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

Roger M. Groves¹

Visiting Professor

Lewis & Clark Law School

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¹ Roger M. Groves is a visiting associate professor at Lewis & Clark Law School, former tax court judge and partner at Howard & Howard Attorneys P.C. Special thanks are in order for the contributions of professors Beverly Moran, Vanderbilt Law School, Susan Mandiberg, Lewis & Clark Law School, research assistants Kelly Menjivar and Troy Nixon, and administrative assistant Brienne Carpenter.

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

President George W. Bush²

INTRODUCTION

Almost \$6 billion in taxes paid by the American people have been rather ubiquitously placed in the hands of a federal subsidy program for investors in low income communities. The subsidy is in the form of a tax credit. The program is entitled the New Markets Tax Credit (“NMTC”) initiative. Under the program, the tax credit is used to lure investors to provide equity capital into low income areas, urban and/or rural. The primary focus of a companion law review article was to provide a clarification of legislative intent and purposes of the federal tax credit program. The overall issue concerns how public funds can be more efficiently used for a stated purpose by amending the existing law and formulating an urban tax credit policy that prioritizes the goals of the NMTC program. I have previously asserted that the purposes of NMTC legislation are to revitalize low income areas for the primary benefit of low income residents, but that this purpose has been usurped in part by investors who establish gentrifying projects such as venues for

² Speech at the *Black Expo*, July 14, 2005 at the RCA Dome, Indianapolis, Indiana, <http://www.whitehouse.gov/news/releases/2005/07/20050714-4.html>

symphony orchestras, upscale hotel-convention center complexes, and high priced condominiums for the financially well healed who migrate to urban low income areas.

These projects appear to present a prioritization of the “wants” of the wealthy gentrifiers, while the NMTC legislation in design champions the needs of the existing low income residents who have suffered the affects of the poverty. It is statutorily required that the entity most responsible for development of the project, receiving the equity investment and distributing the tax credit back to the investors have the “primary mission” of serving low income residents.³ I have termed those gentrifier projects “Problematic Purposed Projects” since it is difficult to consider an entity that has the primary activity of constructing a Residence Inn or Marriott Hotel and convention center, as some projects are, as having a primary mission of benefiting the low income urban residents.⁴ At most, those projects transform low income residents from primary beneficiaries to incidental or residuary beneficiaries on a morphed trickle down economics model.⁵ In such investors and their projects are using federal subsidies for a purpose inconsistent with the congressional intent.

This article contends that an alternative type of investor is more likely to establish projects consistent with the congressional intent of revitalizing the community for its low income residents. That alternative is an African American substrata of the middle class,

³ That important entity is termed a “Community Development Entity” (CDE) under section 45D of the internal revenue code.

⁴ See Exhibit B of companion article, for a chart describing the projects by type, the total amount of equity contributed by investors and the amount of the tax credits to be received from the federal government. From reviewing governmental profiles for each of the 230-plus entities awarded subsidies under the program, I have estimated approximately \$1 billion in tax credits for the Problematic Purposed Projects.

⁵ See companion article, Roger Groves, *The De-Gentrification of New Market Tax Credits*, Florida Tax Review, _____ where I assert that trickle down tax credits are inefficient and not well designed to make low income residents the primary beneficiaries of the projects. A \$100 million hotel complex or \$500,000 condominium provides a minuscule residual benefit to low income residents compared to the gentrified purchaser of the condominium, or the substantial financial returns to the investors and owners of the hotels.

which I term the Ethninvestor. It is past time for such a reconfigured African American middle class on its own collective volition to be part of the revitalization of the urban core cities through a revitalization of its own, fostering a reunion of sorts with low income residents of common ethnicity. The accepted definition of ethnicity for this article is “self-identification in a sociopolitical grouping that has both recognized public identity and a conservationist/activist orientation.”⁶

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

⁶ Margaret D. LeCompte and Jean J. Schensul, *Designing & Conducting Ethnographic Research*. WALNUT CREEK, CA, ALTAMIRA PRESS, (1999), p. 24.

Part I

The Ethninvestor for the Ethnic Enclave

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

When America’s primary immigrant influx at the turn of the twentieth century were primarily Caucasians, albeit from primarily vast regions of Europe, it was perhaps easier to conceptualize America as a melting pot of various ethnic groups that will assimilate into the majority culture. The historically popular notion was that such immigrants would join the mainstream through the generations, and enjoy the bountiful fruits of America in rough proportion to the extent of assimilation, losing their distinctive group characteristics as a byproduct.⁷ There is now a substantial body of empirical evidence that immigrant upward mobility has depended on *not* assimilating completely into the mainstream, but rather, maintaining a common cultural identity that “compensates for other disadvantages such as racial discrimination or a lack of sufficient start-up capital.”⁸ Past immigrants have utilized their small businesses as culturally

⁷ Marilyn Halter, *New Migrants in the Marketplace*, UNIVERSITY OF MASSACHUSETTS PRESS, (1995), p. 2.

⁸ Id.

customized schools for future generations of entrepreneurs and financially independent professionals.⁹ Several case studies in Boston, Massachusetts, a premier modeling site,¹⁰ consistently found that those involved in ethnic enterprises not only later became owners of business themselves, but that future generations also entered the mainstream through professional occupations as owners, rather than paid staff. The studies revealed Greek entrepreneurs, Soviet Jews, Haitians, and British West Indians all gaining in economic and social resources resulting from family enterprises built on ethnic foundations.¹¹

In the early 1990's, one half of the Miami Florida population was of Cuban origin, and a study found that there were not just co ethnic self employed owners with ethnically aligned employees, but also "locational clusters" of ethnic entrepreneurs (e.g. "Little Havana" and concentrated Cuban business districts).¹² The authors concluded that Miami's ethnically Cuban economy was "hyperefficient"¹³ because of its "vertical and horizontal integration, ethnically sympathetic suppliers and consumers, pooled savings, and rigged markets".¹⁴ The evolved term for this economic dynamic is the "ethnic enclave economy", consisting of two components: spacial clustering in a location and a critical mass of immigrant owned business firms that employ co ethnic workers to serve their own ethnic market and/or the general population.¹⁵

⁹ Id. at 9.

¹⁰ Id. at 5. There have been numerous case studies in Boston Massachusetts because of an immigration explosion in the late 1980's, resulting in the fifth largest influx of refugees and seventh largest total immigration increase in the US according to the 1990 census. Boston thus was diversifying faster than most of America without one single ethnic group dominating the increase. One such study by Ivan Light highlighted the "multiplier effect" of ethnic entrepreneurship. Id. at 9.

¹¹ Id. at 10.

¹² Id. at page 29 citing a published case study of Messrs Portes and Boch.

¹³ The efficiency in the ethnic enclave economy is discussed in greater detail in the section on Application of Economic Principles.

¹⁴ Id. at page 30 citing a published case study of Messrs Portes and Boch.

¹⁵ Halter, *supra* note 7, at 30 UNIVERSITY OF MASSACHUSETTS PRESS, (1995), citing a published case study of Messrs Portes and Boch, (Portes 1981, 290-91).

Those ethnic immigrants were motivated for entrepreneurship within an ethnic enclave. By exploring their motivations, can be learn whether a newly configured African American group can become similarly motivated? An established theory (attributable the Max Weber in 1930, hereinafter the “Weber Theory” is that culturally-based entrepreneurship within the enclave is primarily a reaction to exclusion from the larger marketplace due to discrimination. That is to say hostility from a host country is a driving force encouraging economic solidarity and increased entrepreneurship among the oppressed groups, and thus a self-help mechanism for survival and growth.¹⁶ More specific study of the relationship between ethnicity and entrepreneurship brought a theory of “Middleman Minorities”. That is to say in a capitalist system, a certain class of minorities became a “go-between” group, filling a gap between the elite ruling class or host society and the poorer oppressed masses. They typically were not owners of large capital enterprises. Rather, through small business formations, they provided a conduit or negotiating function, passing goods and service as a broker, rent collector, labor contractor, distributor or wholesaler from the host society elite to the masses.¹⁷ This

¹⁶ This theory was espoused by the acknowledged founder of entrepreneurship research Max Weber. His context in 1930 involved religious oppression among German Catholics by Protestants, rather than ethnically based hostilities. In his words: “National or religious minorities which are in a position of subordination to a group of rulers, through their voluntary or involuntary exclusion from positions of political influence, to be driven with peculiar force into economic activity. Their ablest members seek to satisfy the desire for recognition of their abilities in this field, since there is no opportunity in the service of the State.” His examples include Poles who had a more rapid advance in Russia than in their own lands of Galicia. Also noted were Huguenots in France under Louis XIV, the Nonconformists and Quakers in England, and “last but not least”, the Jews for two thousand years. Importantly, he noted the movement was into small businesses, as will be recommended in this article as well. Max Weber, *The Protestant Ethic and the Spirit of Capitalism* NEW YORK: CHARLES SCRIBNER’S SONS (1930) at 43.

¹⁷ This theory is authored in large part by Edna Bonacich and Jonathan H. Turner. *See A theory of Middleman Minorities*, AMERICA SOCIOLOGICAL REVIEW, 38 OCTOBER 1972:583-594. Some recent examples include Asians in East Africa, Japanese and Cubans in the United States, and Chinese in Southeast Asia, all of whom developed a Middleman group.

fostered the notion of the “middle class” or the bourgeoisie among minorities, with particular application to the people of African descent in the United States.¹⁸

Much of the older literature of the African American middle class curiously is devoid of the self help contributions of the group, but the most evolved and emerging theoretical framework for racial enterprise in an oppressive society asserts that the African American experience, though fraught with some unique challenges, nonetheless shows that it is consistent with the Weber principles and the Middleman model for minorities. They too responded to racism and oppression to forge self help business activities and in fact thrived during the years of segregation when it could not depend on upward mobility from the host society.¹⁹ There is now a substantial body of literature revealing that the most prolific period of self help ethnic entrepreneurship is typically by the first generations of the oppressed group in the hostile host environment.²⁰

In the case of African Americans, freed slaves in Philadelphia in the late 1700s developed a critical mass of small businesses to survive economically, serving black and white clientele. In the early 1900s, the proliferation continued despite the fact African Americans were forced to primarily do business with each other for a period after the

¹⁸ The seminal, but oft-criticized, work on the rise of the US black middle class is by E. Franklin Frazier in his writing, *Black Bourgeoisie*. Frazier alleged a lack of leadership in integrating the black masses into the larger Euro-American society. Frazier contemptuously viewed middle class creations such as fraternal organizations or social clubs that separated the middle class from the working class, e.g. Greek letter fraternities in “Negro higher education ... were devoted chiefly to ... educating the black bourgeoisie,” instead of the black masses. The rebuttal includes the contention that Frazier had a myopic view of only a small portion of the black middle class and an utter failure to have a theoretical construct for comparing and appreciating the gains made by that group with other minorities at a comparable point in their history in America. See John Sibley Butler, *Entrepreneurship and Self-Help among Black Americans*, STATE UNIVERSITY OF NEW YORK PRESS, (2005), p241-243.

¹⁹ John Sibley Butler, *Entrepreneurship and Self-Help among Black Americans*, STATE UNIVERSITY OF NEW YORK PRESS, (2005), p. 263. In his critique of the Frazier theme of failed integration, Butler said, “If Frazier had understood, as Weber did, the importance of the relationship between being excluded from a society...and business activity, he would have understood that the African American response and adaptation to America has been seen for hundreds of years. Id.

²⁰

passage of *Plessey v Ferguson* in 1899 with its separate but equal doctrine.²¹ By 1911, when segregation was still in its glory, Atlanta had approximately 2,000 black-owned establishments, representing over 100 business types. This included a bank, 3 insurance companies, 12 drug stores, 60 tailor shops, 83 barber shops, and 85 grocery stores.²² It is important to observe that the forced self help entrepreneurship was 126 years before the City of Atlanta granted its first government contract to an African American owned enterprise.²³ In fact, it appears that in 1929, African Americans were the only ethnic minority group to compile its own national ethnically separated retail store census, and begged the United States Bureau of Census to do the same.²⁴

With banking in particular, African Americans were spurred by the rejection of the hostile host to establish at least 134 banks between 1888 and 1934.²⁵ In contrast with modern times, as of 1986 when principles of assimilation and integration diluted the African American interdependence, there were only 39 African American banks, with total assets of only 12.53% of the total from 60 years earlier.²⁶ Twelve of the 25 banks on the *Black Enterprise Top 100* list were founded between 1895 and 1956, or during the days of official segregation.²⁷ And each of the top ten African American insurance

²¹ See W.E.B. Dubois, *The Negro in Business* (1898) and Joseph Pierce, *Negro Business and Business Education* (1947) for illuminating text. More recent is the work of John Sibley Butler, *Entrepreneurship and Self-Help among Black Americans*, STATE UNIVERSITY OF NEW YORK PRESS, (2005), p 264 where he includes the systematic establishment of social organizations, religious and educational institutions, both public and private. In one case freedmen raised over \$200,000 in 1869 for a schoolhouse and teacher support. Id.

