COMMUNITY ECONOMIC DEVELOPMENT: IS IT A POVERTY ALLEVIATION STRATEGY OR A CHARITABLE AFTERTHOUGHT?[1]

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I INTRODUCTION

The neoliberal economic agenda promoted by the International Monetary Fund (IMF) and the World Bank was characterised among others by free trade, deregulated global financial and capital markets, and privatisation of public enterprises. The Latin American debt crisis in the 1980s resulted from the unsustainable debt levels of the 1970s coupled with economic policies and external factors that contributed to or worsened the crisis.[2] In East Asia on the other hand, despite the unprecedented inflow of capital particularly in the 1990s, the local financial system failed to serve as an effective intermediary as money often ended up in property and stock market investments, driving up the price of those assets in speculative bubbles.[3] During the widespread market-based structural adjustment programmes following the financial crises in the 1980s and 1990s, the IMF required member countries to reduce government spending and encouraged financial and capital markets to achieve 'efficiency' through mergers and consolidations. These structural adjustments have resulted not only in the decrease in purchasing power of the poor but most importantly, recipient countries being prevented from creating social safety nets for their poor. From the developed countries' point of view, globalisation has meant increased international economic competitions that undercut high-priced, locally based manufacturing and cause this industry to shift overseas to countries that offer very low wages. It also meant the removal of barriers for highly subsidised agricultural produce from the West to penetrate developing countries' markets. Displaced rural workers in these countries then migrated to inner-city urban areas to

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[1] International Financial Systems Law and Practice Research Paper for University of Melbourne LLM 12 June 2002

[2] Ross P. Buckley, 'A Tale of Two Crises: The Search for the Enduring Reforms of the International Financial Systems' (2001) 6 *UCLA J. Intl. L. & For. Aff.* 1, 18-23.

[3] Ibid 31.

look for work, which resulted in cities being characterised by a growing dualisation between extreme wealth and poverty.

The optimism about the immediate prospects of a globalise market among democratic states has been tapered-off with the lingering effects of successive financial crises and escalating ethnic and religious conflict heightened by the September 11 terrorists' attacks. As the world anticipates recovery, the continuing economic decline in inner cities and rural areas have contributed to the isolation of many poor, minorities or disadvantaged populations. The lack of access to capital experienced by these communities is the most visible and extreme manifestation of how existing economic structure disempowers these communities. In the face of diminished employment opportunities, support for self-employment through microenterprise and microlending used in conjunction with market-based community economic development (CED) programmes was seen as essential to economic recovery. An attempt to surmount the institutional and social constraints that make lending to poor rural and inner-city communities difficult was made through alternative banking institutions such as the Grameen Bank of Bangladesh and the South Shore Bank of Chicago.

Forged at the intersection of neoliberal economics and postmodern micropolitics, market-based CED rose to prominence in a political and intellectual environment hostile to the social welfare programmes and large-scale reform strategies that formed the foundations for earlier mass-based movements for economic justice. Meanwhile, an alternative mode of legal practice also emerged which led to a shift in strategic emphasis, away from the impact litigation model of institutional reform, and toward fostering smaller-scale actions designed to empower poor clients. More importantly it situated discussions about the role of the legal profession in social movements and the efficacy of alternative methods of practice within the framework of post-modern micropolitics.

This paper discusses the recent financial innovations aimed at facilitating the access of poor communities to capital. As the marginalised poor are more vulnerable to financial crises, policies and strategies must be designed to mitigate their debilitating effects. Since spending on the poor is not only equity enhancing but promotes economic growth as well,[4] this Paper focuses on market-based CED as an approach to poverty alleviation. Part II of this Paper briefly describes market-based CED as a depoliticised version of social change assimilated into the discourse of free market orthodoxy. It is in the context of this description that this approach has been criticised for not seriously challenging the structural determinants of poverty. Parts IIA and IIB discuss two well-documented components of CED, microenterprise and microlending respectively. Part IIA presents the crucial debate in the efficacy of microenterprise – whether this self-employment strategy will achieve self-sufficiency for the poor than assistance for their acquisition of skills to land employment in well-capitalised business run by professional managers. Part IIB discusses the risks and transaction costs in microlending. It then focuses on the asymmetric information theory and the economics of discrimination that hamper development lending, and the affirmative action paradigm that applies race neutral criteria in evaluating loan applications, as exemplified by the US *Community Reinvestment Act*. Part III begins with the emergence of microfinance/non-traditional financial institutions by briefly describing two alternative banking models for urban and rural poor– the Shorebank and Grameen models respectively. More importantly, this part suggest means on how to source funding for these institutions. Part IV discusses the shifting role of the legal profession from mitigating the high transaction costs in market-based CED to 'law and organising' advocacy in politically engaged CED. Part V then explains the implications of the World Bank Development Report 1997 and IMF prescriptions to CED initiatives. Part VI concludes that existing regulatory and structural framework makes it difficult for large-scale, grassroots, and self-sustaining development lending to emerge.

II MARKET-BASED COMMUNITY ECONOMIC DEVELOPMENT

Community-based approaches to economic development[5] seek to address the poverty crisis through a community-controlled development strategy that shifts the

[4] Ross P. Buckley, 'International Capital Flows, Economic Sovereignty and Developing Countries' (1999) *Yearbook of Int'l. Fin. & Econ. L.* 17, 43.

[5] The development concept is broken down into three somewhat distinct sub concepts that heavily overlap: economic development, community development and community economic development. The American Economic Development Council defines economic development as the 'process of creating wealth through the mobilisation of human, financial, capital, physical and natural resources to generate marketable goods and services.' Richard D. Bingham & Nancy A. Denton, *American*

focus from short-term creation or expansion of business activity to democratic influence over the local economy.[6] The focus on community-based approaches can be distinguished from traditional economic development strategies that relied on business profits 'trickling down' to solve local economic problems, with the government playing at most a catalyst role with infrastructure support and financing incentives.[7] Heralded by politicians as a market-based alternative to outdated welfare policies and championed by civil rights leaders as a critical link to economic equality, CED emerged as the dominant approach to poverty alleviation during the 1990s.

