sup> Poverty is regionally concentrated in the United States. The USDA study notes that “people living in poverty tend to be clustered in certain regions, counties, and neighborhoods rather than being spread evenly across the Nation.”<sup>10</sup>

What are the causes of the persistent regional economic disparity in the United States? The causes include geographical factors such as location (*e.g.*, access to ports and transportation links), infrastructure, the availability of educated and trained human capital, and natural amenities. These factors have influenced the sites of new industries, such as IT, bio, and financial industries that generate employment and income. There has been uneven industrial development and adaptation across the country, and it has contributed to the regional economic disparity. The United States had powerful, traditional manufacturing industries, such as the iron and steel industries, but many of these industries failed to adapt to the changing global economic environment, and the regions where these industries once thrived have declined as reflected by the term, “the Rust Belt.” The regional economic disparity creates serious socioeconomic issues such as gaps in education, healthcare, public safety, migration of population from poorer regions, and social discontent leading to political unrest.<sup>11</sup>

Perhaps the most dramatic demonstration of such social discontent was the unexpected outcome of the 2016 U.S. presidential election. Donald Trump, who had been largely considered a political outsider, won the election against the former Secretary of State and Senator for the State of New York, Hillary Clinton, despite the overwhelming forecasts predicting a Clinton Presidency.<sup>12</sup> The Trump victory was owed, in no small part, to the economic discontent and the growing mistrust of the American public in the political establishment,<sup>13</sup> concentrated in the regions in economic deprivations. There is a significant correlation between the counties where Donald Trump won and their household median income pattern observed above, as depicted by the following map.

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<sup>9</sup> USDA Economic Research Service, *Geography of Poverty*, <https://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/#geography> [<https://perma.cc/UX6W-LA8S>].

<sup>10</sup> *Id.*

<sup>11</sup> According to the USDA research, “the poor living in areas where poverty is prevalent face impediments beyond those of their individual circumstances. Concentrated poverty contributes to poor housing and health conditions, higher crime and school dropout rates, as well as employment dislocations. As a result, economic conditions in very poor areas can create limited opportunities for poor residents that become self-perpetuating.” USDA Economic Research Service, *supra* note 9.

<sup>12</sup> See John Slides, *A Comprehensive Average of Election Forecasts Points to a Decisive Clinton Victory*, WASHINGTON POST, Nov. 8, 2016.

<sup>13</sup> See Trip Gabriel, *How Erie Went Red: The Economy Sank, and Trump Rose*, THE NEW YORK TIMES, Nov. 12, 2016.



Figure 2: 2016 U.S. Presidential Election Result by County<sup>14</sup>

## B. Economic Polarization

Economic polarization, which refers to the growing income gaps among the citizens, is another sign of economic disparity in the United States. There is an observation that the increasing share of the top 10% of the income distribution has deprived the middle class of income growth.<sup>15</sup> The real incomes of households in the highest income group has increased sharply since the 1970s whereas the real incomes of households in the low- to middle-income groups have stagnated. The U.S. economy had active upward mobility from the 1950s until the 1970s, but it has subsequently been declining, mostly affecting lower income population groups,<sup>16</sup> including a large number of ethnic and racial minorities. As seen by the following figures, the number of middle-income households has decreased from around 58 percent of all households in 1970 to 47 percent in 2014 and the income share of the middle-income household from 47 percent in 1970 to 35 percent in 2014.<sup>17</sup>

<sup>14</sup> Snopes, *Counting Blue Counties*, cited in YONG-SHIK LEE, *LAW AND DEVELOPMENT: THEORY AND PRACTICE* (2019), at 118, n.610. See also Brilliant Maps, *2016 US Presidential Election Map by County & Vote Share* (Nov. 29, 2016), <https://brilliantmaps.com/2016-county-election-map/> [<https://perma.cc/U8YD-B2BR>].

<sup>15</sup> Teulings & Baldwin, Introduction, in *SECULAR STAGNATION: FACTS, CAUSES AND CURES* 70 (Coen Teulings & Richard Baldwin eds., 2014), at 8.

<sup>16</sup> Ali Alich, Kory Kantenga, & Juan Solé, *Income Polarization in the United States*, IMF Working Paper, WP/16/121, 5 (June, 2016).

<sup>17</sup> *Id.* at 5-8.