²² John Sibley Butler, *Entrepreneurship and Self-Help among Black Americans*, STATE UNIVERSITY OF NEW YORK PRESS, (2005), p.318.

²³ Id.

²⁴ Id. at 311.

²⁵ See Id. 319, citing W.E.B. B. Du Bois, *Economic Co-operation Among Negroes*, ATLANTA, GA, THE ATLANTA UNIVERSITY PRESS, 1907, 111.

²⁶ Id. citing the magazine *Black Enterprise*, June 1988, p. 206.

²⁷ Id.

companies was established during this proliferation of self-help entrepreneurship or no later than 1960.²⁸

Obviously, a return to segregation is not advocated, but the economic evidence from that era leads to questions: If self help entrepreneurship had vitality when African Americans were more directly forced together, can a model be created for achieving the same result in the current environment? What role can the NMTC play with ethnic Middlemen of this day? To answer those questions we must describe the current environment in comparison to the years of forced segregation and assess which, if any, of the prior economic circumstances have current applicability. Indeed one similarity is that the ethnic enclaves of the current day may be as segregated today by ethnicity or class or both than before the Civil Rights movement of the 1960's – though not by law.²⁹

There are however differing aspects of the modern ethnic enclaves that impact the economic model. One major factor is the effect of the second of two significant migrations of African Americans from the South to the North. The first was World War I. Between 1915 and 1917 approximately 400,000 African Americans migrated in just those 3 years. World War II brought the second wave from the South.³⁰ The impact was more profound. Between 1940 and 1950 roughly 2.5 million African Americans moved to 168 of America's cities from rural environs.³¹ In the major industrial cities of the

²⁸ Id, noting particularly the North Carolina Mutual Life Insurance Company founded in 1898, Atlanta Life in 1905, Golden State Mutual Life insurance in 1925 (Los Angeles) and Booker T. Washington Insurance Company, (Birmingham Alabama) in 1932.

²⁹ **GET CITE for comparison of segregation.**

³⁰ John Sibley Butler, *Entrepreneurship and Self-Help among Black Americans*, STATE UNIVERSITY OF NEW YORK PRESS, (2005), at 267.

³¹ Id.

northeast, the influx of African Americans brought a flight of white Americans.³² Combined with the continued vestiges of racism, substandard public schools preventing African Americans the same mobility as non-minorities, the urban “ghetto” was entrenched by the 1950’s. One study in 1963 concluded that while European immigrant groups experienced decreasing residential segregation, African Americans still suffered from systematic segregation and poorer public education. As a result, segregation patterns accelerated rather than diminished for African Americans in those cities.³³ In response to the blighted condition, government programs established urban renewal projects that not only rebuilt, but also displaced or removed people from prior locations. Thirty percent of African American businesses that also were swept away by renewal projects never reopened, and of those who did, 50 percent failed within the first five years.³⁴

A myriad of other factors contributed to a continued deterioration of the urban core that impact the modeling of the modern Ethninvestor. Attribution includes a social disorganization of the black family structure³⁵, and by the mid-1960’s an exodus of

³² Id. That 1940-1950 period brought dramatic white flight from major northeastern cities, including Newark, New Jersey where the primarily African American increase was 29,000 while the white population decreased by 20,000.

³³ Karl E. and Alma F. Taeuber, “*Is The Negro an Immigrant Group?*” VOL. 1, NO. 3 (June, 1963) 25-27 cited by John Sibley Butler, *Entrepreneurship and Self-Help among Black Americans*, STATE UNIVERSITY OF NEW YORK PRESS, (2005) at 268. Even the racially distinct Japanese in northern cities experienced lessened rather than increased segregation.

³⁴ Arthur I. Blaustein and Geoffrey Faaux, *The Star-Spangled Hustle*, Garden City, New York: Doubleday inc., 1972. p 71 and Butler *supra* at 310.

³⁵ A seminal work was the Moynihan Report, Patrick D. Moynihan, *The Negro Family: The Case for national Action* (Washington D.C. Office of Policy Planning and Research, U.S. Department of Labor, 1965), cited by Butler *supra* note 30, at 269. Thoughtful scholars on this subject caution not the blame the victim. As stated by one student of criminology: “Treating changing African-American family structure as a causal agent within a vacuum raises an important problem. One cannot assume that all else in society remained constant while black families and juvenile crime rates changed. In fact, as noted below, societal change has influenced family structure and, in turn, crime rates. Directing policy at lower-class African-American family structures without addressing the larger forces shaping that structure treats symptoms rather than causes.” Joseph F. Sheley, *Structural influences on the Problem of Race, Crime and Criminal Justice Discrimination*, 67 TUL. L. REV. 2273, 2280-81 (1993).

middle class and working class African Americans from the core cities, leaving an underclass with fewer role models. As one study found, the African American middle class had previously been a “social buffer” that could “deflect the full impact of the prolonged and increasing joblessness that plagued inner-city neighborhoods in the 1970’s and 1980’s.”³⁶ The void created a higher concentration of desperation among the remaining urban core residents. Scholars of ethnicity and economics contend that the effect of that 1960’s integration migration out of core cities is consistent with an observed common experience of first minority generations – that the earlier generations facing hostile societal exclusions responded with self help entrepreneurship than succeeding generations who had lesser overt “crisis” of equality of opportunity.³⁷ The sun-up to sun-down work in the business by parents brought a hope for a better life for offspring, achievable through education and professional occupations, which led to greater mobility from the urban core to the suburbs. “Like their ethnic counterparts”, states one scholar, African Americans, when possible, followed the tradition of education, acquiring excellent occupations, and move away from the central city.”³⁸ African American middle class entrepreneurs during the 1930s era produced 56% of the next generation’s “Who’s Who in Colored America” within the professional category.³⁹

Yet unlike the experience of the segregated South, the migration North did not lead to the re-creation of the historic African American institutions. Those institutions provided “historical nurturing and served as launching pads for the adapting to the larger

³⁶ See William Julius Williams, *The Truly Advantaged of the Disadvantaged* (Chicago: The University of Chicago Press, 1987), 55. *See also* Butler *supra*, note 30 at 269.

³⁷ Butler *supra*, note 30, at 268.

³⁸ *Id.*

³⁹ *Id.* at 251-252.

American society and more fully participating in it economically.⁴⁰ Without that tradition, the scholar rhetorically asks, “What are the lessons and values passed on from former generations? What are the lessons or values which guide the offspring of the [African American Middleman]?”⁴¹ And unlike the modern ethnic enclaves, African American enterprise was at one time the “very center of communities during segregation” and “there was always a reality that business enterprise was the shoulders on which to build for future generations”.⁴²

And then there is the current pattern of disproportionate consumer spending and the lack of wealth accumulation. African Americans make up about 12% of the population, and comprise over \$631 billion in annual earnings.⁴³ However, only 50% of African American adults own their own homes, while 70% of white Americans own theirs.⁴⁴ Approximately 30% of the African Americans that earn \$100,000 a year had less than \$5,000 in retirement savings.⁴⁵ When white and black households were compared, whites saved almost 20% more each month for retirement.⁴⁶

Perhaps most fundamentally challenging for the modern African American investor is identity ambivalence, the struggle to define oneself contextually in performance externally among white America, and then internally amongst other African Americans. Now externally, studies on race consciousness involves the extent to which persons of common race practice a “re-interpretation, re-invention, re-presentation, and re-definition of one’s racialized identity within the dynamic context of being American

⁴⁰ Id. at 271.

⁴¹ Id. At 270.

⁴² Id. at 311. See also W.E. B. Dubois, *The Negro in Business* (1898).

⁴³ See *infra*, footnote 60, page 19 for additional income statistics and sources.

⁴⁴ National Urban League “State of Black America 2004”

⁴⁵ USA TODAY, November 19, 2004, citing report of Ariel Mutual Funds/Charles Schwab 2003 Black Investor Survey

⁴⁶ Id.

[as if] in front of an audience, or public.”⁴⁷ An evolving model, which is both internal and external in establishing norms for African Americans, is that of a re-defined notion of “opportunity” beyond the civil rights legacy of equality of opportunity. Rather, “opportunity is a concept of enablement rather than possession; it refers to doing more than having.”⁴⁸ In the NMTC context, the well-suited African American investor must view the opportunity to invest as enabling him or her to achieve goals beyond pecuniary gain (a position). The goal is to invest in a re-invented social entrepreneurial way akin to African Americans during the earlier ethnic enclave and other immigrant groups. At the core is an issue of self-identification and solidarity. If a group is not self-identified, it cannot achieve solidarity on the issues otherwise thought to be common. This “putative solidarity” among African Americans is viewed by leading scholars in the field as requiring a “hybrid” approach, a recognition that although African Americans are a mosaic in skin tones and ethnic origins, in this country there is a need for an overarching common identity in part because it is still so imposed on them – Obama who has an African father is still a black man in jail though his mother is white.⁴⁹ In the context of this article, only those who have such a self identification are deemed likely to be appropriate investors in the MNTC transaction. The excepted definition of ethnicity used in scientific study by ethnographers is “self-identification in a sociopolitical grouping that has both recognized public identity and a conservationist/activist orientation” and is used herein.⁵⁰

⁴⁷ John O. Calmore, *Whiteness As Audition and Blackness as Performance: Status Protest From The Margin*, 18 WASH. U. J.L. POL’Y, 99 (2005), p. 109

⁴⁸ Id. at 110, citing Iris Marion Young, *Justice and the Politics of Difference*, 26 (1990)

⁴⁹ Id. at _____

⁵⁰ Margaret D. LeCompte and Jean J. Schensul, *Designing & Conducting Ethnographic Research*. WALNUT CREEK, CA, ALTAMIRA PRESS, (1999), p. 24.

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

Part II

Ethninvestor Criteria

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

Risk Analysis

Established literature asserts that at the core of the analysis of risk is culture and perception that falls within that culture. According to a leading theorist, "Anything whatsoever that is perceived at all must pass by perceptual controls. In the sifting process something is admitted, something rejected, and something supplemental to make the event cognizable."⁵¹ She concludes, "The process is largely cultural."⁵² She then developed over two decades ago a paradigm of cultural constraints, fitting behaviors and outcomes into a grid with groups designated therein. The intent was develop a way of identifying and segregating the causes for the "self-sustaining perceptual blinkers" and biases we all have, which gives rise to how we perceive our environment and how we view our role within it.⁵³

Investing too is based on perception, including but not limited to the perception of risk before one's money is spent. The typical investor is attempting to increase her

⁵¹ Mary Douglas, *Essays in the Sociology of Perception*, ROUTLEDGE & KEGAN PAUL LTD, (1982), p 1, 2)

⁵² Id.

⁵³ Mary Douglas, *Essays in the Sociology of Perception*, ROUTLEDGE & KEGAN PAUL LTD, (1982), p 1, 2) There are differing theories concerning the factors that influence perception and behavior. Douglas identifies "economic determinists" for the typology that values and beliefs are secondary to and dependent on economic constraints. As a polar opposite there are those who contend the same values and beliefs are predicated on free will. Her model is a middle ground between those theories. Mary Douglas, *Essays in the Sociology of Perception*, Routledge & Kegan Paul Ltd, (1982), p 2).

economic well being as a primary motivation for the endeavor – using her money to make more money. With that quest in mind, she prudently compares one opportunity for making money with other opportunities before deciding which vehicle best suits her. That decision requires a level of analysis of risk – what level of risk of losing my money do I take in that quest for more money.⁵⁴ If the perceived risk is less for those culturally connected with the community in which the business operates, isn't that investor more likely to make the investment than one who perceives that same investment as a higher risk. Someone accustomed to driving in a major city may be more willing, for example, to bear that risk of accident on a very busy freeway on the Beltway around Washington DC than a visitor from rural Wyoming who has never driven on the Beltway. The Wyoming driver is predictably more likely to say, no thank you to that degree of risk. Why? The perception of risk and the familiarity with the environment is different, the culture is different. Similarly, an investor who is unaccustomed to the experience of the existing urban core housing or commercial market is, like the Wyoming driver, likely to perceive the risk as higher than the urban businessperson or those culturally connected with that urban core.