The current CED paradigm is defined by an adherence to market principles and a belief in the efficacy of market-based antipoverty remedies.[8] It rests on the premise that the market does not function properly in low-income communities and that creative efforts to build market capacity are necessary to stimulate flagging local economies. The main programmatic goal has been to restructure market incentives to leverage private investment for the development of community-based businesses and financial institutions.[9]

Market-based CED is criticised for not addressing the crucial political dimension of poverty. The model has conceptualised poverty alleviation as primarily a matter of structuring the appropriate economic incentives to spur capital inflow and business expansion in distressed localities. Within this framework, the notion of building political power among the poor to challenge institutional arrangements is viewed as inimical to the goal of packaging low-income communities as attractive

Apartheid: Segregation and the Making of the Underclass (1993). Community development refers to social, human, and physical structure development activities at the neighbourhood or community level. See Avis C. Vidal, 'Reintegrating Disadvantaged Communities into the Fabric of Urban Life: The Role of Community Development' (1995) 6 *Housing Pol'y Debate* 169, 172-173. Community economic development (CED) can be characterised as a hybrid process that promotes the overall quality of life in a neighbourhood in order to improve the economic conditions for residents of that area. While community economic development borrows its approach, technique, and rhetoric from its cousin-economic development, the focus of community economic development is tuned down a notch or two to the level of the neighborhood, as opposed to the entire city or the state. Audrey G. McFarlane, 'Race Space, and Place: The Geography of Economic Development' (1999) 36 *San Diego L. Rev.* 295, 308.

[6] Peter R. Pitegoff, 'Urban Revitalisation and Community Finance: An Introduction' (1994) 27 *U. Mich. J. L. Rev.* 613, 624.

[7] Ibid.

[8] Randy Stoecker, 'The Community Development Corporation Model of Urban Redevelopment: A Political Economy Critique and an Alternative' (1997) 19 *J. Urb. Aff.* 1, 4.

[9] Audrey G. McFarlane, above n 4, 307-308.

business environments.[10] Some analysts have charged that political inaction has compromised the integrity of CED work, transforming them into just 'another developer following a supply-side free market approach to redevelopment rather than fighting for the social change necessary to support sustainable communities.'[11] To the extent that CED has become aligned with neoliberal tenets of privatisation and economic growth, it has reinforced the perceived immutability of existing market arrangements. Offering a market-friendly, depoliticised version of social change practice, CED has been readily assimilated into the discourse of free market orthodoxy. This orthodoxy, in turn, has been translated into an agenda inimical to social welfare policies and labour protections that interfere with market efficiency. Cummings argued that 'despite [CED's] sensitivity to community needs, the market orientation of CED advocacy has prevented it from mobilising the type of grassroots political resources necessary to advance a redistributive, worker-centred agenda.[12]

CED advocates are quick to rebut by explaining that the promotion of small businesses and community institutions are a legitimate independent political end in itself. Small businesses and family farmers are an important bulwark in the maintenance of the community and not just another interest group as these businesses are the engine of economic innovation and the sector of much new job creation. Businesses owned by the poor provide the best employment opportunities for poor workers and civil rights values will therefore be best served by a structure of finance that supports such businesses.[13]

A further limitation of market-based CED is its emphasis on local economic reform. CED's focus on localism does nothing to seriously challenge the structural determinants of poverty and diminishes the importance of large-scale, coordinated social change strategies. Its failure to sufficiently address the broader spatial and

[10] Scott L. Cummings, 'Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice' (2001) 54 *Stan. L. Rev.* 399, 455.
[11] Stoecker, above n 7, 3.
[12] Cummings, above n 9, 454.
[13] Anthony D. Taibi, 'Banking, Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice' (1994) 107 *Harv. L. Rev.* 1463, 1503.

institutional dimensions of poverty has constrained CED advocacy, disassociating it from an agenda of systematic economic transformation.[14]

The microenterprise development fund concept appears to be the most popular and significant tool for financing development in low-income communities and creating employment opportunities for the poor. Microfinance refers to the provision of small loans typically used for working capital (also referred to as 'microcredit'), secure savings products, insurance products, training, technical assistance, and networking opportunities to individuals ('microentrepreneurs') to encourage self-employment.[15] Microfinance is further characterised by collateral substitutes, streamlined loan disbursement and monitoring, and the access to repeat and larger loans, based on repayment performance.[16] Microcredit programs appear to be very successful when viewed from the perspective of overall fund performance, with emphasis on managerial criteria, such as loan volume, number of loans made, number of business assisted, and loan delinquency rates.

The United Nations (UN), recognising that poverty is not a denial of a single human right but a wall behind which a number of basic human rights are encased,[17] also support microfinance as an effective poverty reduction strategy. Opportunities that are essential for human development not only include basic rights such as political freedom and personal security, but also the opportunity to take part in social progress. Consequently, the UN has modified its approach to poverty by recognising it as one of the many strands in a web of human rights that are often lacking in developing countries.[18] In 1997, the UN passed a declaration highlighting the effectiveness of microcredit in poverty reduction and calls upon UN organisations to explore the microcredit approach in their programs as a tool to eradicate poverty.[19] In line with the UN's resolution, international development organisations, including the

[14] Cummings, above n 9, 455.
[15] Joanna Ledgerwood, *Microfinance Handbook: An Institutional and Financial Perspective* (1999) 1.
[16] Ibid.
[17] Cristina N. Campanella, 'The United Nations's New Approach to Human Development and Poverty' (2001) 17 *N.Y.L. Sch. J. Hum. Rts.* 951, 951.
[18] Ibid.
[19] G.A. Res. 52/194, U.N. GAOR, 52nd Sess., Agenda Item 97(f), U.N. Doc. A/RES/52194 (1998).

World Bank and the Asian Development Bank, now highlight microfinance as a key component in their poverty eradication strategies.[20]

A *Microenterprise: Self-employment for the Poor*

The debate on the viability of microenterprise programmes is anchored on the question whether the welfare-dependent person is more likely to achieve economic self-sufficiency through assistance directed toward the development of a small but often unstable business or through assistance that is directed to the acquisition of skills and personal resources that will enable that person to obtain a good job.

Howells argues that self-employment through small business may not be an appropriate anti-poverty strategy for welfare-dependent persons because successful entrepreneurs and welfare-dependent persons are statistically distinct groups who have predictably different personal situations and economic resources.[21] Furthermore, in highly urbanised communities in developed countries, the legal, regulatory and tax requirements for establishing a small business are often onerous.