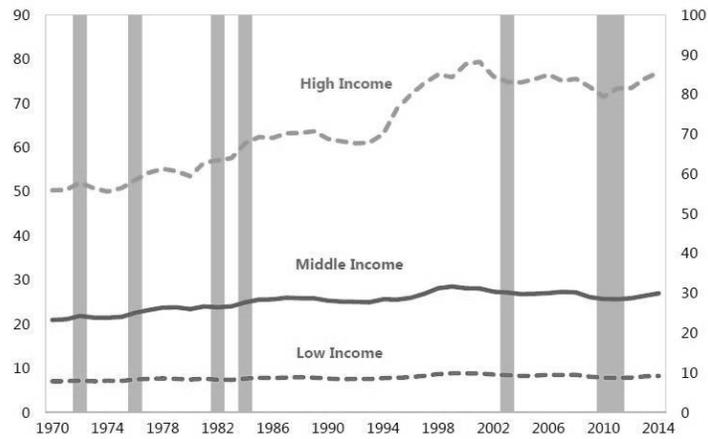


Figure 3: Average Scaled Household Income, 1970-2014 (thousand 2005 US\$)<sup>18</sup>

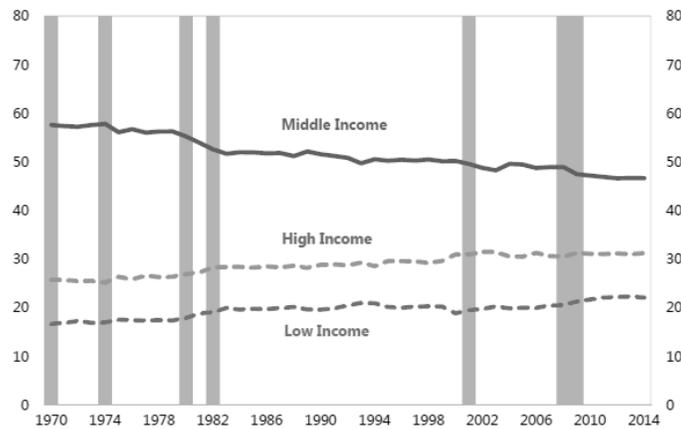


Figure 4: Number of Households by Income Group, 1970-2014 (percentage)<sup>19</sup>

<sup>18</sup> *Id.* at 4. The low-income group is comprised of households with less than 50 percent of the median income; the middle-income group, households with 50-150 percent of median income; and the high income group, households with more than 150 percent of median income. Household income is divided by its size using OECD's equivalence scale. *See id.*, n.6.

<sup>19</sup> *Id.* at 5.

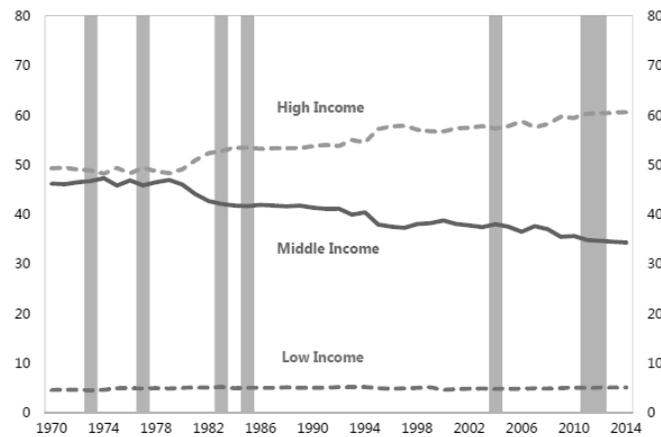


Figure 5: Income Shares by Income Group, 1970-2014 (percent)<sup>20</sup>

The polarization has been accelerating; during 1970–2000, more middle-income households moved into the high income group rather than the low-income group, but only 0.25 percent of households have moved up to the high-income group since 2000 compared to 3.25 percent of the middle-income households moving down to the low-income group.<sup>21</sup> As illustrated by this stagnation of the income growth for middle and low-income groups, the majority of U.S. households have experienced stagnant income growth since the 1970s.

### C. Racial Divide

The economic disparity, discussed in the preceding sub-sections, is exacerbated by the racial and ethnic divide. Legal discriminations against racial minorities in the United States may have been removed since the civil rights movement, but social prejudice against minorities still exists, which has culminated in a substantial economic disparity. The following graph illustrates the significant economic disparity along racial lines.

<sup>20</sup> *Id.* at 8.

<sup>21</sup> *Id.* at 5.