Another major risk variable with important implications for the NMTC investor is how long must the investor wait (i.e. the holding period) before the anticipated return is achieved. From a pure finance perspective, the longer the wait on the return, the larger the required amount of the return and often the more risky the investment.⁵⁵ The NMTC program has attracted investors over the short term (i.e. over the 7-year tax credit period) without necessarily committing to the long term best interests of the community or the

⁵⁴ That process is referred to as the “opportunity cost of capital”. **CITE**

⁵⁵ **FIND CITE.**

remaining economic life of the subsidized assets. It is a greater risk to commit long term to any such venture since the tax credit benefits will have expired. The point is that investment criteria for an Ethninvestor should include a longer term commitment because it is in the interests of the target community and more aligned with the purpose of the NMTC program. It is therefore a more mature model to engage as NMTC investors those who perceive the low income urban core communities as less of a long term risk, or at least a risk that for cultural and non-economic reasons, he or she is willing to take beyond the seven year haven.

Social Entrepreneurship

Equally important, the economic return may not be as high a priority if the investor's goal is to achieve a blend of economic returns and social benefits to the target community. This incorporates the burgeoning study of "social entrepreneurship."⁵⁶ This term is defined as the pursuit of innovative investment strategies, including profit-making ventures to serve a social mission, typically found in the nonprofit sector or within private hybrid business organizations mixing nonprofit and for-profit social purposes. This is a "double bottom line".⁵⁷ The Bill and Melinda Gates Foundation apply the concept in controlling approximately \$60 billion toward its own charitable enterprises.⁵⁸ The Foundation's underlying goal is improving the lot of world's poor people without regard to their color, religion or other differences.⁵⁹ Its results-oriented approach led to

⁵⁶ Gail A. Lasprogata and Marya N. Cotton, *Contemplating 'Enterprise': The Business and Legal Challenges of Social Entrepreneurship*. 41 AM BUS. L. J. 67 (2003)

⁵⁷ Id. at 69.

⁵⁸ So impressed was the world's second wealthiest man, Warren Buffett (Chairman, Berkshire Hathaway, Inc), with the social entrepreneurship of the world's wealthiest man, Bill Gates, that he donated \$31 million to the Bill and Melinda Gates foundation, which previously had assets of an approximate equal amount. Donald G. McNeil, Jr and Rick Lyman, *Buffett's Billions Will Aid Fight Against Disease*, THE NEW YORK TIMES, VOL. CLV, No. 53,623, Tuesday, June 27, 2006, p 1.

⁵⁹ Id.

the selection of projects they could actually envision a meaningful change in the world, such as improving global health through research, prevention and treatment for AIDS, tuberculosis, malaria and vaccine-preventable childhood diseases.⁶⁰

Modifying a venture capital model, the Gates Foundation leverages its investments to achieve that double bottom line. Its concept is to identify measurable and achievable outcomes, that though they may required a large initial outlay of capital, can produce a desired result with a low cost of sustaining the benefit. Like software, the up front costs of vaccinations globally are very high, but the ongoing manufacturing costs are low. The Gates observed that three million children a year were dying from vaccine-preventable diseases. According to the World Health Organization, the foundation has saved 670,000 children, and will save millions more in coming years.⁶¹ The true genesis of this social entrepreneurship model was the Gates mindset to be “audacious”, where they “believe these things actually can be solved”⁶².

It is that type of audaciousness that is required for an Ethninvestor model to effectively make a difference in the urban core communities. Bill Gates urged his foundation staff to think “outside the box”⁶³ As will be discussed under the specific Ethninvestor model, the qualified investor must have a similar perspective to avoid the rigidity of externalities and be guided more by the group’s greater good. When social entrepreneurship is discussed in that section, these conceptual underpinnings are incorporated by reference.

⁶⁰ Susan Stamberg, Steve Inskip, *Gates Aims for major Philanthropic Impact*, NATIONAL PUBLIC RADIO MORNING EDITION program, June 27, 2006, and <http://nl.newsbank.com/nl-search/we/Archives>.

⁶¹ Id.

⁶² Id.

⁶³ Id.

Access to Capital

Finally, it is of little value to discuss a model for investors if it includes those with little or no money to invest. African Americans have \$631 billion dollars in earnings per year.⁶⁴ Approximately 343,000 African American households earn between \$100,000 and \$124,000 annually, and 102,000 African American households earn \$200,000 or more.⁶⁵ And then there are a few with Gorilla wealth. To name a few, Usher Raymond IV, known worldwide musically in the rap genre as “Usher” established his own record company (Sony BMG) that paid him \$20 million in 12 years.⁶⁶ In early 2005 he earned another \$20 million from his 64-city tour. Usher asserts that only 10% of his income is devoted to consumer spending, with the remainder invested in fixed income investments, blue-chip stock, real estate and business ventures. Included in the portfolio is a \$1 million investment in a bank. In February 2005 he became a minority owner of the Cleveland Cavaliers of the National Basketball Association with a \$9 million investment. In his words, “Wealth accumulation is at the top of the list.”⁶⁷ Rapper Jay Z (a.k.a. Shawn Carter) co-owns Rocawear clothing, with \$350 million in sales. There are more African Americans in America than there are people in Canada,⁶⁸ and census data reveals a 46% increase in African American owned firms between 1987 and 1992 compared to a 26% increase in the larger society.⁶⁹ The opportunity for investment in the NMTC program and other vehicles is within reach if the collective vision of a few extends to grasp it.

⁶⁴ USA TODAY, November 19, 2004

⁶⁵ US Census Bureau, *Statistical Abstract of the United States: 2004-2005 Table 663*, (124th Edition) Washington, DC, 2004.

⁶⁶ Brett Pulley, *Diamonds, Cars and Confessions*, FORBES, May 9, 2005; (<http://forbes.com>)

⁶⁷ Id.

⁶⁸ CITE

⁶⁹ Butler *supra*, note 30 at 325. The raw numbers show 424,165 to 620,912.

Specific Model

A host of influences affects economic investment goals and choices. Akin to the Douglas model, there are essentially two dimensions of control over an individual's decision making. One influence module is the impact of forces outside oneself and outside of the small group of common believers. These are major principalities such as the government, corporations, the larger institutional entities that regulate us in one fashion or another. We must have driver's licenses, car notes, mortgages regulated by financial institutions, and employers who regulate employee behavior for assigned tasks. These are termed "External Regulators". As the chart below depicts, the lower left corner is the low level of influence by the External Regulators on a person. As the influence grows, that growth is measured vertically so the top left of the square reflects the highest extent of external regulation.

The other influence module is the group dynamic where people have commonality in areas they consider important. The group has a self defined pattern of allegiance, criteria for admission and varying levels of commitment to that group.⁷⁰ For African Americans, indicia of membership as a general group include the shared historical context of slavery and segregation, cultural aspects that are either self defining (e.g. speech, music, phrases of art), or ascribed to them in stereotypes that they commonly rail against, and of course skin pigment. For the specific purpose of the NMTC investing analysis, the group influence is defined more particularly as that group of investors that are self motivated group, with a non-traditional sense of social entrepreneurship where the investment goal is not only to make money as an individual, but as importantly, be committed to the betterment of the ethnic enclaves of the NMTC

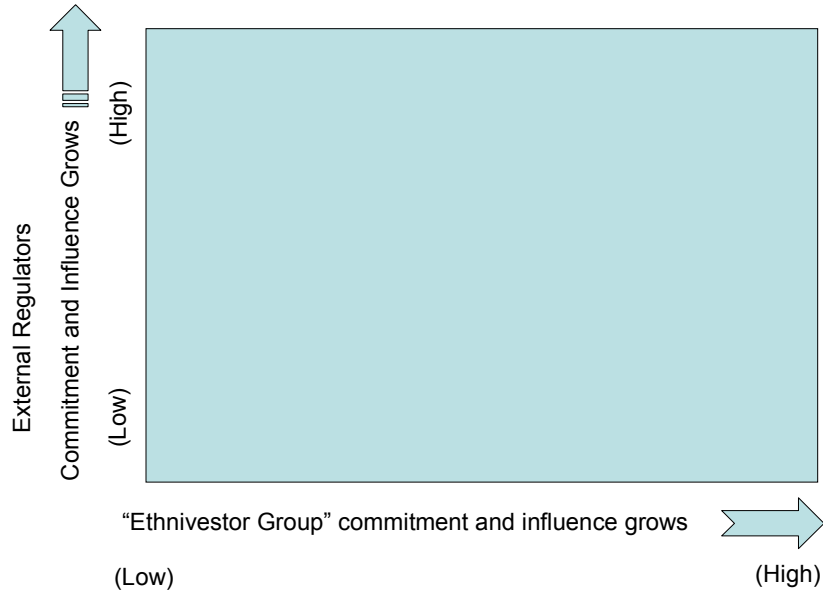
⁷⁰ Mary Douglas, *Essays in the Sociology of Perception*, ROUTLEDGE & KEGAN PAUL LTD, (1982), p 2

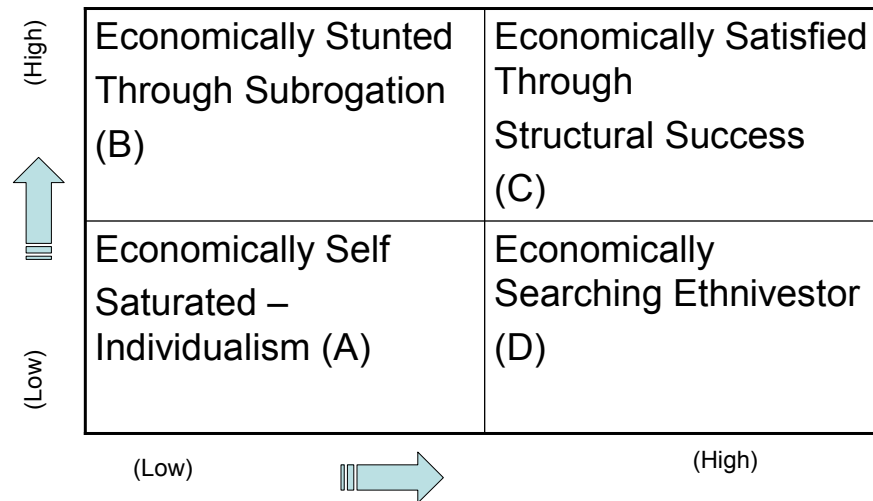
target community. The group dynamic is therefore the “Ethninvestor” factor because of the role ethnicity plays in the investment analysis.⁷¹ The extent of influence of this group factor is increased horizontally from left to right. So the greater the extent of influence by the group on the individual the further to the right that person falls.

⁷¹ The Douglas model used generic terms as part of the notion that the theory is applicable to innumerable circumstances. She termed the E.I.I. influence as a “Grid”, and the Ethninvestor Group as “Group”. [Mary Douglas, *Essays in the Sociology of Perception*, Routledge & Kegan Paul Ltd, (1982), p 4] Douglas asserts that this grid/group theory “predicts or explains which intellectual strategies are useful for survival in a particular pattern of social relations.” Id at p. 6. As applied to this publication, the social patters for NMTC investors and the intellectual strategies sought to be explained are for those investors with allegiance to the NMTC purpose of assisting the low income residents of urban America.

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

The grid is shown below.





Group A: The Economically Saturated

Investor Group A at the bottom left corner represents those with the least amount of influence from any group dynamic, be it external regulators (low vertically in the grid) or from within a common internal ethnic group influence (horizontally low at the lower left of the grid). Accordingly, Group A is highly individualistic, being without a significant influence from any group. They are less inclined to follow the group perspective and prefer to “do their own thing.” They are “saturated” by their individualistic goals, or simply put “self-saturated”. There is little room left to absorb the social entrepreneurial spirit to sacrifice profits for people. They are less likely to donate significantly to the NAACP or similar entities unless a corresponding personal benefit (return on investment) appears likely. Similarly, these persons are less likely to make personal sacrifices for, and would therefore have less tolerance for the working class

masses as employees in a small business under a NMTC project. Saliency, this category of investor is least likely to have the Weber-modeled self help ethnic group solidarity for entrepreneurship in response to a hostile societal host. That self-help model brought the most successful periods of entrepreneurial success by African Americans in this country. For these reasons, Group A persons among the African American middle class do not meet the Ethninvestor criteria and are not the ideal candidates for the transactional entities on NMTC projects.⁷²

Group B: The Economically Stunted Through Subordination

Group B from the African American middle class has high controls from external sources, (vertically high in the grid) but minimal influence from the ethnically inspired self help group (horizontally low – i.e. on the left of the grid). What prevents Group B from investing in Properly Purposed Projects is some source external to the investor that has a high level of influence over investment decisions. A career military person may be so ensconced in the culture of military thinking, that his only investment comfort is from whatever is available through the federal government's Department of Defense. There is an ability to invest, but not the perspective to go beyond what the external regulators proscribe.