Critics have also noted that microenterprise programs engage already disadvantaged women in businesses that are disadvantaged and encourage women to engage in 'pink-collar' businesses that are merely extensions of domestic work and providing them with general and abstract training that failed to realistically apprise the participants of the obstacles to successful business ownership.[22] Thus it exacerbates the marginal status of women and the poor in the labour market.[23] It is also unlikely that programmes that only provide instruction in business planning, marketing, and financial management will be doing enough to increase their clients' capacity for self achievement since the welfare-dependent person will also experience difficulty unless the programme offers support such as child care, transportation, access to affordable

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[20] World Bank, Financial Sector: Rural and Microfinance/SMEs http://www.worldbank.org/finance/html/micro_finance.html> see also Asian Development Bank, Fighting Poverty in Asia and the Pacific: The Poverty Reduction Strategy of the Asian Development Bank 1 (1999) http://www.adb.org/Documents/Guidelines/Poverty_Reduction/Poverty_Policy.pdf

[21] Louise A. Howells, 'The Dimensions of Microenterprise: A Critical Look at Microenterprise as a Tool to Alleviate Poverty' (2000) 9-WTR *J. Affordable Housing & Community Dev. L.* 161, 162.

[22] Ibid, 169.

[23] Tracy Bachrach Ehlers and Karen Main, 'Women and the False Promise of Microenterprise' (1998) 12 *Gender and Soc'y* 424.

housing, and personal support.[24] Other critics argue that microenterprises are more likely to fail than mainstream businesses: the owners lack business experience or formal education; industry specific microenterprises such as child care and garment industry work operated by those less able to protect themselves may contribute to the oppression of the group; and such enterprises may end up becoming sweatshops.[25] Nevertheless, microenterprise advocates countered by explaining that their programmes promote the development of human capital: the use of domestic skills to earn money may help to achieve balance between work and home and bridge conflicting roles for women in the domestic and financial worlds; that self-employment can lead to control over time and other personal resources; that the programmes provide persons with access to business development resources not otherwise available; and that the training offered by microenterprise programmes may increase the capacity of participants to function in the mainstream economy, even if their businesses fail.[26] Some feminist have also claimed that microenterprise development can lead to women's empowerment by creating 'new patterns of social interaction' that promote feelings of enhanced social and political capacity.[27]

Servon and Bates make five recommendations for targeting assistance to increase the viability of microenterprises which include making larger loans; steering entrepreneurs away from narrow, low-income, minority markets; offering training to prepare entrepreneurs for emerging business markets; focusing resources on those most likely to succeed and filtering out less serious or less well-prepared entrepreneurs; and conducting better analysis of current programs.[28] It has also been suggested that individuals are more likely to find a way out of poverty through employment in larger, well-capitalised businesses operating in competitive areas of

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[24] The availability of affordable, quality childcare and financial assistance for childcare are linked to maternal employment. See Sandra L. Hofferth, 'The Silent Crisis in U.S. Child Care: Child Care, Maternal Employment and Public Policy' (1999) in 563 *Annals of the American Academy of Political and Social Science* 20. For a discussion of the correlation between access to affordable housing and economic self-sufficiency, see Peter W. Salcich, Jr., 'Welfare Reform: Is Self-Sufficiency Reasonable Without Affordable Housing?' (1997) 2 *Mich. L. & Pol'y Rev.* 43.

[25] Susan R. Jones 'Representing the Poor and Homeless: Innovations in Advocacy Tackling Homelessness Through Economic Self-Sufficiency' (2000) 19 *St. Louis U. Pub. L. Rev.* 385, 393.

[26] Howells, above n 20, 171-172.

[27] Lucie E. White, 'Feminist Microenterprise: Vindicating the Rights of Women in the New Global Order?' (1998) 50 *Me. L. Rev.* 327, 330.

[28] Lisa J. Servon and Timothy Bates, 'Microenterprise as an Exit Route from Poverty: Recommendations for Programs and Policy Makers' (1998) 20 *J. Urb. Affairs* 419, 438.

the economy that are run by professional managers and in a position to provide sufficient compensation and benefits.[29]

B *Microlending: Making Credit Less Expensive for the Poor*

The risks and high transaction costs associated with lending to the poor constitute a substantial barrier to formal financial institutions delivering these services. In any financial contract, the lender requires adequate and accurate information to assess the risk of lending to a borrower. Practices undertaken by the lender like credit checks to ascertain the borrower's character, project appraisals to assess the borrower's business prospects, and taking security interest in collateral to secure loans, cannot be used in lending to microenterprises as microentrepreneurs do not have a credit rating, do not maintain records necessary for project appraisals, and lack marketable collateral.[30] Commercial banks, often bureaucratic and concentrated in urban areas are also deterred from offering financial services to the poor in the rural communities because of the increased transaction costs of a centrally-located bank branch office.[31] Furthermore, rural borrowers usually require individual small-sized loans while commercial banks tend to lend to large, established enterprises in modern industrial sectors.[32] The cost of extending a small loan to a single microentrepreneur is the same as that extended to a large-scale commercial borrower and banks have no choice but to increase their interest rates to reflect the reality that microfinance operations are more costly. Formal financial institutions are also reluctant to extend deposit services to poor clients because of the assumption that poor people cannot save because they do not have the funds to save or incomes are used purely for consumption needs.[33] Again, the relatively high transaction costs attendant to handling the small deposits of low-income clients deter traditional institutions.[34] Still another theory is that the mainstream-banking sector simply miscalculated the

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[29] Howells, above n 20, 172.

[30] Elisabeth Rhyne and Maria Otero, Financial Services for Microenterprises: Principles and Institutions in Maria Otero and Elizabeth Rhyne (eds), *The New World of Microenterprise Finance* (1994), 11-13.

[31] Jacob Yaron et al., The World Bank, *Rural Finance: Issues, Design, and Best Practices* (1997) 18.

[32] Ibid.

[33] Marguerite S. Robinson, Savings Mobilisation and Microenterprise Finance: The Indonesian Experience in Maria Otero and Elizabeth Rhyne (eds), *The New World of Microenterprise Finance* (1994), 28.

[34] Ledgerwood, above n 14, 156.

economics of microlending, overestimating the associated transaction costs and underestimating the productive capacity of poor people.[35]

Nevertheless, lending to poor communities requires taking on more risk than is commonly accepted in the banking industry. While large banks minimise correlated risks by lending to businesses in different geographical locations and sectors of the economy, small business loans made by a community bank will tend to be geographically concentrated and failure risks will tend to be correlated.[36] Fortuitous events like natural calamities, race or ethic riots or local economic shocks could wipe out many local banks and businesses at the same time. Layoffs by a major area employer could also sharply reduce the demand for the services of many small businesses in a single community. Although these risks are present in affluent areas as well, poor communities are both more vulnerable and less able to rebound, given the absence of an informational infrastructure to support informal and formal lending.[37]

Furthermore credit markets in developing countries are different because of both the relative poverty of the borrowers[38] and institutional infrastructure as manifested by ill-defined property rights, undocumented credit histories, and unreliable and costly legal systems resulting to information asymmetries between lenders and borrowers.[39] While development economists tend to focus on asymmetric information theories in explaining the lack of lending to the poor in developing countries, development lending in multi-racial, multi-caste or multi-ethnic inner-city communities is further hampered by the theoretical work on the economics of discrimination.[40]

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[35] 'Trickle-up Economics', *J. Com.,* 6 February 1997, 6A.