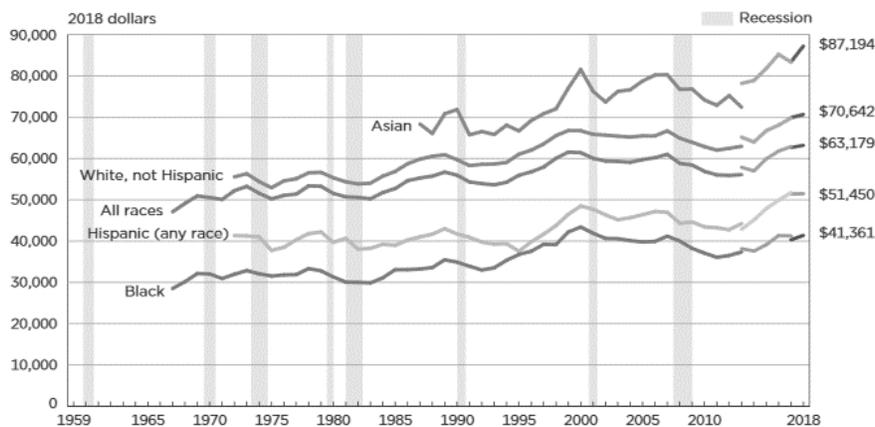


Figure 6: Real Median Household Income by Race and Hispanic Origin<sup>22</sup>

The median household income of black minorities is 41.4 percent lower than the white majority and Hispanics 27.2 percent lower. The poverty rates of racial minorities are also substantially higher than the white majority; the poverty rate of blacks is 22 percent and that of Hispanics 19 percent while the poverty rate of the white majority is 9 percent.<sup>23</sup> The substantial poverty existing among these racial minorities indicates that there is a long way to achieve the ideals of the civil rights movement; without securing sufficient economic foundations, racial minorities will not enjoy the full equity and dignity that the civil rights movement aimed to protect and promote.

This economic disparity along racial lines contributes to the creation of a racially divided society. The last presidential election demonstrates the extent of the racial division; the Republican candidate, Donald Trump, received 58 percent of the white majority votes, but only 8 percent of the African-American votes and 29 percent of the Hispanic votes. By contrast, the Democrat candidate, Hillary Clinton, received 88 percent of the African-American votes, 65 percent of Hispanic votes, and 37 percent of the white majority votes.<sup>24</sup> The current divide is not consistent with the objective of the civil rights

<sup>22</sup> U.S. Census Bureau, *Income and Poverty in the United States: 2019*, <https://www.census.gov/content/dam/Census/library/visualizations/2019/demo/p60-266/figure2.pdf> [<https://perma.cc/7GNS-VXSD>].

<sup>23</sup> Kaiser Family Foundation, *Poverty Rate by Race/Ethnicity* (Timeframe 2018, estimated from U.S. Census Bureau data), <https://www.kff.org/other/state-indicator/poverty-rate-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> [<https://perma.cc/84V7-6TFT>].

<sup>24</sup> See Cornell University, Poper Center for Public Opinion Research, *How Groups Voted 2016*, <https://ropcenter.cornell.edu/polls/us-elections/how-groups-voted/groups-voted-2016/> [<https://perma.cc/7H5V-3VSB>].

movement toward an integrated society. An effort to cure this division must begin with a serious endeavor to bridge the economic gaps present between the white majority and the racial minorities.

### III. A CARBONDALE STORY

The objective of the civil rights movement was the protection and promotion of the equity and dignity of all people, not only racial minorities. As discussed earlier, regional economic disparity is an important issue that undermines this noble objective. A number of declining cities and communities in the less-affluent areas of the United States are an embodiment of the problem. Located away from major commercial centers, these communities lack economic opportunities. State and local governments attempt to facilitate economic development in these communities, but their budgetary constraints and limited resources do not enable them to provide effective assistance.<sup>25</sup> This section introduces the story of a Midwestern city, Carbondale, Illinois. The story illustrates the extent of the economic disparity that plagues regional communities in the United States and underlines the necessity for a new approach for economic development to revive these communities.

Carbondale, a city located in Southern Illinois (see the map below), was once a thriving college town and the trade, tourism, and educational center of Southern Illinois.<sup>26</sup> It is a small city, with the population of 25,376 (U.S. Census 2019 estimate), and also a college town with over 11,000 student enrollments at Southern Illinois University located in the city. The community is adjacent to a national forest, national wildlife refuge, state park, and serves as the host and focal point for business and recreation activities in Southern Illinois.<sup>27</sup>

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<sup>25</sup> For a discussion on the insufficient State budget, see Lucy Dadayan & Donald J. Boyd, *By The Numbers: 2016: Another Lackluster Year for State Tax Revenue*, Rockefeller Institute of Government (May 2017), <https://rockinst.org/wp-content/uploads/2018/02/2017-05-08-By-numbers-brief-no9-1.pdf> [<https://perma.cc/Q9J4-BD2B>].

<sup>26</sup> City of Carbondale, *Carbondale Community Profile*, <http://www.explorecarbondale.com/DocumentCenter/View/2749/Community-Profile-PDF> [<https://perma.cc/Z83G-Z54J>].