A more blurred line of demarcation and thus more deserving area of discussion is where the external and internal influences are mixed. There have been external influences such as financial parasites or even legitimate financial firms that have led to oppressive debt obligations on African American investors. Once the oppression is

⁷² The parties to the NMTC transaction are the CDE, the QCB, and the investor. The relationships and interrelationships are discussed in the Structure of the Credit section, the CDE, the QCB, and the investor.

internalized (i.e. a secondary self subrogation), the debt leads to such a level of apprehension and discomfort that they become gun-shy and investment in Properly Purposed Projects is stunted. Inexperience or past financial failures is suggested as the causation for that stunted investment perspective in conjunction with the lack of ethnic influence.⁷³

The apprehensiveness about investing in securities has been tied to several factors, including less exposure to capital markets, inexperience, and less disposable income which results in a more risk adverse investment strategy.⁷⁴ Considering those factors in combination, African Americans within this category have been more vulnerable to nefarious wrongdoers that have consciously targeted ethnic groups. More particularly, African Americans are among several ethnic groups who have been the target of “affinity fraud” schemes, where crafty sales pitches of nefarious wrongdoers consciously target ethnic groups that lack investment experience and appeal to their cultural values and beliefs. The practice has caused the Securities and Exchange Commission to pursue prosecutions for the millions of dollars scammed.⁷⁵ They, among others, also have fallen prey to “Ponzi” schemes which promise investors high rates of return, only to find the funds were used to simply pay earlier investors⁷⁶. Subprime

⁷³ Isaac C. Hunt, *A message on Investing, Symposium Black Economics and the Law*, 42 HOW. L. J. 387, citing a survey by Ariel Funds and Charles Schwab & Co. noting a lesser rate of investment in securities. It is contended here that those causes for apprehension also affect the investment risk analysis for other investments such as real estate. See note 141.

⁷⁴ *Id.*

⁷⁵ Lisa M. Fairfax, *With Friends Like These...” Toward a More Efficacious Response to Affinity-Based Securities and Investment Fraud*, 36 GA. L. REV. 63, 74. This source notes that the SEC obtained a \$4 million disgorgement order against a schemer who targeted almost two thousand African American investors (The “Zurich scheme”). A similar action was brought against Hispanics who fraudulently raised \$1.5 million from over 200 members of the Houston Hispanic community. Immigrants from the Dominican Republic, people of Middle Eastern descent and German speaking Europeans were similarly targeted. See also Isaac C. Hunt, *A message on Investing, Symposium Black Economics and the Law*, 42 HOW. L. J. 387 at 389, citing Liz Skinner, *Affinity Fraud Scams Increasing*, HOUS.CHRON., Apr. 5, 1998, at 2.

⁷⁶ *Id.* at 389.

lending has also contributed to this investment malaise. Upper and middle income African Americans are twice as likely as low-income Caucasians to turn to subprime refinancings in the real estate market.⁷⁷ The lack of investing acumen has also left many African American middle class uncomfortable with their ability to manage debt.⁷⁸

Similarly, a significant part of the African American middle class has income, but has yet to invest. Despite the collective \$671 Billion in annual earnings, and the 100, 000-plus African Americans that make over \$200, 000, much is squandered in consumer spending. 2002 median wealth for black households was \$5,988, which is “paltry” since it includes homes, retirements and investment portfolios.⁷⁹ Some 30% of African Americans earning \$100,000 annually have retirement savings of below \$5,000.⁸⁰ The first comprehensive estimate of African American stock ownership revealed that of the net wealth accumulated by African Americans, only .09 percent was in corporate stocks.⁸¹ These figures suggest that many African Americans may currently fall into Group B investors and have not reached the investment maturity well suited for a NMTC project, though sufficient income otherwise exists. Such investors, already reeling from a history of bad investments or otherwise uncomfortable with investing, are likely to perceive a

⁷⁷ There is a disproportional presence of subprime lending in African American communities, evidenced by a HUD analysis that over half of all mortgages in those communities were subprime, leaving a Black borrower five times more likely than white Americans to receive such a disadvantageous loan. Baher Azmy, *Squaring the Predatory Lending Circle: A Case for States as Laboratories of Experimentation*. 57 FLA. L. REV. 295, 328-329 (April, 2005).

⁷⁸ T John Simons, *Even Amid Boom Times, Some Insecurities Die Hard – Black Middle Class Gains Ground, But Still Finds its Situation Shaky*, WALL STREET JOURNAL, New York, NY, December 10, 1998, p A10.

⁷⁹ Keith Reed, “State of Black America, Part Two: Our Financial Insecurity”, January 13, 2005, (<http://blackamericaweb.com>)

⁸⁰ USA TODAY, November 19, 2004.

⁸¹ Andrew F. Brimmer, *Income, Wealth, and Investment Behavior in the Black Community*, THE AMERICAN ECONOMIC REVIEW, Vol. 78, No. 2, Papers and Proceedings of the One-Hundredth Annual Meeting of the American Economic Association (May, 1998), 154. This is not to say African Americans are doomed to investment failure. There are numerous encouraging signs, including the facts that African Americans are making more money than ever before, overall earning power is rising. Hunt *supra* note 69 at 390.

Properly Purposed Project as high risk and with great suspicion. For some, those prior failures may be so internalized that the fear of failure stunts any future investment activity that may be considered risky. The result is that the actor can become unduly passive dooming oneself to inaction.⁸²

This “what’s-the- use?” attitude has been empirically shown in university student testing where three groups were subjected to two tests. The first test concerned the ability to turn off loud noises. One group could control the noise through a lever, another group could not control the noise at all, and a third group had no noise at all. The second test was to place them in settings where a simple act could eliminate the noise. The group that had the inability to control the noise at all in the first test was the most passive in the second test, even though it could have very easily accomplished the task.⁸³ Similarly, bad investment experiences or an otherwise skittish investment perspective can lead to internal doubt, which in turn leads to a lack of effort to meet the demands of the situation. This leads to a perceived sense that the individual cannot control the circumstance and unduly generalizes the failure to new situations. The NMTC opportunity would be one such new situation. The profile of the Group B investor is one already disconnected from the ethnic common group and therefore unlikely to heed the call for entrepreneurial spirit for the cause ethnic enclave. So this investor type wallows in a pity party and self loathing, stunted from investing in such Properly Purposed Projects. Hence, Group B investors would not meet the Ethninvestor criteria.

⁸² 31 U. RICH L. REV. 1337, citing definitions of learned helplessness at 102 J. Experimental Psychol. 187, 187-93; Lyn Y. Abramson et al., *Learned Helplessness in Humans: Critique and Reformulation*, 87 J. ABNORMAL PSYCHOL. 49, 49-74 (1978)

⁸³ Hiroto, Locus of Control and Learned Helplessness, 102 J. Experimental Psychol. 187, 187-93 (1974). See 31 U. Rich L. Rev. 1336, citing Edwin A. Locke & Gary P. Latham, *Work Motivation: The High Performance Cycle*, in *Work Motivation 3* (U Kleinbeck et al. eds., 1990).

Group C: The Economically Satisfied

Through Structural Success

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

The group could also include the corporate executive that has the house, automobile, and luxuries of choice, and has contributed significantly to both the NAACP *and* the country club. By way of example only, there are a few African American CEOs and approximately 275 senior executives of Fortune 500 companies. And there are African American investment banks and asset management firms substantially in the black, literally and figuratively, with billions of dollars in assets under management.⁸⁴ And as previously noted, over 100,000 African Americans earn more than \$200,000 annually. Apart from possibly a few high cost of living cities, for such folks, the living is easy – financially speaking. These are well healed people by any standard. Some of them

⁸⁴ Cora Daniels, *Most Powerful Black Executives*, Fortune.com, www.fortune.com/fortune/careers/articles/0,15114,368860,00.html?promoid=email.

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

So while Group B is unable to invest, and Group A is unwilling to invest, this group is ethnically influenced, but has concluded that its ethnically inspired investment mission has been accomplished.⁸⁵

Group D: The Economically Searching

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

If the investor linked investment strategy solely to individualism, the greater good of the ethnic enclave would not induce the investment (“economically self saturated”). If the investor was overwrought by fear of failure, or the investing constraints of traditional corporate, governmental or financial institution culture, (“economically stunted”), such a transformative investment strategy is not likely to occur. If the investor had the ethnic identification to invest, but had already done enough after externally fulfilling experiences, the investment into ethnic enclave economy would not occur because it was

⁸⁵ No empirical studies have been located on this group dynamic. Future ethnographic research can provide a testing of the theory as will be discussed below.

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

Since the thesis of this article involves providing an alternative to gentrification so that the urban residents are not marginalized, this is the propitious opportunity to discuss how the Ethninvestor model accomplishes that task. Various strategies are discussed in Section IV.

Part III:

Application of Economic Principles

Within the general rubric of law and economics, two camps are at theoretical war. Philosophical pundits in one corner are known as neo-classical economists with a fundamental premise that each *individual* will conform his or her behavior to make rational choices to maximize whatever causes satisfaction, i.e. self interest.⁸⁶ From that premise, three economic principles are generated: (1) there is an inverse relationship between a price charged (or value of an item) and the quantity demanded (i.e. the Law of Demand) (2) for a denial of a resource, an opportunity cost is incurred, which has consequences on wealth of the individual and/or society,⁸⁷ and (3) resources tend to

⁸⁶ Richard A. Posner, *Economic Analysis of Law*, 3-5(6TH ED 2003). See also the writings of Gary S. Becker, *The Economics Approach to Human Behavior* 6-11(1976), Guido Calabresi, *Cost of Accidents: A Legal and Economic Analysis* (1960), and Ronald H. Coase, *The Problem of Social Cost*, 3 J. L. & ECON 1 (1960). Importantly, the search for satisfaction is not necessarily always economic. It is a function of utility, and how one attempts to increase it through behavior that achieves a goal of high value. So one may maximize their utility if she chooses to pay a lesser price for ground chuck in the face of price increases for the steak previously preferred. Behavior was adjusted to meet a higher level of satisfaction – the actor’s perception that it is better to buy a slightly lesser grade of beef for a better price. This “self-interest” is not argued to only include the negative connotation of selfishness. It could include a mix of personal happiness and pleasure. In the above example, the self interest in the ground beef purchase could have also been motivated by remembering that her spouse prefers ground chuck for the dish that was going to be prepared. The satisfaction is therefore more precisely termed by the neo classical economists as “utility” to avoid broader commingled concepts of selfishness and self interest. Posner *supra*.

⁸⁷ The opportunity cost is a benefit forgone by employing a resource in a manner that denies its use. One who attends college for four years as forgone the money he could have made as an employee over that period. A homemaker who could otherwise be employed outside the home has incurred an opportunity cost for the value of her labor, though no pecuniary equivalent is established. Under this theory even sex is an economic activity since it involves an expenditure of time and effort (resources) in the quest –Posner,*supra* note 82. In economist terms, the type of “cost” can vary. There are “sunk” costs which refer to resource expenditures for past values (e.g. throwing “good money after a bad idea”) and “forward” costs where a rational actor is attempting to maximize utility and the resources are expended to bring a satisfaction in the future. These forward costs are advocated by the neo-classical economists. Id. at 7. There are social costs which diminish wealth to a society and private costs which instead rearrange that wealth. Id. at 6. Presumably, resources expended that decrease incentives to work are social costs diminishing wealth of the society, while a buyer of a residence receives property and the seller gains money is a private cost because it rearranges resources rather than generating a loss of resources.

gravitate toward their most valuable uses if the open market is allowed to operate without undue interference from the government. That is to say a negotiated price between two individuals without undue pressures from external sources such as government price fixing will achieve a more valuable output, through maximizing the self interest of the buyer. The value is the price paid by the buyer who presumably saw a value greater than the seller's economic cost.⁸⁸ Under the neo-classical economic theory, efficiency refers to the allocation of resources to maximize value or wealth.⁸⁹ As will be discussed particularly in the Ethninvestor analysis, these principles employed by culturally compatible individuals in the marketplace may lead to an overall greater "efficiency" than a gentrified model for tax credits.