[36] Keith N. Hylton, 'Banks and Inner Cities: Market and Regulatory Obstacles to Development Lending' (2000) 17 *Yale J. on Reg.* 197, 225.

[37] Ibid.

[38] Rural people who earned a subsistence living were routinely considered impoverished under Western economic standards such as 'per capita income' which promoted urbanisation and industrialisation while invariably disregarding any adverse impacts, including deterioration of community ties and deprivation of general 'access to land, water, and other resources.' Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (1995) 22.

[39] Jameel Jaffer, 'Microfinance and the Mechanics of Solidarity Lending: Improving Access to Credit Through Innovations in Contract Structure' (1999) 9 *J. Transnat'l L. & Pol'y* 183, 183-187.

[40] See Deborah Ray, *Development Economics* (1998) 540.

Discrimination theorists have distinguished two types of discrimination: the 'taste-based' (or irrational) discrimination, which assumes that discrimination occurs because the discriminating actor experiences some disutility from associating with the group he dislikes;[41] and the statistical (or rational) discrimination, which assumes that the actor treats the distinguishing characteristic of the disfavoured group (e.g. race, caste, ethnicity) as a signal of poor reliability, low ability, or some other unfavourable trait.[42] Under the statistical discrimination theory, the lender uses information on race as a proxy for information on risk that would be difficult to gather. While asymmetric information theory focuses on the lender's inability to assess the creditworthiness of a particular applicant or the risk propensity of the applicant's intended use for the loan, race is not a necessary feature of the theory though it may play a role in the inability to assess the risk. Thus discrimination theories assume that race (or caste or ethnicity as the case may be) plays a pivotal role in the lending process, whereas asymmetric information theory makes itself the key variable.[43] In the credit context, discrimination practices are also related to redlining which originally referred to the practice of literally drawing a redline around certain neighbourhoods on a city and refusing to make loans for property or businesses located within the demarcation zone.[44] Today the term refers to any set of practices that 'systematically den[ies] credit to applicants from low- and moderate income, and minority neighbourhoods.'[45]

In the US, the *Community Reinvestment Act (CRA)*[46] embodies the affirmative action paradigm, which seeks to ensure that banks not only apply race neutral criteria in evaluating loan application, but also actually lend to clients in low- and moderate-income communities. However, the *CRA* is not bereft of critics from both sides of the political spectrum. Liberal critics see much of what passes for *CRA* compliance as mere public relations and charitable contribution to community-group causes.

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[41] Gary S. Becker, *The Economics of Discrimination* (1971) 16-17.
[42] Edmund S. Phelps, 'The Statistical Theory of Racism and Sexism' (1973) 62 *Am. Econ. Rev.* 659.
[43] Hylton, above n 35, 207.
[44] Taibi, above n 12, 1486.
[45] Gregory D. Squires, Community Reinvestment: An Emerging Social Movement in Gregory D. Squires (ed) *From Redlining to Reinvestment: Community Responses to Urban Investment* (1992), 2.
[46] 12 U.S.C. §§2901-2907 (1988 & Supp. V 1993). The *CRA* provides that 'regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which [those institutions] are chartered to do business §2901 (a)(1). For an overview of the *CRA*, see Griffith L. Garwood and Delores S. Smith, 'The Community Reinvestment Act: Evolution and Current Issues' (1993) 79 *Fed. Reserve Bull.* 251; and A. Brooke Overby, 'The Community Reinvestment Act Reconsidered' (1995) 143 *U. Pa. L. Rev.* 1431, 1439-1482.

According to this view, *CRA* enforcement merely imposes the requirement of extensive paper trails for marginal activities that have little to do with substantive investment in low- and moderate-income communities.[47] They argue that banks refuse to change the way they do business and look to please regulators rather than comply with the spirit of the law.[48]

Conservative commentators and the bank industry have raised significant objections to the *CRA*. They argued that the *CRA* requires banks to sacrifice profits by forcing them to make loans and investments in low-income communities on terms not supported by their assessment of the market.[49] Higher risk in the loan portfolio and the extensive reporting requirements necessary for the enforcement of the *CRA* have raised direct compliance costs for banks, providing them a competitive disadvantage compared to their less regulated non-bank competitors such as pension funds, life insurance companies, finance companies, mortgage banks, venture capital companies, mutual funds, and commercial paper markets.[50] Professors Jonathan Macey and Geoffrey Miller also argue that the *CRA* impedes the 'desirable process of bank mergers and acquisitions' since *CRA* protests can delay, derail or raise the costs of an attempted merger.[51] Finally, the ambiguous character of the *CRA* rating system has led some commentators to conclude that regulators can assign an arbitrary rating, often merely responding to the wishes of community activist groups that might have other motives.[52]

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[47] Allen J. Fishbein, 'The Community Reinvestment Act After Fifteen Years: It Works, but Strengthened Federal Enforcement is Needed' (1993) 20 *Fordham Urb. L.J.* 293, 306-308.
[48] Taibi, above n 12, 1491.
[49] David E. Runck, 'An Analysis of the Community Development Banking and Financial Institutions Act and the Problem of Rational Redlining Facing Low-Income Communities' (1996) 15 *Ann. Rev. Banking L.* 517, 527.
[50] Calvin Cunningham, 'How Banks Can Benefit from Partnership with Community Development Financial Institutions: The Bank Enterprise Awards Program' (1999) 3 *N.C. Banking Inst.* 261, 281.
[51] Jonathan R. Macey and Geoffrey P. Miller, 'The Community Reinvestment Act: An Economic Analysis' (1993) 79 *Va. L. Rev.* 291,322-323.
[52] Runck, above n 48, 528-529.