<sup>27</sup> *Id.*

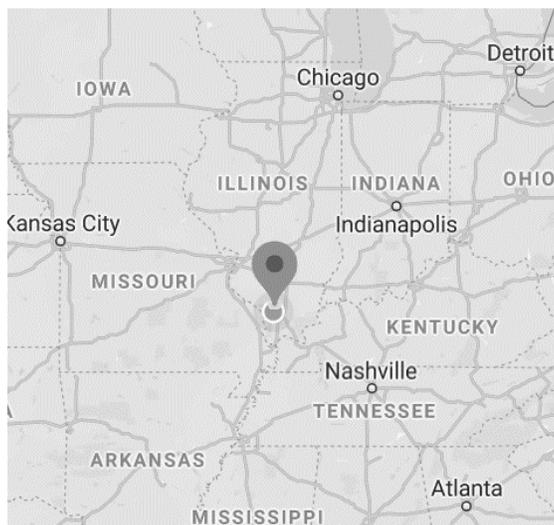


Figure 7: Location of Carbondale (Google map)

Despite the regional importance of the city, Carbondale is a weak economy plagued with poverty. Its per capita income of \$19,224 and median household income of \$22,025 is about a third of the national average, reaching the poverty lines (\$20,578, for a family of three with one child, \$25,926 for a family of four with two children).<sup>28</sup> However, the poverty in Carbondale does not appear to be an outcome of the nation-wide racial economic disparity illustrated in the preceding section; in accordance with the latest U.S. Census report, the city has the majority white population (61.8 percent) and minority blacks (26.6 percent), Hispanics (5.7 percent), and Asians (5.7 percent). There is a significant income gap among races in Carbondale, but its poverty appears to be a problem beyond the racial divide. According to a 2010-2014 statistics, median household incomes for black and Hispanic minorities in Carbondale were equivalent to 55.7 percent and

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<sup>28</sup> U.S. Census Bureau, *QuickFacts: Carbondale City, Illinois*, <https://www.census.gov/quickfacts/carbondalecityillinois> [<https://perma.cc/DF27-6GBR>]. The sizable university student population in Carbondale may have affected the income statistics. However, according to a 2014 article published when the SIU's student enrollment was nearly two-thirds higher, the poverty rate among people with families was already as high as 32.7 percent, indicating that the data are not as skewed and that poverty is prevalent in the city. Robert Loerze, *Impoverished in Illinois*, NPR Illinois (Dec. 1, 2014), <https://www.nprillinois.org/post/impoverished-illinois#stream/0> [[perma.cc/KK99-T2FS](https://perma.cc/KK99-T2FS)].

71.9 percent of the median household income for the white majority, respectively,<sup>29</sup> but poverty was prevalent among all races.<sup>30</sup>

What are the causes of poverty in Carbondale? First, the city's employment base is weak, as demonstrated by a small number of employers offering sizable employment. Only eighteen employers were reported to employ fifty employees or more,<sup>31</sup> with the combined total employment of 11,023. Among them two major employers, Southern Illinois University (SIU) and SIH / Carbondale Memorial Hospital employ nearly three-quarters, with 5,518 employees and 2,412 employees, respectively. SIU employs half of them, and the city's employment and economy are largely dependent on this single institution. This dependency creates economic vulnerability for Carbondale because the city's economic vitality is closely linked to the prosperity of this state university that can be affected by numerous elements outside the control of the city, such as political factors affecting the university budget at the state level. In fact, the university recently had to cut 31 million dollars from its budget, which was equivalent to 15 percent of its annual budget, due to the impasse of state funding.<sup>32</sup> The student enrollment decreased by 43 percent from 2009. The decline of the university has not only adversely affected the city's employment but also its overall economic vitality.

For Carbondale, SIU is not just an institution of higher education but a major industry affecting the livelihood of the city. However, the state government, by allowing this impasse and failing to provide SIU with necessary funding over political disputes, has failed to recognize its importance as an economic player for the city and the region of Southern Illinois. This is against the economic development interest of the community and demonstrates the failure of the government to serve the vital economic interests of its electorates. It is necessary for the state administration to consider the seemingly political issues that also have significant economic implications, such as those associated with the state funding impasse, in a broader economic development context if they were to facilitate economic development in regions affected by poverty such as Carbondale. It is

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<sup>29</sup> Rabita Reshmeen Banee, *Carbondale Median Household Income by Races (2010 to 2014)*, THE SOUTHERN ILLINOISAN, Feb. 11, 2016, [https://thesouthern.com/news/local/communities/carbondale/carbondale-median-household-income-by-races-to/table\\_7b82dfcc-db55-54f3-9a7f-0c151d69eba5.html](https://thesouthern.com/news/local/communities/carbondale/carbondale-median-household-income-by-races-to/table_7b82dfcc-db55-54f3-9a7f-0c151d69eba5.html) [perma.cc/KDC2-4BVB].