In the other corner of legal economic theorists are groups that focus not so much on individual behaviors as on group dynamics that impact a greater goal of the society – curing an injustice. One such group is the "environmental justice" movement.⁹⁰ In their view, an allocation of resources by maximizing an individual's satisfaction and utility through pure market forces is simply inapplicable where the goal is to achieve justice because land use is not an unencumbered market where people are free to choose their desired outcomes. According to these theorists, the goal is the important item – social justice, and governmental intervention may be required to achieve a more equal distribution of resources (i.e. distributive justice).⁹¹ As applied in the land use context, it

⁸⁸ Posner *supra* note 82 at 9-10.

⁸⁹ Id. at 11.

⁹⁰ Alice Kaswan, *Distributive Justice and the Environment*, 81 N.C. L. REV. 1031, 1035 (2003).

⁹¹ Id. at 1031, 1082 (2003). By way of example, one Camden New Jersey neighborhood became the site for various industrial facilities, including a sewage treatment plant, a trash-to-steam plant, a co-generating plant, and two contaminated Superfund sites suspected of releasing hazardous substances. Ninety one percent of the residents are persons of color, poor, and suffer a disproportionately high rate of asthma and other respiratory ailments. It is a pattern repeated across the country. Id. at 1033. Posner also discusses distributive justice but as an economic variable. *Infra*, at footnote ____.

is argued that a disproportionately high number of industrial waste plants are placed in low income communities of racial minorities throughout the United States, and pure market forces does not cure the injustice. Rather governmental intervention may be required to force corporate decision makers to “do the right thing” and make a more equal reallocation of resources (i.e. more fairly distribute the waste plants so the adverse health affects do not fall disproportionately on the poor).⁹²

Similarly, advocates of critical race theory embrace a discourse on the effect of discrimination by groups on groups of America’s citizenry, criticize neo-classical economics as “methodological individualism [at] fundamental tension with the concept of race, intrinsically a group concept.”⁹³ These theorists consider it a fatal flaw of neo-classical economists to ignore the possibility that victims of discrimination could have psychic losses as part of the opportunity costs analysis and likewise ignore the transactional costs for racial discrimination in commercial transactions.⁹⁴

What appears common to those adversaries of neoclassical economics is their prioritization of a social humanistic goal through an analysis of how *groups* impact other groups over the science of individual behaviors. One scholar characterized neo-classical law and economists as those who “seek to make law appear more, rather than less,

⁹² In the land use debate, one scholar was accused of using neo-classical principles to argue that disparities are not necessarily unjust, since a community could assert its preferences and what is undesirable to one community could be deemed desirable by another. Kaswan *Supra*, note 86 at 1031, 1038 (2003). The Kaswan response was that the free market based model does not solve the problem of inequitable distribution of resources nor establish public policy likely to solve the problem. Id. at 1038-39.

⁹³ Robert E. Suggs, *Poisoning the Well: Law & Economics and Racial Inequality*, UNIVERSITY OF MARYLAND SCHOOL OF LAW, LEGAL STUDIES RESEARCH PAPER NO. 2005-37, <http://ssrn.com/abstract=700686>

⁹⁴ Robert E. Suggs, *Racial Discrimination in Business Transactions*, 42 HASTINGS L. J. 1257, 1284-87 (1991).

scientific and thus avoid references to the humanities”.⁹⁵ Indeed, a prominent theorist of neoclassical economics, Judge Richard A. Posner boldly admits that the theories advocated are an abstraction, “but abstraction is the essence of scientific inquiry, and *economics aspires to be scientific*.”⁹⁶ The counter claim is that “Law is not, however, a natural science. Even though references to the natural and social sciences can be helpful, law involves human practices and experiences that are not fully explainable or understandable in scientific terms”. For the law to be effective, it must address human need and fairness beyond profit motives.⁹⁷

The Ethninvestor model and tax policy implications are a blend of both worlds. On the one hand it is a design to prioritize a social goal – revitalization of urban core American to primarily benefit the low income residents, without increased marginalization. Yet the means of accomplishing that goal includes the infusion of neoclassical principles of opportunity cost and increasing market based behavior models so that over time the self help ethnic entrepreneurship (market based) diminishes the need for public funding for this purpose.

The Ethninvestor model has an implicit premise that a governmental incentive subsidy alone shall not revitalize urban America in a way that maximizes the wealth of underutilized resources. Neither can we depend on gentrified projects to do for that group what it may do for itself. Those underutilized resources are both a segment of the African American middle class (Ethninvestors) and the urban core residents that are otherwise being marginalized by gentrified projects. By incorporating an Ethninvestor blended

⁹⁵ Robin Paul Malloy, *Framing The Market: Representations of Meaning and Value in Law, Markets, and Culture*, 51 BUFF. L. REV. 1, 17 (2003).

⁹⁶ Posner, *supra* note 82 at, 17.

⁹⁷ Malloy, *supra* note 91, at 18.

motivation of philanthropy and profit (social entrepreneurship) African American resources are made more productive, wealth is increased, and through the small business concentrations and school of entrepreneurship concepts, the resources of low income core residents are enhanced. The desired result is a more efficient market within the ethnic enclave.⁹⁸

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

Utility

Under traditional neoclassical configuration, “utility” refers to “the value of an uncertain cost or benefit as distinct from a certain one” and satisfaction garnered from the behavior.⁹⁹ The Posner utility configuration is also expansive enough to incorporate the concept of group. The label used is “utilitarianism”, which is aggregating utility across persons, treating them as “cells in the overall social organism rather than as individuals”. As will be discussed below, the Ethninvestor and the Gentrifier investor have a different sense of utility, both in terms how they define value/satisfaction, and how they view utilitarianism in their investment decision making.¹⁰⁰

⁹⁸ Arguably, if purely market forces were in operation without governmental regulation or incentives, the Ethninvestor should come to the aid of the community it has the greatest cultural connectivity. The issue of whether the pure market based scheme to revitalize the urban community is superior to a federal program is a fight for another day. Since Congress has provided such an incentive, this author considers it more valuable to propose a framework that combines private forces with the reality of the NMTC incentive.

⁹⁹ There are two components to utility that is demonstrated through the classic Posner illustration of a person having a choice between \$1 million outright, or rather a 10% chance of receiving \$10 million. One form of utility is a measure of one’s appetite for risk to determine what that person values most. Do you take a low risk (\$1 million) or do you increase the risk to achieve the greater reward? The risk adverse person would take the \$1 million. This is the value or expected benefit component of utility because the person valued the \$1 million now more than the increased opportunity later. The second concept of utility is philosophical, meaning an approximation of happiness and satisfaction. Posner, *supra* note 82 at 11.

¹⁰⁰ *Id.* at 12.

The Posner principle of value as a component of utility is that you value consistent with what you are willing to risk.¹⁰¹ Importantly, there is no prescription that one *must* value pure pecuniary profit to the exclusion of all other motives. Therefore one can still be motivated by non-financial purposes even if it makes the investment financially risky. In the Ethninvestor context, it could easily be perceived as a lower pecuniary risk to build a mixed use condominium unit with restaurants and high end units. Value is conceived through the buyers - gentrifiers who could afford to pay at a price beyond the developer's cost of producing the resource. It would be more risky to invest in a needs-inspired small business (Property Purchased Projects) that assist primarily the target poor people within the community. For an Ethninvestor who values the higher risk for the greater good of the ethnic enclave, the value and satisfaction components of utility are found by investing in such Properly Purposed Projects. The social entrepreneurial motivation, though utilitarian in nature is nonetheless his "value" and utility.¹⁰²

Conversely the non-Ethninvestor (termed Gentrifier investor) would most likely invest, if at all, based on maximizing a *financial* or pecuniary return on that investment. The gentrifier investor¹⁰³ would have a different utility - maximizing profit - because that is what he or she values. The uncertain commodity desired by the Gentrifier investor is

¹⁰¹ See definition of utility, footnote ____ (now 190).

¹⁰² In the Posner hypothetical of the person with the choice of \$1 million now or 10% of \$10 million, the person taking the \$1 million was terms more "risk adverse". If say the interest rate he received compensated him for the higher risk, where his total return was greater than if he merely invested the \$1 million on receipt, the risk adverse choice would not "maximize" his *pecuniary* self interest. The important concept is that as long as his concept of value was to be risk adverse, he maximized his self interest, because he essentially defined self interest consistent with that value. Thus, simply making the most money possible is not always value and thus is not always the definition of utility. In the NMTC Ethninvestor context, the Mall of Needs type of investments may not generate a maximum financial return, but that is acceptable if it fits within his concept of value to incorporate non-pecuniary goals like revitalization of the ethnic enclave and its core citizenry.

¹⁰³ The gentrifier investor includes those of the same mind who own the CDE or the QCB.

increased wealth from a new market – the low income community. The certain item used for comparison is whatever other investment he could have made in older markets.

Efficiency

Another component of utility is diminishing marginal utility. The concept is that a commodity means less to someone who already has a lot of it, e.g. a second million dollars to a millionaire is not as satisfying as the first. In economic terminology, those who already have attained utility (value and satisfaction) from a certain item will likely attribute less value to getting more of the same. Thus, the utility diminishes as he attains more of same of whatever he had.¹⁰⁴ There is also a reciprocal aspect in that while utility diminishes for one party of a voluntary transaction there may be a corresponding increase in utility for the other party to the transaction. Simplistically stated by example, those who have “a loss of a dollar hurts the millionaire less than the gain of a dollar pleases the pauper”¹⁰⁵ In the Ethninvestor context, I submit that the Ethninvestor will retain more utility when investing in the ethnic enclaves than the Gentrifier investor if the NMTC program prioritizes Congressional goals of helping those in greatest need among the

¹⁰⁴ Posner, *supra* note 82 at 10.

¹⁰⁵ Posner is quick to caution that this does not mean redistributing substantial wealth from higher-to lower income people will increase total utility. Posner’s controversial assumption is that “people who work hard to make money and succeed in making it are, on average, those who value money the most, having given up other things such as leisure to get it”. Posner, *supra* note 82 at 470. Posner cites no empirical proofs for that assumption. It could just as easily be that those who have substantial wealth have it because of inheritance or they were provided greater opportunities to make money from the labor of others. If a partner in a law firm bills out his own labor at \$300 an hour, he could have gross revenues of \$2,400 if he bills and collects on 8 hours of work that day. But if he also derives 50% of the billable time for three associates in his office (say each bills at \$200 per hour for 8 hours that day) his take for the day is an additional \$2,400. Thus, he has *doubled* his income, not because he worked harder, but because he was in the position to profit from the labor of others – others who may have even worked harder, and been just as talented or more, but not yet blessed with the leveraging opportunity. The Poser model appears to give no effect to the value of privilege, class, legacy, or inheritance, but would rather posit only the possibility that the difference is due to hard work and personal sacrifice as an “opportunity cost” of the wealthy. Just as easily, the opportunity costs would be far greater for an associate who deserved to be partner but was denied because she was a woman, or because he was African American, or gay. This again points up the notion that neoclassical economics is not designed to solve social justice issues, because it fails to explain or measure the opportunity costs of those who have been victims of such things as discrimination, legacy, and inheritance.

target community. An Ethninvestor who invests in part to help those target residents should have a correspondingly higher amount of satisfaction and value because it is tied to betterments of humanity, not just pecuniary rewards. If the Properly Purposed Project were mandated under the program, the Gentrifier investor's satisfaction and value would diminish more quickly because the financial returns would be more difficult to achieve.