III EMERGENCE OF MICROFINANCE/NON-TRADITIONAL FINANCIAL INSTITUTIONS

As the need for suitable credit and saving services for low-income clients have become apparent, microfinance institutions (MFIs)[53] have emerged to serve sectors excluded by formal financial services. By identifying clients based on characteristics such as their poverty level, ethnicity, caste, religion, gender, geographic location, or type of business activity, MFIs can pinpoint a target market they wish to service and design a credit delivery model appropriate for that target.[54] Also, instead of using conventional collateral to secure loans,[55] MFIs use collateral substitutes, such as character references,[56] group-based joint liability schemes,[57] and compulsory savings requirements.[58]

Based on past experiences with subsidised credit, microcredit lenders have learned that subsidised rates are not an effective means of delivering credit to poor clients as they have been consistently abused by rent-seekers and have not reached the target group of the poor.[59] MFIs have also learned that they must charge interest rates at or above market rates to be cost-efficient and to create sustainable microfinance

[53] MFIs can be non-governmental organisations (NGOs), savings and loans cooperatives, credit unions, non-bank financial institutions, or even government or commercial banks. Many MFIs are locally based, bringing services directly to the community. See Ledgerwood, above n 14, 2.

[54] Ledgerwood, above n 14, 34.

[55] In developed credit markets, collateral can often compensate for some gap in the information between lender and borrower, providing a way to both increase the borrower's stake in the success of the project and reduce losses to the bank in the event of a default.

[56] Ledgerwood, above n 14, 137. Where character-based references are used in the place of collateral, loan officers, often recruited locally, visit various establishments in the community and ask about the potential client's character and behaviour. .

[57] Susan Johnson and Ben Rogaly, *Microfinance and Poverty Reduction* (1997) 7. In group-based joint liability schemes, if an individual member defaults on a loan, the group is ultimately responsible for repaying the full amount of the loan. Individuals self-form into small groups and receive one loan for the entire group. Members then decide which individual will receive the loan. When the loan is repaid, the group receives another loan and it distributes the funds to another member. Joint liability of the group creates an environment of peer pressure that helps achieve credit discipline without physical collateral.

[58] Where compulsory savings are used in lieu of collateral, MFIs require borrowers to set aside a certain amount in savings during the term of the loan and part of the disbursed credit is withheld and transferred to a deposit account in the MFI. Ledgerwood, above n 14, 138.

[59] Eric R. Nelson, Development Alternatives, Inc., 'Financial Intermediation for the Poor Survey of the State of the Art' *African Economic Policy Discussion Paper No. 10* (July 1999). http://eagerproject.com/discussion10.shtml.

programs.[60] Because the cost of delivering program services is high,[61] an MFI may often charge higher-than-market interest rates on their loan products to effect full cost recovery.

In the United States, there has been an extraordinary growth in non-traditional financial institutions, which fills the gaps that conventional lenders and public agencies often leave. These non-traditional institutions take many forms, including: community development loan funds,[62] community development credit unions,[63] community development banks,[64] microenterprise business funds, community development corporation funds, hybrids such as the low-income housing fund, public sector loan funds, and national intermediaries.[65] These institutions typically undertake the following types of lending in low-income communities: (1) providing predevelopment and other gap financing, usually in a project's early stages, to allow the project to reach the stage where it is bankable; (2) cushioning conventional loans with junior financing above certain loan-to-value limits; (3) seasoning loans to demonstrate their safety so that conventional institutions can later purchase or refinance them; (4) experimenting with new lending approaches to demonstrate their effectiveness and to help conventional institutions to become comfortable with the new programs; (5) providing high-transaction-cost loans; high loan-to-value land loans and land banking loans; start-up working capital, and microbusiness loans; unsecured loans; lines of credit; and loans that allow developers or entrepreneurs to gain experience so they can proceed to conventional lenders for future projects; and

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[60] Yaron, above n 30, 26. The sustainability of microfinance programmes is dependent on the ability to break even the cost of making a loan. To break even, the cost of making a loan (cost of funds plus administrative and default costs) must be less than or equal to the price (interest rate) of the loan.
[61] Shahidur R. Khandker, *Fighting Poverty with Microcredit: Experience in Bangladesh* (1998) 1-2. The activities critical to maintaining high loan recovery rates, for example, group formation and training, are expensive.
[62] Community development loan funds are unregulated and uninsured financial intermediaries that aggregate capital raised from individual and institutional social investors at below market interest rates. Taibi, above n 12, 1525.
[63] Community development credit unions are regulated and federally insured depositary institutions that are cooperatively owned and operated by their members on a one-person, one-vote system regardless of the amount of deposit. Ibid 1523-1524.
[64] Community development banks provide for development credit for its community through the vehicle of a commercial bank, credit union, or savings and loan; it is the most comprehensive of the CDFI models. Ibid 1522.
[65] Daniel M. Leibsohn, 'Financial Services Innovation in Community Development' (1999) 8-WTR *J. Affordable Hoising & Community Dev. L.* 122, 126. Leibsohn was the Executive Director of Community Development Finance, a non-profit financial and research organisation in California, when he authored the paper.

(6) sponsoring high-risks loans, in general, for reasons such as lack of borrower financial strength, lack of takeout, difficult neighbourhood, community facilities (e.g., day care, health, offices), specialised use, mixed use, scattered sites, or non-traditional income streams.[66]

Alternative banking models have shown that it may be possible to lend to poor customers without incurring an unacceptable level of risks. For example, the South Shore Bank of Chicago, a community development bank, has undertaken to coordinate lending with other development activities made by affiliates within their holding companies, which specialise in housing development, business development, job training, and education.[67] Thus Shorebank has avoided the coordination problems that affect the supply of local public goods by taking a large stake in the development of social capital. By taking a large stake, it effectively captures or 'internalises' a large share of the external benefits generated by its lending and investment projects.[68] The implication of the Shorebank model is that the risk of development lending can be reduced to a tolerable level by harnessing local information and by coordinating development activities.

'Group lending' under the Grameen Bank model suggests another approach to reducing the risk of development banking. The Grameen Bank in Bangladesh provides loans to groups of five borrowers from the same village under agreements in which all members of the groups are liable for the amount loaned to one member.[69] This transfers a large part of the risk to the borrower, and the parties themselves have incentives to monitor the borrower to make sure that the loan is repaid. Groups will seek out members who are creditworthy, based on information they have from day-to-day experience in the communities. The Grameen Bank also provides counselling services to help borrower groups meet their obligations.[70]

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[66] Ibid 126-127.
[67] Rochelle E. Lento, 'Community Development Banking Strategy for Revitalising Our Communities' (1994) 27 *U. Mich. J.L. Reform* 773, 782-799. The function of the bank holding company is to assess and evaluate development opportunities before the bank invests. The non-bank affiliates may facilitate equity capital investment in businesses, rehabilitation loans for commercial and residential real estate ventures, and social development programmes, while establishing strong links between the community, the development bank, and public programmes available to revitalise distressed communities.
[68] Ibid.
[69] Deborah Ray, *Development Economics* (1998) 540, 579.
[70] Ibid.