<sup>30</sup> According to City-Data.com, the poverty rates were 38.7% for white population residing in Carbondale, 59.3 percent for blacks, 56.1 percent for native Americans, and 47.6 percent for Hispanics, <http://www.city-data.com/poverty/poverty-Carbondale-Illinois.html> [perma.cc/D8MK-VXDL].

<sup>31</sup> City of Carbondale, *Carbondale Community Profile*, *supra* note 26.

<sup>32</sup> Gabriel Neely-Streit, *SIUC's budget crisis recovery challenged by enrollment struggles*, THE SOUTHERN ILLINOISAN, Feb. 11, 2019, [https://thesouthern.com/news/local/siu/siuc-s-budget-crisis-recovery-challenged-by-enrollment-struggles/article\\_8d4d9aa4-f26d-59a6-bae7-7c5335c1f991.html](https://thesouthern.com/news/local/siu/siuc-s-budget-crisis-recovery-challenged-by-enrollment-struggles/article_8d4d9aa4-f26d-59a6-bae7-7c5335c1f991.html) [perma.cc/63WY-AAWU].

necessary for the government to analyze carefully both the short-term and long-term economic effects before taking such a political action and coordinate with the local government to minimize the adverse impact. None of these (i.e., careful economic analysis, the broader economic development perspective, and inter-government coordination) was present in the state handling of the university funding issue, causing significant economic ramifications for the community.

Efforts should also be made to expand Carbondale's weak economic base, as demonstrated in the small number of employers, by promoting diversified industries. The private sector creates employment and is an engine for economic development, but the government also plays an essential role for economic development, by providing information, key infrastructure, education and training, and regulatory and financial incentives for business and entrepreneurs. The City of Carbondale, through its small Economic Development Office, promotes economic development through projects such as the Downtown Master Plan, but it has not been successful in promoting businesses and industries on a scale that will generate sufficient incomes to solve the current poverty problem in Carbondale. The local government does not have the personnel and financial resources necessary to implement large-scale economic development initiatives, but the resources of the state and the federal governments have not been effectively channeled into economic development in Carbondale. There is no master plan or an effective mechanism in place to coordinate the local, state, and federal governments to promote economic development in the community.

The coordination is necessary to promote economic development. For example, the local tax rates in Carbondale, including property tax rates, are higher than most other cities and counties in the nation.<sup>33</sup> These high rates may be necessary to finance the resource-stricken local government, but may not be conducive to economic development as the higher tax rates would discourage potential employers from moving into the area and opening up businesses. The local government needs to re-assess the necessity of imposing such high tax rates against their negative effect on economic development. If such high rates are financially inevitable, there should be a system in place, which will enable the local government to open discussion with the state government on the possibility of subsidizing the local government so that it can lower the tax rates and encourage investments necessary for economic development. If the state government does not have financial capability to offer this assistance, then the proposed coordination

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<sup>33</sup> Illinois has the 6th highest property tax rates in the country at 1.76 percent, and the tax rate for Jackson County, where the City of Carbondale is located, is 1.73 percent. Tax-rates.org, Tax Rates By State 2020, <http://www.tax-rates.org/taxtables/property-tax-by-state> [https://perma.cc/F2UJ-3TJL]; Tax-rates.org, Jackson County, Illinois Property Tax, [http://www.tax-rates.org/illinois/jackson\\_county\\_property\\_tax](http://www.tax-rates.org/illinois/jackson_county_property_tax) [perma.cc/MPW7-CCHH].

system will enable the state and the local governments to call on the federal government for possible support to promote economic development. Such an institutional setup is not in place.

The stagnant economy, as illustrated by the prevalent poverty in Carbondale and many other communities in the United States, and the current institutional inability to promote economic development, requires a change of the paradigm and the adoption of a new approach; i.e., a new legal and institutional approach (“law and development approach”) that will enable the communities to overcome the impasse and promote economic development. Traditionally, local economic issues have been considered a business for the local communities, but this traditional stance has not improved the deteriorating economic conditions in communities like Carbondale. The impasse calls for a more active government role for economic development, as has been successful elsewhere.<sup>34</sup> As discussed in the next section, this new law and development approach includes a legal and institutional reform that promotes coordination among local, state, and federal governments and between the public and private sectors to promote economic development in regional communities and overcome prevalent poverty in many of these communities such as Carbondale.