Under neoclassical theory there is an important correlation between "utility" and "efficiency". Efficiency is the allocation of resources in which utility and value is maximized.¹⁰⁶ If indeed utility and value is not confined to pecuniary notions of wealth, then the non-pecuniary value is also part of increased efficiency. It follows that if one invests consistent with those values, utility should increase, or be reduced at a lesser rate, if the purposes of that investment are fulfilled. In the NMTC context, if Properly Purposed Projects are the only statutorily authorized ventures, the Ethninvestor is likely to achieve greater satisfaction and value from the investment because his investment behavior is aligned with the projects authorized and purposes of the NMTC program. The greater the value and satisfaction, the greater the utility and value. That allocation of a resource, the investment in the Properly Purposed Project, is therefore more likely to bring greater efficiency in an economic sense than a Gentrifier investment in a Problematic Purposed Project that falls outside permitted project goals. A gentrified investor who seeks primarily individual profit would find more frustration than

¹⁰⁶ Posner, *supra* note 82 at 11-12. Again, Posner prefers to shy away from applying efficiency to doing good for a society and groups within it. In his words, efficiency "has limitations as an ethical criterion of social decision-making." Id at page 12. The relevant question is whose limitations? Why not modify an economic theory to have as its goal, the curing of a social ill, rather than an explanation of an individual's self interest. If that creates a "humanitarian" aspect, so be it, since it is humans as a group we hope to cope with over our earthly existence. Isn't that the higher priority of a civilized society - peaceful coexistence - where all people are treated fairly? I would call economic theories that incorporate such motivations "econo-realism". If instead the primary purpose of an economic theory is the explanation, prediction, and intervention of principles that only promote an individual's self interest, does that theory advance or retard our movement to be a more civilized society?

satisfaction if he (1) suffers in financial returns, (2) has to remain invested in the target community beyond the tax credit haven, or (3) is unwilling to hire target residents or incorporate target community ideas of proper projects, when he really is only interested in profitability. The lesser satisfaction and value is a lesser utility. The lesser utility is a lesser efficiency.

To buttress the point, I return to the studies of the Cuban ethnic enclaves in the early 1990s. Researchers concluded that when those of Cuban descent established locational clusters of ethnic enterprises, hired people from within the ethnic enclave, pooled their savings in rotating credit associations, and developed sympathetic suppliers and customer bases, a vertical and horizontal integration occurred (i.e. an ethnic enclave economy) that became “hyper-efficient”.¹⁰⁷ Part of the key findings were that these businesses employ co ethnic workers to “serve their own ethnic market and/or the general population. Importantly, the ethnic enterprises had such a caring perspective about those co-ethnics that the business becomes a school of sorts for entrepreneurship for those co-ethnics hired within the ethnic enclave.”¹⁰⁸

The Ethninvestor model provides for African American investors a combination of economic resources and an ethnic sense of solidarity to utilize those gaming strategies of other successful immigrants and African Americans prior to the integration era, when the self help entrepreneurship was forced by externalities of discrimination or economic exclusion. Whether this newly configured African American group of Ethninvestors can become similarly motivated when it is a choice, not by force remains to be seen. There are scholars who would dispute the premise that cultural connectivity can lead to this

¹⁰⁷ Halter *supra* note 7 at 29-30, citing a published case study of Messrs Portes and Boch.

¹⁰⁸ Id. at 30, citing a published case study of Messrs Portes and Boch, (Portes 1981, 290-91).

investment behavior. I submit that is overbroad to apply such an assumption to all African Americans in the United States. I have described the narrowly drawn characteristics that would likely be required for such a group to come forward. They could not be so stunted from prior miscalculations that they are too fearful to invest. Nor can they be so satisfied by their prior successes that they no longer hunger for the investment goals. Nor can they be so saturated with the individualism of self interest that there is no behavioral motivation to help those less fortunate in the ethnic enclave. In short, the “Weber Theory” of culturally-based entrepreneurship has applied to other groups. Why is it impossible for African Americans? The application to an Ethninvestor may increase efficiency in economic terms, measured not solely in financial rewards to the investor, but in concert with the increased ability to assist the community in employment, empowerment, and long term quality of life, without marginalizing those core residents. The NMTC scheme currently allows dilution of that purpose through Gentrified investment practices.

One could assert that for such a model to be viable there must be an analysis of opportunity costs, and that true efficiency cannot occur if the forgone costs exceed the benefit.¹⁰⁹ The Ethninvestor pays a financial price when investing in a Properly Purposed Project, a health clinic due to the disproportionate need for sickle cell or kidney dialysis treatment. Assume the same money could have been invested in some other manner with a greater financial return. There is an opportunity cost to the Ethninvestor because of the greater return forgone if monetary return was what he valued. But since the value,

¹⁰⁹ We recall that the opportunity cost was one of three principles that springs from the neoclassical bedrock assumption that a rational actor conform behavior to maximize self interest, and that a social cost diminishes wealth in society, while a private cost merely rearranges that wealth. See footnote _____. Posner, page 6.

satisfaction, and therefore utility includes the social aspects of the entrepreneurship there is a minimal sense of loss, if at all. Therefore, there is no material social loss to society, but instead a private rearrangement of resources from the Ethninvestor to the target resident within the ethnic enclave. So while validating the general principle of diminishing marginal utility, the Ethninvestor has less of it because of the match between the reasons for investing with the results of a Properly Purposed Project.

Application of Utility and Efficiency

The charts below graphically illustrate how efficiencies vary between the Ethninvestor and the Gentrifier. In Chart A, the Ethninvestor utility is measured on the vertical pole on the left of the chart. That utility includes all those Ethninvestor characteristics that motivated the investment behavior, including the desire for increased well being for target residents, despite lesser financial returns to the Ethninvestor. The Target Resident¹¹⁰ who receives the benefit of the Properly Purposed Project has utility measured on the right vertical pole. That utility incorporates enhanced employment opportunities, greater access to role models, and of course whatever other residual benefits flow from having a Properly Purposed Project.

Across the bottom horizontally left to right is the increase in Properly Purposed Projects. The horizontal line titled EU tracks the increase or decrease in the Ethninvestor utility as each project is built with investor funds. The horizontal line titled TRU tracks the increase or decrease target resident utility as each project is built. The horizontal line titled “B” is the baseline to indicate the lower existing utility of the target resident prior to each of the development of each of the three projects. The horizontal line “P” represents

¹¹⁰ The Target Resident is consistent with the NMTC statutory definition of “target population” found within I.R.C. § 45D.

the amount of opportunity cost. Since the Ethninvestor motivations includes a blend of financial profit and social well being for the ethnic enclave, the measured increase or decrease in utility as projects are built should also be measured against those variables.

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

Area A represents the total increase in utility for the Target Resident, i.e. the amount of increased utility between where he was in utility prior to the project compared to where he was after each project. Notice that there should be some increased utility after each project assuming it provides the benefits contemplated in the needs assessment for the target population as defined by the statute.¹¹¹ Area B depicts the Ethninvestor utility, which includes both the extent of value and satisfaction received from seeing increased well being in Target Residents and the financial return on the investment. In this graph, the amount of satisfaction the Ethninvestor receives from the social

¹¹¹ I.R.C § ____.

enhancement to the Target Resident is assumed to be less than the sense of satisfaction received by the Target Resident. This is based on the reciprocal notion embedded in the concept of diminishing marginal utility that a pauper will value receipt of say a \$10,000 dollar job from a well-healed Ethninvestor more than that Ethninvestor's satisfaction from the increased incremental income and thanksgiving for the joy or return from the pauper/Resident Assistant. That could obviously be reversed where a wealthy person values most his gift through seeing the joy it brings. That is the essence of philanthropy. For purposes of illustration however I posit the circumstance where the combined benefits in utility to the Ethninvestor are less than the utility to the Target Resident. The point remains the same -as long as the Ethninvestor's total utility is a net plus to himself, (i.e. the investment benefits, both social and financial, exceed the forgone opportunity costs of time, alternate investments, etc) there is increased efficiency.

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

Chart A

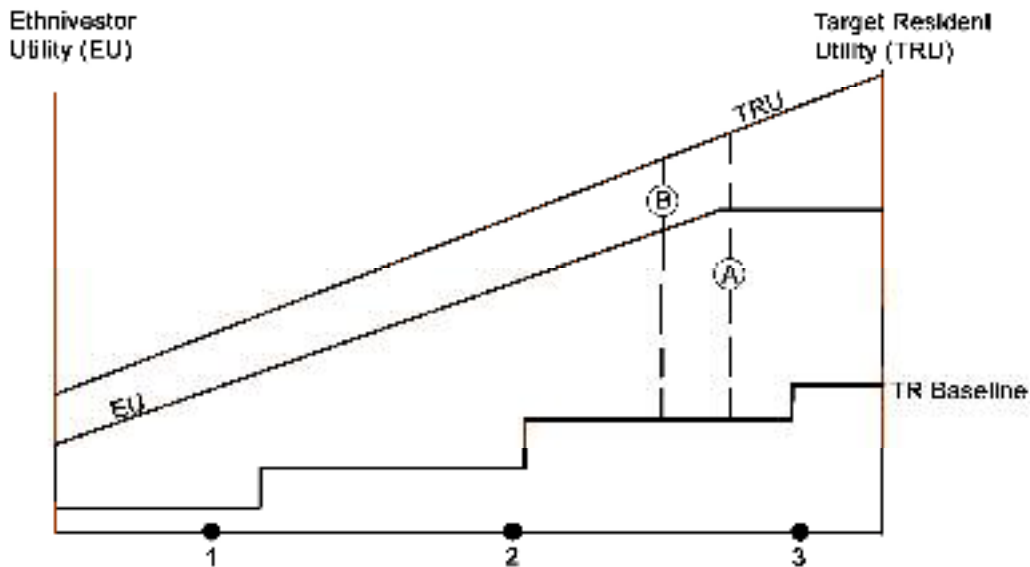
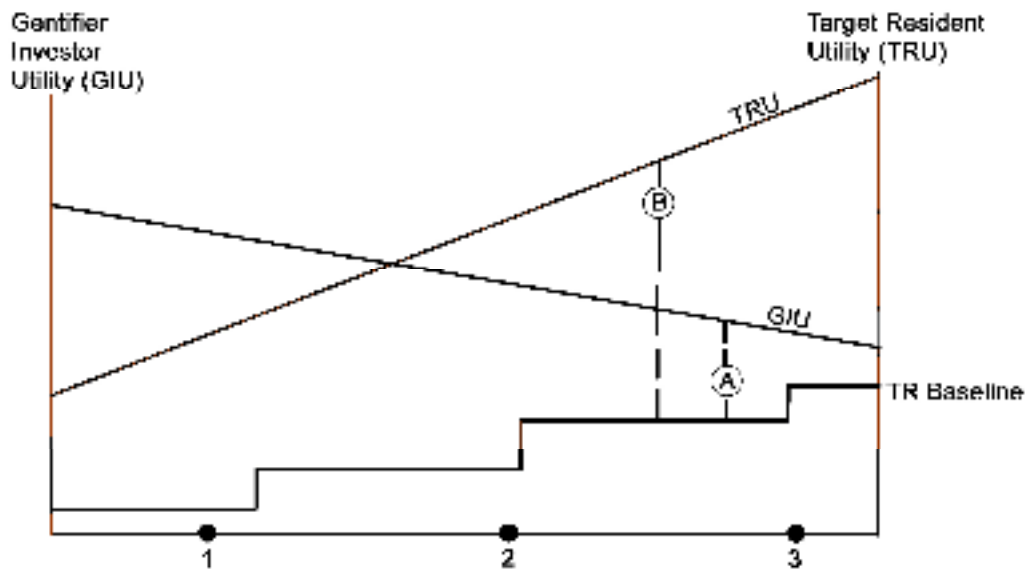


Chart B represents the tracing of utility and efficiency for the Gentrifier Investor. (“G.I.”) The guideposts are the same as for the Ethninvestor in Chart A. But instead of parallel benefits between the G.I. and the Target Resident, the respective utility to the parties grow further apart over time. The Target Resident may receive roughly the same sense of satisfaction, though highly questionable if the investor does not have a personal commitment to the well being of the target community. Even assuming efficiency equivalence there is a probable loss of utility and efficiency from the G.I. An investor that defines maximization of self interest in purely financial terms and purely for self without a corresponding value for the non-financial benefits to the target resident and ethnic enclave would likely grow increasingly dissatisfied with the investment. That again assumes the MMTC statute and regulations require a Properly Purposed Project designed for long term benefits to the existing target community and residents. Under

those circumstances the Gentrifier investor is likely to bring lesser efficiency in an economic sense and greater social costs because utility seepage occurs from the transfer of resources. As to personal utility, he could have invested in some other venture that was not hindered by social returns. The commodity of time and related resource losses are greater than the return.

Chart B



In a more macro view of utility and efficiency, there are opportunity costs that span various entities in a Gentrified project, governmental as well as private. Opportunity costs of gentrified NMTC projects is no different fundamentally than what has been observed as the byproduct of other gentrified urban redevelopment programs.¹¹² Those costs are substantial and have been enumerated in prior studies.¹¹³ There are physical

¹¹² Benjamin B. Quinones, *Redevelopment Redefined: Revitalizing The Central City with Resident Control*, 27 U. MICH. J. L. REFORM 689, 742-744 (1994).