The general implication of the Grameen and Shorebank models is that the information-related risk can be reduced by adopting methods that (1) harness local information to serve the bank's purposes; (2) transfer lending risk away from the bank, whether to borrowers (as in the case of group lending) or to third parties; and (3) coordinate lending with local efforts to promote business development, education, and job training.[71] Group lending is good in implementing the first two methods with slight progress on the third, while the Shorebank model though good at the first and third methods fairs poorly on the second.[72]

However, there is a notable tension between the need that these non-traditional financial institutions have for independence, local control, and freedom from bureaucratic red tape on the one hand, and their need for active restructuring of the financial marketplace by the government and more initial capital input on the other.[73]

Financial institutions need money to lend and if their operating costs exceed their revenue, they will be forced to consume their lending capital to the point where they have none left to lend. A significant portion of the funding for these efforts has come through local economic development agencies, supplemented by foundation grants, private investments, and commercial loans.[74] Criticisms of MFIs have often focused on their reliance on outside funds for support as they are financed, at least initially, through grants or low-interest loans from aid organisations and donor governments.[75]

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[71] Hylton, above n 35, 227.
[72] Ibid.
[73] Taibi, above n 12, 1522.
[74] Michael H. Schill, 'Assessing the Role of Community Development Corporations in Inner City Economic Development' (1996-1997) 22 *N.Y.U. Rev. L. & Soc. Change* 753, 769-771.
[75] Lawrence Solomon, 'Microcredit's Dark Underside: Problems of Bangladesh's Grameen Bank', *World Press Review,* August 1998, 4A. Although Grameen Bank claims to be profitable, it currently makes a profit only because it borrows money at concessionary rates from donors, and reinvests at prevailing rates. Moreover, Grameen Bank's ability to expand is attributable in large part to donated funds or reliance on soft loans.

Nichols offers a solution for MFI funding by swapping sovereign debt for the creation of microenterprise lending institutions.[76] A donor government that holds sovereign debt from a debtor government would enter into negotiations with that government for the purpose of securing the government's agreement to the following: its debt would be exchanged for bonds that would be serviced in local currency; that currency would be given to a local NGO with the objective of creating and operating a microenterprise lending institution; and the government would cooperate with and support the institution.[77] Once an agreement is reached, the exchange would occur wherein either the donor government or the NGO would hold the bonds, and the government would retire the sovereign debt that it received in the exchange.[78]

In his study of MFIs in Indonesia, Miyashata advances the need for increased NGO activity in microfinance through government funding for NGOs to become financial intermediaries as the latter are necessary to fill the gaps in outreach of state-run MFIs.[79] He suggested that government create a regulatory framework, which will eliminate legal barriers to NGO participation in both savings and credit services provision.[80] Also, increased NGO involvement could reduce the clients' political risk in microfinance intermediation by offering an opportunity to bank with a non-state-owned MFI and smaller NGOs with operating flexibility that are able to penetrate population in the outermost regions.[81]

Social Venture Philanthropy (SVP), a new paradigm in charitable giving influenced by venture capital, is driven by new donors who are turning their attention to charitable issues after acquiring substantial wealth. The SVP model allows for longer term investments (3-5 years) in non-profit organisations, which combine social philanthropic and business values and are monitored and evaluated for progress,

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[76] Philip M. Nichols, 'Swapping Debt for Development: A Theoretical Application of Swaps to the Creation of Microenterprise Lending Institutions in Sub-Saharan Africa' (1994) 27 *N.Y.U. J. Int'l L. & Pol.* 43. 89.
[77] Ibid 91.
[78] Ibid.
[79] Yoko Miyashita, 'Microfinance and Poverty Alleviation: Lessons from Indonesia's Village Banking System' (2000) 10 *Pac. Rim L. & Pol'y J.* 147, 183-186.
[80] Ibid 187-189. Currently, Indonesian NGO MFIs are subject to two regulations that may affect the scope of their operations. First, the 1992 banking regulation affects the ability of some NGOs to operate as rural banks capable of accepting deposits. Second, NGO laws prohibit NGO MFIs from accepting deposits from members.
[81] Ibid 189.

management and expansion capabilities.[82] However, critics of venture philanthropy believe that its characteristics – measurable and result-oriented giving – are already employed by many donors.[83] Others caution that the outcome measure driven nature of SVP may hinder the learning process and non-profit groups' willingness to openly discuss and share the lessons learned. [84]

Leibsohn suggested that conventional and non-traditional lenders develop joint programs to provide access to capital in low-income communities e.g. non-traditional lenders can establish a pool of conventional lenders to make interim or permanent loans, in which the non-traditional lender (usually a non profit organisation) undertakes most of the administration and underwriting in order to reduce the lenders' costs, and the lenders pool their funds in order to increase underwriting oversight while spreading risks.[85] Non-traditional institutions can also acquire loans, equity investments, and grants from conventional lenders as well as other capital sources like insurance companies, nonbank lenders, and mutual funds.[86] New capital markets can be opened to non-traditional lenders in order to reach additional investors, through mortgage revenue bonds, subordinated debt, commercial paper, debentures, and similar financial instruments.[87]

IV LAW AND ORGANISING: THE SHIFT TO POLITICALLY ENGAGED CED ADVOCACY

Traditional CED lawyering encompasses a broad set of practices that includes developing affordable housing and commercial projects, as well as structuring community-based NGOs, childcare centres, businesses, and financial institutions. Some of the high transaction costs in CED can be greatly diminished by pro bono programs undertaken by bar associations, public interest law firms, non-profit

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[82] Jed Emerson, 'The U.S. Non-profit Capital Market: An Introductory Overview of Developmental Stages, Investors and Funding', *The Roberts Enterprise Development Fund*, The Roberts Foundation 1-11,15.
[83] Shashank Bengall, 'California Community Leader Discusses Future of Venture Philanthropy', *San Jose Mercury News,* 9 August 1999.
[84] Susan R. Jones, 'Representing the Poor and Homeless: Innovations in Advocacy, Tackling Homelessness Through Economic Self-Sufficiency' (2000) 19 *St. Louis U. Pub. L. Rev.* 385, 410.
[85] Leibsohn, above n 64, 128.
[86] Ibid 129.
[87] Ibid.