#### IV. CALL FOR A NEW PARADIGM<sup>35</sup>

The new legal and institutional approach must address the causes of persistent regional economic disparity. To this aim, the government may adopt laws (statutes) that mandate government support to develop necessary infrastructure, improve public education in economically depressed areas, and promote the establishment and expansion of businesses in such areas. The Public Works and Economic Development Act of 1965 (PWEDA)<sup>36</sup> provides for some of these supports through the Economic Development Agency (EDA), established under the PWEDA, but its operational scale is inadequately small and has failed to promote meaningful economic development in communities such as Carbondale. The proposed legislation enables the government to provide specific support measures including subsidy grants, tax incentives, loans, and loan guarantees for the benefit of

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<sup>34</sup> For example, the active state role has led to strong economic development in East Asian countries. Between 1961 and 1996, South Korea increased its gross domestic product (GDP) by an average of 8.75 percent per annum, Hong Kong by 7.61 percent, Taiwan by 8.64 percent, and Singapore by 8.61 percent, while the world’s average annual GDP increase for the corresponding period was 3.85 percent (the GDP growth figures are calculated with real GDP figures at constant 2005 national prices). Yong-Shik Lee, *General Theory of Law and Development*, 50 CORNELL INT’L L.J. 415, 425 n.75 (2017).

<sup>35</sup> The discussion under this section draws from the author’s previous work, Lee, *supra* note 1, at 252-59.

<sup>36</sup> 42 U.S.C. § 3161 (2012).

qualified businesses and industries, promotion of which is expected to lead economic development generating employment and income for local populations in economically distressed areas. These support measures require a substantial amount of financial resources that may exceed the financial capacities of the state and the local governments with budgetary constraints.<sup>37</sup> This means that the proposed pro-economic development legislation must be set up at the federal level so that the federal government, which retains the majority of tax revenues and has the largest resources of all governments, may assume the primary financial responsibility.

The process mandated by the proposed legislation will be an inclusive and collaborative one among the different layers of governments (i.e., federal, state, and local) despite the primary responsibility of the federal government; i.e., it does not preclude state and local governments from setting up their own laws and institutions to meet their economic development objectives within the bounds of their own resources, provided that inter-governmental coordination and cooperation is secured. The essence of the proposal is to enable the federal government to provide support for local economic development where the local and the state governments lack resources to promote businesses and industries on a scale necessary to generate sufficient income and employment to overcome poverty. If such a mechanism should be in place, communities like Carbondale would have access to federal as well as state funding for economic development and be no longer restrained by the lack of resources to initiate economic development projects. The access to funding does not guarantee success but will be necessary for the resource-stricken local communities to undertake economic development.

The proposed law reform also requires effective institutional setup. There is a significant lack of coordination and cooperation for economic development among the federal, state, and local governments and between the public and private sectors.<sup>38</sup> The failure of coordination and cooperation indicates a need for a control tower in charge of promoting coordination and cooperation among the federal, state, and local government departments and agencies in policy development and implementation concerning economic development. This type of control tower could provisionally be entitled, “Economic Development Council” or “EDC” and needs to be established at the federal government level to coordinate the federal departments and agencies, as well as state and local.<sup>39</sup> The primary role of the EDC will be the

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<sup>37</sup> Dadayan & Boyd (2017), *supra* note 25.

<sup>38</sup> See Lee, *supra* note 1, at 19 n.93 (for the examples of this failure).

<sup>39</sup> At the federal level, the EDC is to be granted an independent status from the other departments and agencies and the mandate to coordinate and cooperate with them, including the Department of Commerce, the Department of Finance, the Department of Agriculture, and the Department of State (for development policies with international ramifications).

development of economic development policies, such as identifying strategic areas for government investments, facilitation of inter-governmental and the public-private sector coordination, and identification of the focus areas in which such coordination and cooperation will be essential. The EDC may also be open to the participation of the private sector and invite inputs from relevant private sector players, such as industry representatives, in the development and implementation of economic development policies. The EDC, in cooperation with the existing state or local offices, may also provide further assistance by collecting and disseminating business and trade information, which will be useful particularly for businesses in the economically distressed regions with limited resources and information.

The proposal for the pro-development legal and institutional frameworks might appear to be inconsistent with the political tradition of the United States. There is a cultural characteristic imbedded in the American ethos that emphasizes and values individual autonomy. The economic well-being of an individual is, therefore, primarily his or her own responsibility, to be secured from one's own effort and not from government aid, either in hard cash or regulatory support. According to this tradition, Americans expect the government to protect individual political and economic liberties. The government is expected to secure fair market rules and punish conduct interfering with the operation of the market, such as the dissemination of fraudulent information on the stock market, but not to intervene in the economy and use its regulatory power to meet economic targets. Thus, the establishment of the legal and institutional frameworks focusing on economic development might be seen as an unconventional attempt to assign the government role that is not consistent with the traditional American expectations of the government.