¹¹³ Id. at 724-751

construction costs. This refers to actual construction that was ineffective at meeting resident needs, and thereby precluding construction that would have been better suited.¹¹⁴ In theory it is akin to the property appraisal concepts of the failure to build based on the “highest and best use” for the site. Also prominent is the lost time and effort of governmental actors for misguided development projects. The staff time, including the huge resources associated with negotiating with private developers, creating and evaluating feasibility reports, holding public hearings and then analyzing and publishing materials therefrom are all costs for gentrified projects that fail to primarily meet the needs of the target residents.¹¹⁵ There are also costs from the nationalization of project types, where the cookie cutter format of office buildings, high-tech developments, hotel-convention centers complexes, inter alia, have replicated themselves as a matter of policy. That same modeling occurred in urban renewal gentrification and in the NMTC gentrification. That developer’s strategy also compounds the error since in many cases, the construction would have occurred in any event and the subsidies were not needed.¹¹⁶ The more obvious and devastating personal costs are to the low income residents themselves who suffer the inordinate risk of displacement or marginalization.¹¹⁷ .

Despite attempts to explain behavior in economic terms, the issue should still be raised: Does the neo-economic theory advocate or reject the use of utilitarian ideals to help achieve social justice? If Posner is the voice box for neoclassical economics, the answer appears to be that achieving social justice is not a goal, only an incidental byproduct in route to finding an individual’s self interest. Posner finds the notion of the

¹¹⁴ Id. at 724.

¹¹⁵ Id. at 742-743.

¹¹⁶ Id. at 744.

¹¹⁷ Id. at 750-751.

“sacrifice of innocents for the sake of the greater good...deeply disquieting”.¹¹⁸ Yet, Posner readily admits that societal decisions of what is just and legal does not always hinge on economics, as when we make illegal private forms of discrimination based on race or sex. In his words, “...there is more to justice than economics...”¹¹⁹ On that point perhaps all scholars can agree. But the Posner abhorrence for sacrificing oneself for the greater good of a group seems to sidestep the inquiry into the effect, in terms of cost or utility, of discrimination by groups and the effect of overcoming it. This brings into question whether neoclassical economics is truly intent on solving for social justice for groups of people in our society or rather its goal is to explain and prioritize maximizing individual wealth. In response to his own rhetorical question of how utilitarianism can be defended, he stated: “One answer is that the things that make wealth possible – not only or mainly luxury goods, but leisure, comfort, modern medicine, and opportunities for self-expression and self-realization – are major ingredients of most people’s happiness, so that wealth maximization is instrumental to utility maximization. This answer ties efficiency to utilitarianism.”¹²⁰ It may be the case that “most people’s” happiness is tied to self. But the Ethninvestor model is a narrow class where pecuniary self-sacrifice may be part of the investment motivation in the NMTC program. The scales of influence tip toward the greater goal.

Revitalizing urban America without marginalizing its urban low income residents I submit is not just a social goal, but a socioeconomic goal. The former African American Seattle mayor did not characterize gentrification in his city as inherently racist, but rather

¹¹⁸ Posner *supra* note 82, at _____. Posner has various definitions of justice. Distributive justice appears as the one he referenced in the text quotation. Even that term he defines as “the proper degree of *economic* equality”. Id at 27.

¹¹⁹ Id. at 28.

¹²⁰ Id. at 16.

economic.¹²¹ Whether racism is part of the phenomenon is not the focus of this article. Rather at issue here is what tax credit policy and private equity model helps solve the problem. The Ethninvestor model is an attempt to assist in achieving that goal, so it is utilitarian in that sense. And as such, it modifies the neoclassical economic design to expand the concept of utility and efficiency to incorporate such a goal. The modification is not entirely inconsistent with the Posner utility model at its root. Posner has chastised critics of neo-classical economics for improperly viewing economics as being just about the money. Posner admitted the confusion could easily occur. His bedrock assumption is that a person is a “rational maximizer of his self-interest”.¹²² This could lead a reasonable thinker to equate self interest with increased “wealth” in pecuniary terms. To avoid that assumption, Posner prefers to use a more precise term “utility” to describe a broader concept of “self interest”. Utility is broad enough a term to include, as Posner states, “a rational utility maximizer in *all* areas of life, not just in his ‘economic affairs’.” Posner considers this assumption as “central” to his entire neo-classical design.¹²³

Thus, when the author incorporates into the model the notion that an Ethninvestor’s motivation for investment is to assist the ethnic enclave and the target residents even if it does not maximize his individual pecuniary sense of “wealth”, it is nonetheless consistent with neo-classical economic theory with the possible modification that the *goal* may be to help that community beyond merely a means to maximizing self interest. It really becomes almost a semantic issue of how one defines “utility” and “self interest.” If those terms include social justice as a goal, then it is entirely consistent with neo-classical

¹²¹ Blaine Harden, <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/18/AR2006061800605> (June 19, 2006).

¹²² Posner *supra* note 82, at 4.

¹²³ Posner *supra* note 82, at 4.

economics. If, as I suspect, achieving a social just result is permitted by neoclassical economists only if it is a means to maximizing self interest and utility, then my theory is a modification of that view. More precisely an Ethninvestor has a mix of motivations, both philanthropic and profit driven, and that is how he envisions “value” and “satisfaction” for the utility of the investment behavior. Regardless of whether it fits neatly into neoclassical definitions of utility, this Ethninvestor model should be viewed as a viable theoretical construct for increasing private equity funds from a previously under-committed source for a socially just goal. And even if we assume Posner’s preferred non-utilitarian model for utility, the Ethninvestor includes in his *individual* investing behavior the notion that the greater good is part of his satisfaction and value.

Part IV

Application of Ethninvestor Model

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

Reduced Marginalization

Through Historic Small Business Hiring Practices

Structure of the Credit

The general NMTC transaction can be described as follows:

1. The investor¹²⁴ must invest a qualified equity investment (“QEI”) into a qualified community development entity (“CDE”).¹²⁵
2. The CDE must then take the investor’s QEI and invest those sums into a low income community project, either directly, or through a qualified community-based organization (“QCB”) or other approved entities that serve the low income area.¹²⁶
3. The credit is considered for the period commencing with the date the initial investment and each of the 6 anniversary dates thereafter.¹²⁷ The credit is 5% for the initial three years, and 6% for the remaining 4 years, equating to a 39% credit over the total of 7 years.¹²⁸

¹²⁴ Also termed the “taxpayer” since that person is the recipient of the tax credits.

¹²⁵ I.R.C. § 45D (a)(1)

¹²⁶ Reg. § 1.45D-1(d)(1)(i)

¹²⁷ I.R.C. § 45 (a)(3)(A)(B)

¹²⁸ To illustrate the credit, assume an equity investment of \$100,000 in year 1. For year 1, 2, and 3, the credit is \$5,000 (5% of \$100,000) for a total of \$15,000. The 6% credit on the same 100,000 investment for the following four years is \$6,000 each of the remaining four years for a total of \$24,000. The combined credit is \$39,000 (\$15,000 plus \$24,000).

Procedurally, the program is administered through the Community Development Financial Institutions Fund (“CDFI”). The application process requires a mini-business plan prior to certification of acceptance into the program.¹²⁹

One threshold task prior to examining specific Ethninvestor criteria is to establish a more investment compatible environment under the NMTC program. There appears to be less than five African American owned CDEs among all the Allocatees granted in the several years of the program’s existence.¹³⁰ One barrier to more African American CDEs is the same that hinders minority entrepreneurship is general – a lack of access to capital. The current NMTC program has allowed the large scale projects in the range of \$100 million and beyond. The majority of them are within the listing of Problematic Purposed Projects described earlier. Without the money for large scale projects, minority group CDE participation is practically non-existent. Practically all of the Problematic Purposed Projects are among the most expensive to build, in large part, it seems because the purpose is to satisfy those accustomed to more expensive life styles – the gentrifiers rather than the basic needs of the low income target population. The types of projects the

¹²⁹ The procedural steps are summarized below:

1. An application must be presented within prescribed time periods to the CDFI, requesting an allocation from the total funds available in that round.
2. The application must detail specifically how the investments of cash (“equity”) will flow into a qualified entity which in turn will funnel substantially all of such equity investments into a low income community.
3. The CDFI selects applicants for an allocation based on criteria that gives priority to any entity that either (1) has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities I.R.C. § 45D (f)(2)(A),¹²⁹ or (2) intends to make qualified low income community investments in 1 or more businesses where the persons holding the majority equity interests are unrelated to the taxpayer I.R.C. § 45D (f)(2)(B).
4. The CDE then has a 5 year period to invest in qualifying low income community investments or be subject to reallocation of those funds to other CDE’s IRC § 45D (b)(1)(C), Reg. §1.45D-1(c)(4)(A).

¹³⁰ Two Hundred Thirty Three CDE’s have received allocations as of June 29, 2006 according to CDFI announcements on its website at www.cdfi.gov The CDFI has published profiles of the CDEs that received awards. Three appear on that list as list as “minority owned or minority controlled”.

target community/ethnic enclaves appear to need the most are not the most expensive. Rather, the Properly Purposed Projects,¹³¹ designed for such items as nonconventional financing for small business start ups, health care facilities, are and affordable housing are among the lesser cost projects. If a needs assessment of the statutory “target population” were primary when formulating the project, and part of the prioritized criteria by the CDFI, there is likely to be even smaller sized projects that can accommodate small business capitalization. The smaller projects should open the investment opportunity to those with a comparative cultural advantages discussed above. That would be a component to the strategy that may help return these current NMTC target communities to bustling ethnic enclaves economies which people like W.E.B. Dubois considered at the very center of the community. Various other attributes of the Ethninvestor common to the self help heyday would have to exist as well, and will be discussed below.

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

As to small business formations, the Ethninvestor investment motives are aligned to the Weber model of self help formations in response to hostility from the host society

¹³¹ A more expansive description of such projects is noted in Exhibit C of the companion article, but include such projects as _____. These were terms a “Mall of Needs” akin to a physical strip mall of what items are most needed by the community.

because of its strong ethnic influence of decision making (horizontally evidenced to the far right of the grid). A lack of access to capital has been a major hurdle to establishment of the enterprises among the low income communities. The ethnic response historically was to establish an ethnic economy where revolving credit associations formed to provide the capital for its own businesses. The credit association is a collection of funds that are then distributed to one business owner, and upon re-pooling of additional funds, rotated to the next business.¹³² Consistent with the Weber model, those credit associations were a self help response to the host society's hostility (discriminatory lending practices).¹³³

The credit association strategy is essentially a finance technique with modern application. Venture capitalists created pooled funds for different tiers of investor types. One form of entity that has utilized pooled funds is a limited partnership with a corporate general partner. Such a model is used by one of the few minority firm participants in the NMTC program.¹³⁴

Increased Co-ethnic Employment

The Ethninvestor model reduces the marginalization by increasing employment among co-ethnics, including the chronically underemployed African American male youth. It should be a point of emphasis that these federal subsidies are attempting to address a crisis in America. By way of illustration, more than half of all core city African American men do not finish high school. As of 2004, 72% of African American dropouts

¹³² Id, at 12. One of the many fertile Boston studies observed that among Kiroean and West Indian enclaves, the men contributed to the pool, but the women were the bankers, who handled and managed the funds. Id at 12.

¹³³ Proofs of disparate lending practices is evident in the disproportionate predatory lending practices or simply the failure to loan to minorities who have similar lending credit risks as non-minorities. NEED CITE.

¹³⁴ One of the Round IV allocatees was a limited liability limited partnership with a corporate general partner. A minority firm organized as a limited liability company was part of the LLLP. See CDE Profiles at <http://www.cdfi.gov> ____

who are in their 20's are unemployed, up from 65% in 2000.¹³⁵ Incarceration levels are at historic highs and increasing, where by their mid-30's, 6 in 10 of these high school drop outs have spent time in prison.¹³⁶ That rate is *four times* higher than that of Black men in South Africa under the apartheid regime.¹³⁷ Seventy six percent of African American males in Baltimore Maryland do not graduate from high school¹³⁸ Leading scholars in ethnic economic research concluded that those who are employed in the ethnic economy are more likely than others to become self employed themselves.¹³⁹ Those small businesses therefore became a self help defacto "school for entrepreneurs" though different ethnic groups had varied patterns, niche business types, "all stem from the initial exposure to the ethnic economy...springboards to future rewards, both economic and social... [i.e. a "multiplier effect"]"¹⁴⁰ This model increases the employment opportunities for those underemployed within the NMTC target population beyond a trickle down gentrification.¹⁴¹ The trickle down theory embodies the notion that greater investment will lead to significant job growth. As one study concluded the causal connection between capital investment and job growth among the low income residents is "untested and usually unproven".¹⁴² Conversely, there is ample empirical evidence that redevelopment project areas normally become "gentrifying markets" without material

¹³⁵ Eric Eckholm, *Plight Deepens for Black Men, Studies Warn*, THE NEW YORK TIMES, March 20, 2006. Eckholm was relying on data from a panel of experts at Columbia, Princeton, and Harvard, who opined that the rate of disconnectedness is "far" greater for these African American males than comparable white and Hispanic men. One factor of many is the reduced market for unskilled labor.