agencies, and law school legal clinics[88] which can recruit private attorneys specialising in corporate, tax, real estate land use, and other transactional areas of law who are interested in volunteering their services to community groups and NGOs. Assistance is available in matters ranging from construction financing to forming joint ventures with for-profit developers. While the proliferation of providers participating in CED representation increases the available pool of legal services, it may result in fragmentation and ineffectiveness, which can be remedied by developing an integrated, comprehensive, and collaborative system of delivery.[89]

A 'client-centred' approach to the delivery of legal services emphasises 'client voice' as a means to avoid attorney domination and control of the decision-making process.[90] In order to use this approach, it has been suggested that attorneys hear (and perhaps even aid in the development of the community voice.[91] As to the question of what community is, there is no monolithic community from which lawyers can take direction and legal service offices must face the difficult reality that conflict and hard choices are inevitable.[92] What is needed then is the formulation of a client selection process that somehow ensures that all diverse constituencies of the community will be served.[93]

It is not sufficient for legal service providers to identify clients who represent the community since they must also develop relationships of mutual trust and responsibility rather than lawyer domination and client subordination.[94] Lopez suggests that civil rights and poverty lawyers often push their clients toward legal strategies that reward lawyers' ambitions more than they serve clients' needs; that they frequently fail to draw on their clients' problem-solving skills; and that they

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[88] Susan R. Jones, 'Transactional Lawyers Supporting Economic Development in the Nation's Capitol' (1999) 9-FALL *J. Affordable Housing & Community Dev. L.* 18, 21. The D.C. Bar Community Economic Development Pro Bono Project is cited as a working example.
[89] Alan W. Houseman, 'Civil Legal Assistance for the 21st Century: Achieving Equal Justice for All' (1998) *Yale L. & Pol'y Rev.*
[90] Raymond H. Brescia, Robin Golden, and Robert A. Solomon, 'Who's in Charge, Anyway? A Proposal for Community-Based Legal Services' (1998) 25 *Fordham Urb.L.J.* 831, 856.
[91] Ibid.
[92] Matthew Diller, 'Lawyering for Poor Communities in the Twenty-First Century' (1998) 25 *Fordham Urb. L.J.* 673, 678.
[93] Houseman, above n 87, 54.
[94] Ibid 18.

often settle for technical success without considering whether their work actually benefits their clients.[95]

Other approaches to changing the power dynamic between lawyers and clients include 'collaborative' and 'facilitative' lawyering.[96] In collaborative lawyering models, attorneys strive to diminish the distinction between lawyers and lay people by becoming an 'insider,' collaborating in cross-cultural and inter-disciplinary contexts with clients to maximise the experience and knowledge of all participants.[97] Facilitative lawyering emphasises client autonomy and involved working on client-defined legal issues, recognising that the client may not want the lawyer to do more than provide general corporate legal advice, and the lawyer may not be able to do more.[98]

More recently, scholars have suggested that lawyers should not only use their legal skills to assist organising groups, but that they should also engage directly in organising activities[99] to empower client communities to loosen lawyers' affinity for traditional legal practice and to encourage them to 'think outside the box'.[100] Law and organising in the CED context has focused on the provision of transactional legal assistance to community organising groups working to create jobs and remove barriers to employment for low-wage workers.[101] The development of law and organising initiatives has led many CED lawyers to move away from traditional market-based business development strategies and, instead, use their transactional legal skills to support movements for economic justice.[102]

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[95] Ann Southworth, 'Taking the Lawyer Out of Progressive Lawyering' (1993) 46 *Stan. L. Rev.* 213, 214, writing a review of Gerald P. Lopez, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (1992).
[96] Susan R. Jones, 'Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice' (1997) 4 *Clinical L. Rev.* 195, 225.
[97] Ibid.
[98] Ibid.
[99] Organising is often used as shorthand for a range of community-based practices, such as organisation building, mobilisation, education, consciousness raising, and legislative advocacy. Scott L. Cummings and Ingrid V. Eagly, 'A Critical Reflection on Law and Organising' (2001) 48 *UCLA L. Rev.* 443, 481.
[100] See generally Gerald P. Lopez, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (1992) 74-78 and Lucie E. White, 'To Learn and Teach: Lessons from Driefontein on Lawyering and Power' (1988) *Wis. L. Rev.* 699, 760-766.
[101] Cummings and Eagly, above n 98, 477.
[102] Ibid 479.

The market orientation that characterises current CED efforts has proven insufficient to address the complex processes that generate poverty and has shifted the direction of antipoverty advocacy away from grassroots political engagement and toward politically passive market interventions. In contrast with the market-based development strategies, the politically engaged CED model applies legal advocacy to support community organising around economic justice issues with the goal of deploying transactional lawyers in a way that builds organised low-income constituencies that can challenge the distribution of political power.[103] This new model also seek to situate CED advocacy within the context of a broader progressive movement on behalf of marginalised communities not only through the formation of strategic alliances between CED practitioners and community organisers but with other grassroots actors as well – labour representatives and clergies who have the mass-based constituencies necessary to leverage cultural change.[104]

The new CED advocacy model also cultivates cross-racial coalitions that cut across traditional community boundaries. Instead of targeting economic resources in specific neighbourhoods, CED practitioners of this model are forging linkages with community groups in different localities to create regional, national, and transactional structures to combat the economic deterioration of marginalised populations. In this way, CED advocates are transforming the meaning of community to encompass racially and geographically dispersed groups that share common grievances arising from their economically marginalised status.[105]

However, as law and organising is still in its early stages, there has been little opportunity for a sustained dialogue, informed by practical experience, on the appropriate scope and application of the model. In advocating for the integration of law and organising, scholars have omitted the type of critical analysis of organising practice that they have so deftly levelled against litigation-based approaches.[106] Defining the role for lawyers within an organising context generates complicated, often conflicting, responses.[107] It is argued that lawyers should be organisers because

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[103] Cummings, 'Community Economic Development as Progressive Politics', above n 9, 459.
[104] Ibid 462.
[105] Ibid 463.
[106] Cummings & Eagly, above n 98, 479.
[107] Ibid 493.

their legal skills provide them with unique insights as argued by White as that 'fluency in the law' - a deep practical understanding of law as a discourse for articulating norms of justice, and an array of rituals for resolving social conflict which will improve a person's flexibility and effectiveness at 'third dimensional' work.[108]

In contrast to the arguments in favour of lawyer-organisers is the reality that lawyers are ill equipped to organise because of their penchant for narrow, legalistic thinking and tendency to dominate community settings that can undermine their effectiveness as organisers.[109] Furthermore, by the nature of their education and professional status, most lawyers are highly invested in the existing system and not well positioned to advocate for radical structural change.[110]

These arguments taken together paint an oxymoron: while lawyers possess special skills that facilitate organising, the lawyers' knowledge is not superior to 'lay' knowledge and that they should play only a very minor role in organising efforts because of their potential for overreaching. Nevertheless, despite the criticisms, law and organising advocates argue that the lawyers' technical sophistication makes them valuable in grassroots settings.[111]

V IMF-WORLD BANK POLICIES: CATALYSTS OR OBSTRUCTIONISTS?