However, the circumstance has changed since the 2007-2008 financial crisis; public trust and confidence in the ethos and traditional policy recommendations of the establishment have been weakened. Many Americans seem to have realized the structural economic obstacles created by regional economic disparity and economic polarization that prevents most, if not all, individuals from improving their own economic wellbeing solely on their own efforts without systematic assistance from the government. Also, the federal government retains the majority of tax revenues, which may justify expanding the responsibility of the government beyond its traditional role under the American political tradition. This change of public perception has been demonstrated by the unexpected election victory of Donald Trump who had promised this change. Despite the controversy of the pronounced policies of the new administration,<sup>40</sup> this dramatic upset has created a momentum to develop a more active role for the

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<sup>40</sup> See Lee, *supra* note 1, at 230-34 (for the untenable nature of the policies).

U.S. government to facilitate economic development for the majority of the American population, allowing for the proposed legal and institutional approaches to be addressed in this context.

Lastly, a lesson should be learned from the outcome of a state-led, regional development initiative under the Appalachian Regional Commission (ARC). The ARC is a regional economic development agency established under Appalachian Regional Development Act of 1965. The ARC promotes the development of the impoverished region that covers 205,000 square miles alongside the spine of the Appalachian Mountains (the Appalachian region), consisting of 420 counties in 13 states from southern New York to northern Mississippi, with a population of 25 million.<sup>41</sup> Just as Carbondale, the Appalachian region is considered among the most impoverished regions in the United States, with the majority of the 420 covered counties categorized as economically uncompetitive: as of October 2019, 80 countries were categorized as economically “distressed,” 110 countries “at risk,” and 217 countries “transitional” while only 13 countries as economically competitive.<sup>42</sup> Several factors, including the regional isolation, lack of social infrastructure, low educational attainment, and lack of capital and skilled labor, have contributed to decades of economic stagnation in the region.

To overcome these issues, the ARC has implemented hundreds of projects a year (reaching 522 projects in financial year 2018), investing in entrepreneurial and business development strategies; improving the education, knowledge, skills, and health of residents; investing in infrastructure, including broadband, transportation such as the Appalachian Development Highway System, and water/wastewater systems; leveraging the region’s natural and cultural heritage assets; and building human capital in the region.<sup>43</sup> Despite the five decades of effort and the substantial federal funding (US\$ 165 million in 2019), the outcome is considered mixed at best, failing to lift most of the region out of poverty, even if some regions have experienced growth.<sup>44</sup> A critic pointed out the consistent failure of the ARC to engage in “rational economic calculation” to pick “winners” for its investment (i.e., businesses and industries that will become self-sufficient and contribute to economic development) and adverse political economy from its bureaucracy (i.e., investments made for political motivations rather

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<sup>41</sup> Appalachian Regional Commission, *FY 2020 Performance Budget Justification*, (March 2019) <https://www.arc.gov/images/newsroom/publications/fy2020budget/FY2020PerformanceBudgetMar2019.pdf> [perma.cc/P6K7-H7WK].

<sup>42</sup> Appalachian Regional Commission, *County Economic Status in Appalachia, FY 2020*, [https://www.arc.gov/research/MapsofAppalachia.asp?MAP\\_ID=149](https://www.arc.gov/research/MapsofAppalachia.asp?MAP_ID=149) [perma.cc/Z6ZE-EAK4].

<sup>43</sup> Appalachian Regional Commission, *Program Area*, [https://www.arc.gov/program\\_areas/index.asp](https://www.arc.gov/program_areas/index.asp) [perma.cc/C8X2-9LC8].

<sup>44</sup> Abigail R. Hall, *Mountains of Disappointment: The Failure of State-Led Development Aid in Appalachia*, 29 J. PRIVATE ENTER. 83, 87 (2014).

than economic rationale) as the reasons for its failure and advocates policies to expand “economic freedom” and reduce government intervention as a solution.<sup>45</sup>

However, the neoliberal policy advocating “leaving it to the market” is unlikely to bring a better solution. Carbondale and Southern Illinois did not have an elaborate federal-funded development initiative program such as the ARC, but its economy has not been any better. State-led development policies have had much better success elsewhere, such as the East Asian economies (e.g. South Korea, Taiwan, Singapore and Hong Kong) from the 1960s to the 90s,<sup>46</sup> lifting the majority of their populations out of poverty. The difference between this success and the outcome of the Appalachian initiative is that in the former case, the governments and the private sector worked more closely (described as the “marriage” between state and market) and the continuing support was conditioned on the recipients’ market success.<sup>47</sup> The supported businesses were able to “graduate” from government support and attained international competitiveness whereas many of the businesses supported by the ARC remained dependent on support, failing to attain competitiveness in the market.<sup>48</sup> The East Asian countries were also able to minimize the adverse impact of government bureaucracy, and the latter was controlled by strong political leadership devoted to economic development.