¹³⁶ *Id.*

¹³⁷ Dash T. Douglas, *A House Divided: The Social and Economic Underdevelopment of American's Inner Cities*, 10 U. FLA. J. L. & PUB. POL'Y 369, 381 (Spring, 1999), citing Milton S. Eisenhower Foundation Report, *The Millennium Breach I* (1998).

¹³⁸

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¹⁴⁰ Halter *supra* note 7s at 9-10.

¹⁴¹ The trickle down theory as applied to NMTC transactions is discussed at Roger Groves, *How to Revitalize Urban American without Marginalizing our Core People*, ____ .

¹⁴² *Id.* at 746, citing Robert Mier, *Job Generation As a Road to Recovery*, in *Social Justice and Local Development Policy*, 34 ROBERT MIER ED. (1993).

increase in the quality of life of the low income residents.¹⁴³ To be effective at employing that chronically underemployed group realistically requires meeting them where they are in the employment spectrum. It does little good to offer jobs requiring a graduate degree in economics to those who are struggling with high school graduation requirements. It is of greater value to establish the types of businesses where those unemployed youth can be nurtured from those culturally connected role models in their own “school for entrepreneurs” in the tradition of other ethnic enclave economies.

Reduce Barriers of Entry From Transactional Costs

One important byproduct of the small business Properly Purposed Projects is that it cures an existing barrier of entry for Ethninvestors in NMTC projects. Currently, the transactional costs,¹⁴⁴ professional fees for a NMTC transaction is problematically high, and in many cases prohibitive of the types of cases that a target community wants and deserves.¹⁴⁵ The costs are high because the transactions are highly complex. The transactions are complex because they are attempting to meet gentrified goals, (i.e. a substantial return on the investment of problematic purposed projects). Some projects have hundreds of millions of dollars in construction costs.¹⁴⁶ If the goals were aligned with the best interests of the target community, absent gentrified goals, the projects would not have to be as expensive. The transactions could be simplified to meet the more

¹⁴³ Quinones, *supra* note 108 at 27 U. Mich. J. L. Reform 689, 748 (1994).

¹⁴⁴ These are professional fees, typically top heavy with billed legal and accounting fees.

¹⁴⁵ Cite

¹⁴⁶ Cite

basic needs of the target community, and therefore the transactional costs would decrease proportionally.

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

Long Term Commitment To Target Community

Another criterion for the Ethninvestor is willingness for long term commitment to the target community, beyond the 7 year tax credit. The desire for long term commitment rather than mere short term gain is advocated as criteria for the Ethninvestor because it should provide longer term benefits for the target community, and thus a more qualitative use of the federal subsidy funds. While a NMTC project has tax credits are spread over 7 years, if the project fails to maintain an enterprise with a permanent economic base, those left after the tax credit exodus are potentially left flailing as they were prior to the NMTC project, representing a failed use of taxpayer dollars to boot. Accordingly, the

Ethninvestor model is conceptually not just a tool for current earnings or short term investment, but a platform - a spring board for future generations of those residents to rise, as have other immigrant groups. In essence, the model is to have investors with a goal beyond a short term return on investment, to grow the target community. The result should aid in the quest to establish current and future generations from within rather than being marginalized by those from outside. The outside gentrification model has as a more likely byproduct of small benefits to the target residents trickled down from the gentrified wealthy who build problematic purposed projects. The long term commitment should flow from the Ethninvestor's investment motivation to serve the social entrepreneurial mission, to gain the type of solidarity exhibited by the African Americans of the prior generations.

To facilitate a long term commitment by the Ethninvestor, the type of entity for the CDE and a QCB should be carefully selected. The entities should be flexible enough to increase continuity between entities both during volatile periods during the 7 year credit period, and after the credit period when the entities can continue the business activity. The volatile transactional potential exists because there have only been questionable monitoring of the successes and failures of such ventures.¹⁴⁷ So there is very little empirical of the success or failures under this program from which to establish a best practices guide or roadmap as to the best designed and effective business types under this NMTC scheme. It is like a stock market with no Morningstar, a bond without Moody's. Regarding continued business activity after the 7-year credit haven, the CDE could become an equity owner in the QCB during the 7-year credit period and thereafter. Thus,

¹⁴⁷ Several commentators have observed that very little is known about the success rates of the program. J. AFFORDABLE HOUSING AND COMMUNITY DEV L., 323, Summer, 2001

retaining flexibility and continuity between entities can provide increased options for structuring future relationships between the CDE and QCB, both of which may be well stocked with Ethninvestors during or after the 7-year tax credit period.¹⁴⁸

When structuring for long term commitments in a volatile or uncertain marketplace, some entity types have advantages over others.¹⁴⁹ LLC statutes generally provide greater ability of the LLC to negotiate and contract the relative liability rights between partners over the more rigid requirements of corporations. For example, there is no need to create special ‘surplus’ accounts for dividends and no special requirement for management by a board of directors or equivalent body.¹⁵⁰ Thus, it is important that an Ethninvestor model is customized so many African American middle class Ethninvestors can contribute the equity for the Properly Purposed Project based on the needs assessment for that target community.¹⁵¹

¹⁴⁸ Under specified conditions, the CDE may gain majority control, through voting or management rights. See Reg. § 1.45D-1(d) (6); FEDERAL REGISTER, VOL. 69, NO. 248, December 28, 2004, p. 77633.

¹⁴⁹ For a discussion of the LLC advantages over other business entities, see 95 MICH L REV. 393,446 (1996). An LLC model is often particularly well suited for CDE and the QCD relationship, including the flexibility of sharing profits, losses, and even partners within the transactions. The QCB may strongly consider forming as a Limited Liability Company (“LLC”) in large part because the need for a mutually managed structure rather than a near autonomous general partner found in partnerships, and the concomitant need for flexible and tax favorable allocations of profits and losses beyond corporate formations. The CDE could similarly consider the LLC as the entity of choice for its flexible self determined management without restrictive statutory regulation, tax advantages, and the ability to infuse several Ethninvestors as passive investor “members”

¹⁵⁰ Robert R. Keatinge, et al., *The limited Liability Company: A study of an Emerging Entity*, 47 BUS. LAW. 378, 385 (1992)

¹⁵¹ Consideration should be also given to a modified venture capital limited partnership model, with a corporate general partner. Typically a general partner attracts limited partner investors because of the GP’s expertise in financing and business acumen for the types of businesses undertaken. The multiple limited partners (e.g. Ethninvestors) contribute funds but do not materially participate in management functions. Since the risk falls primarily on the general partner, the GP manages the partnership and sometimes even becomes involved in the entity the limited partner invests in. See Joseph W. Bartlett, *Equity Finance, Venture Capital, Buyouts, Restructurings and Reorganizations*, VOL. 1, 2nd, (1995), p. 7. And consideration should be provided for a Subchapter S corporation, but its flexibility and continuity is significantly impaired. It can only have shareholders who are individuals, estates, or certain types of trusts. It cannot have a shareholder that is a C corporation, an S corporation (unless it is a wholly owned subsidiary of another S corporation), an LLC or a partnership. I.R.C. § 1361(b) (1). It should be remembered that an increasing number of states follow the model LLC act which authorizes a single member LLC. Uniform Limited Liability Company Act, § 202(a) (1995) so the future funding source of a QCB could be a

There is also a regulatory factor supporting the strategic need for a long term commitment to the community and a flexible structure that can be infused into the ethnic enclave economy. Obviously, the plasma of the entire NMTC program is the cash investment. It must be qualified (i.e. become a “QEI”) as discussed above. The CDE does not have a perpetual opportunity to invest that QEI into the low income community. A CDE that receives an allocation from the CDFI must issue the investment within 5 years of the execution of its Allocation Agreement or those funds may be taken from the CDE and reallocated by the Treasury.¹⁵² If a CDE does not meet the 5 year requirement, the target low income community loses the benefit of whatever could have occurred positively within those 5 years. The Ethninvestor model has advantages in that a group with a cultural connectivity with the community is more likely to be attuned to qualitative opportunities in the first instance, and be viewed favorably by that community in the same way a person with Chinese connectivity may have opportunity advantages in a Chinatown. If the overwhelming motivation of the CDE is maximizing a return on the investment, the lack of additional tax credits may kill a transfer. But Ethninvestors or those otherwise engaging in social entrepreneurship with a long term commitment beyond the financial return are more likely to see a benefit beyond the short term financial returns and have an ear to the ground for investment opportunities, either upon the initial allocation, or on a reallocation from Treasury.

To the extent African Americans within the core cities have ethnic enclaves, a clustering of businesses. More challenging may be the need to have an organized

financially well-healed Ethninvestor who owns her own LLC. If the QCB became a subchapter S corporation, it would unwittingly eliminate those important potential sources of new equity. Conversely, the LLC has no such restriction.

¹⁵² IRC § 45D (b)(1)(C), Reg. §1.45D-1(c)(4)(A)

business synergy that serves the local ethnic needs and/or the general public. It is certainly conceivable that, like Miami entrepreneurs of Cuban descent, an Ethninvestor-based CDE and QCB team can develop strategic plans that evidence vertical and horizontal integration, culturally aligned suppliers and consumers and pooled savings, cross-pollinating markets where related markets become co-referral sources. There is also no prohibition in the NMTC statute or Regulations against rotating credit associations akin to those used in other ethnic enclave economies in this country.

Empirical Ethnographic Design Modeling

Though beyond the scope of this article, scientific testing of the Ethninvestor model is recommended. Ethnography is a scientific approach to discover *what* people actually do, what role, if any, culture and ethnicity have to with those actions, and the reasons for those actions before interpretations are drawn from our professional or academic discipline.¹⁵³ Commonly used research methods for ethnographies include data collection through focus group interviews, audio and video recordings, and elicitation techniques.¹⁵⁴ Definitions on such terms as culture and ethnicity should be clarified.¹⁵⁵ The inquiries could for example survey two groups of African Americans: One group that fits the proposed profile of an Ethninvestor and another group that does not. The questions would be designed to reveal the likelihood of investing in what is proposed as Properly Purposed Projects based on the Mall of Needs criteria. If those fitting the Ethninvestor profile have a highly correlated answer to match the projected investment behaviors in

¹⁵³ Margaret D. LeCompte and Jean J. Schensul, *Designing & Conducting Ethnographic Research*. WALNUT CREEK, CA, ALTAMIRA PRESS, (1999), p. 1.

¹⁵⁴ *Id.* at 127.

¹⁵⁵ The accepted definition of ethnicity for this article is “self-identification in a sociopolitical grouping that has both recognized public identity and a conservationist/activist orientation.” *Id.* at 24.

Properly Purposed Projects then the results are indicia of validity for the model. If, on the other hand, the non-Ethninvestor profiles show a propensity for investing in those same proper projects, then the results are indicia that the Ethninvestor model is flawed.

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

Conclusion

The NMTC program has laudable goals of providing federally funded subsidies as incentives for equity investment to assist targeted low income residents and their community. The process has been co-opted in part by those who prefer to benefit wealthy persons who come into the low income community over the low income residents of that community. Unintended loopholes have morphed properly purposed projects into problematic opportunities for opera houses, convention centers, and high priced condominiums, in two words - subsidized gentrification.

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

The challenges to an Ethninvestor-modeled transformative self help strategy are several. Unlike the Middlemen of the past among other ethnic and religious groups, there is not the forced source for self help. Can the Ethninvestor rekindle the self help investment strategy on its own volition? Stated differently, is the lure of individual gain,

of satisfaction in prior efforts, or the financial insecurities inexperience or prior failed experiences, too strong an influence compared to the social entrepreneurial goals to invest in the ethnic enclave economy? Without amendments to the current NMTC legislation as proposed above, I doubt it. Without a collective vision of a relative few groups that culturally connects with the target communities, I doubt it. Yet there is hope and opportunity - hope because there is a pool of potential Ethninvestors with capable resources, and opportunity because the NMTC legislation provides the proper statutory goal, and with some tweaking, an accessible regulatory framework.