It is questionable whether the ARC, comprised of the federal and state representatives, has had such strong and coordinated political leadership and an effective working relationship with the private sector. The lack of political leadership is evident. For example, the ARC’s project to build highways in the region (the Appalachian Development Highway System) has not been completed for some fifty years, with state partners either unwilling or unable to contribute to this key project. The ARC has not successfully worked with the private sector and secured strong support from the local residents to promote industries on a scale that was necessary to lift the region out of poverty. Unlike the support programs in the East Asian countries, a number of grants that the ARC approved have had only limited economic effects and have not spurred the growth of economy in the region as a whole. The support has instead created dependency among the local residents on transfer payments.<sup>49</sup> The success of proposed initiative like the EDC will depend on the institutional ability to work with the private sector and to generate

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<sup>45</sup> *Id.* at 88-100.

<sup>46</sup> *See supra* note 34 (for cases of unprecedented economic success under state-led development policies for decades).

<sup>47</sup> Yong-Shik Lee, *General Theory of Law and Development*, 50 CORNELL INT’L L. J. 415, 440 (2017) and YONG-SHIK LEE, RECLAIMING DEVELOPMENT IN THE WORLD TRADING SYSTEM 331 (2d ed., 2016).

<sup>48</sup> Hall, *supra* note 44, at 90.

<sup>49</sup> *Id.* at 95.

effective leadership, as well as the will of the local residents to overcome poverty and dependency.

## V. CONCLUSION

The civil rights movement, the objective of which is to protect the equity and dignity of all people, has led us to an improved society that secures equal political rights without legal discrimination. The achievement of this noble objective required the intervention of the federal government in the form of legislation at the federal level and enforcement of the laws by the federal government. The objective was not achieved by the voluntary cooperation of the state and the local governments. Some resisted such interventions by the federal government, viewing them as interference with the traditional freedom enjoyed by the state and local communities. The legislative, judicial, and administrative interventions at the federal level were necessary to achieve this political justice across the nation, because some state and local governments did not support the civil rights movement and instead attempted to oppress it by using the state and local laws which were inconsistent with political justice to all.

An analogy may also be drawn in the promotion of economic justice, without which we cannot fully meet the objective of the civil rights movement. The protection of the equity and dignity of all people is not limited to political terms. We cannot secure them with the present regional and racial economic disparity that puts a number of minorities and communities in the United States under the poverty lines. The traditional approach of leaving local economic matters to the market and to state and local governments has failed to bridge the gap and to bring economic justice to all. Just as the achievement of the equal political rights required the interventions of the federal government, the realization of economic justice also requires support and coordination from the federal government. To this aim, this essay proposes a legal and institutional reform that will mandate the federal government to do so. The proposal is not to undermine the traditional state sovereignty and the local autonomy. On the contrary, it is to reinforce them by providing means to achieve economic development that is otherwise not feasible under the constraints of state and local government budgets. The proposed role for the federal government is not an alien concept in many other successful developed countries in which the national government plays a more active role for economic development. The proposed role for the federal government will be consistent with the objective of the civil rights movement and will be necessary to bring economic justice for all.

The outcome of the Appalachian Development Initiative has brewed skepticism about federal involvement in regional development issues. Critics are correct that the government involvement does not guarantee that “winners

are picked.”<sup>50</sup> As with everything else in life, there will be successes and failures with state-led development initiatives, and a better question is whether government support will create enough winners to achieve economic development, let losers go, and minimize the adverse outcome of bureaucracy, as the East Asian countries have successfully done. The neoliberal approaches limiting government “intervention” have failed to promote economic development in places like Carbondale, and there is a need for a new paradigm, a new legal and institutional approach that promotes coordination among the federal, state, and local government and cooperation between the private and the public sectors. Effective political leadership and the will of local residents to overcome poverty and dependency will be the core element of success. Given the economic disparity across the country and across racial lines, there is a call for a new phase of the civil rights movement to achieve economic equality through the promotion of economic development, as advocated by the Reverend Martin Luther King, Jr. in his last days.

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*Id.* at 90.

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