The World Bank's *World Development Report 1997: The State in a Changing World*, has been hailed as signalling a 'surprise policy U-turn' for the Bank. The Report claims to 'refocus on the effectiveness of the state,' provide a guide to 'reinvigorating institutional capability,' and suggest ways to bring 'the state closer to people.' Conditionalities imposed by the IMF and the Bank have required governments to take measures to alter social arrangements foremost of which are the

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[108] White, above n 99, 765. White's approach to poverty law advocacy promoted local empowerment by liberating clients from stifling lawyer-imposed narratives and allowing them to 'name the world' for themselves. White argued for a model of 'third-dimensional lawyering' in which lawyer-activists used educational techniques to stimulate a critical consciousness in subordinated groups through a process of mutual dialogue and exchange. To implement this alternative model, White suggested that poverty lawyers loosen their affinity for conventional legal practice and create 'parallel spaces' outside the boundaries of tradional litigation that allowed clients to engage in 'reflective conversation and strategic action.'
[109] Cummings & Eagly, above n 98, 494.
[110] Ibid.
[111] Ibid.

cutting of government spending on services such as health and education and reduction of subsidies to basic commodities. There has been wide criticisms on these directives particularly on the point that the commitment to limit the state's involvement in areas such as health, education, industrial relations, consumer protection or financial regulation has led to a decreased capacity for public participation in decision-making over those areas of activity and policy.[112] When the state is stripped of most of its functions except maintaining law and order (which is understandable because of the social unrest fomented by the prescriptions), government's accountability has been reposed to international institutions instead of its citizens.[113] The newly reinvigorated state exists to manage and delegate: 'to build on the relative strengths of the private markets and the voluntary sector while taking into account and improving its own institutional capability.'[114] A 'capable state' is described as one that can require participation by delegating unnecessary services to the non-governmental or voluntary sector, while facilitating competition and investment by the private sector.[115]

The 1997 Report recommended that most social security services be privatised for two reasons: first, because somehow rather than 'protecting the vulnerable', such programmes have 'resulted instead in transfers of resources to elite groups,' presumably masquerading as elderly people (those 'outside the wage economy' for 'reasons of age') or unemployed people (those 'outside the wage economy' due to 'the business cycle').[116] Secondly, those programmes have 'wrought havoc with long-term fiscal policy.'[117] What is striking is that assistance programmes that are not profitable, and therefore cannot be sold-off are to be reorganised and administered using market-based principles.[118] Programs such as food-for-work or lending for

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[112] Anne Orford and Jennifer Beard, 'Making the State Safe for the Market: The World Bank's World Development Report 1997' (1998) 22 *Melb. U.L. Rev.* 195, 198.
[113] Ibid 199, citing Jochen Hippler, 'Democratisation of the Third World After the End of the Cold War' in Jochen Hippler (ed), *The Democratisation of Disempowerment: The Problem of Democracy in the Third World* (1995) 1, 24.
[114] The World Bank, World Development Report 1997: The State in a Changing World (1997) 38.
[115] Orfird and Beard, above n 111, 202.
[116] 1997 Report, above n 113, 57.
[117] Ibid.
[118] Orfird and Beard, above n 111, 206.

micro-enterprises in poor communities should be aimed at alleviating poverty but must be done in a market fulfilling way.[119]

The 1997 Report also applies more stringent standards of accountability in its treatment of the role of voluntary associations and NGOs as it notes that 'in most societies, democratic or not, citizens seek representation of their interests beyond the ballot: as taxpayers, as users of public services and increasingly as clients or members of NGOs and voluntary associations.'[120] While the Report recognises the role played by NGOs in providing the services that are abandoned by the state but are not attractive to private investors, such as health, education, microcredit, vocational training, professional services, research and civic education,[121] it however, criticises such organisations for 'poor quality of service, inadequate community participation, and weak accountability.'[122] The Report's authors reach a verdict proclaiming that, 'there are no guarantees that these organisations are adequately addressing citizen's needs or that they are genuinely concerned with promoting the public interest.'[123]

Furthermore, while the 1997 Report adopts the language of accountability and participation, there seems to be little recognition that collective participation in decision-making means more than participating as a 'stakeholder' or consumer of public services.[124] The Report's authors do not seem to recognise that people should be able to participate in determining the nature of the political, and thus the economic, system under which they live as there is no discussion, for example, of the possibility that the people of target states might wish to choose forms of economic or social arrangements that differ from the models imposed by the bank.[125] Also, questions about whether people want to be treated as consumers of privatised or corporatised public services, rather than as the collective owners of those services, do not appear to be open to popular debate.[126]

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[119] 1997 Report, above n 113, 55-59.
[120] Ibid 113.
[121] Ibid 113-118.
[122] Ibid 115.
[123] Ibid.
[124] Orford and Beard, above n 111, 209.
[125] Ibid.
[126] Ibid.

Accountability for the Bank appears to be a one-way street: something that is demanded principally from non-governmental and voluntary organisations but not from privatised state agencies and industries as they are not expected to provide the same degree of accountability and transparency, except to the extent of accounting to investors about profits.[127]

Under the structural imperatives of the emerging global financial system as espoused by the International Monetary Fund, the banking industry assertively implements the deregulation and internationalisation of banking and finance. In Asia, the financial crisis also forced the authorities in the region to take over or close down scores of banks and finance companies which were financially unsound or undercapitalised while those that can be cleaned up were put up for sale.[128] Greater banking consolidation, however, is inimical to small business and community institutions since studies show that local independent banks give small businesses better credit terms and service than do larger, more distant lenders. Larger banks also generally do not emphasise small business lending as they view such lending as less profitable than middle market and larger business loans.[129] Private financial markets also fail when it comes to the very poor as mainstream banks do not seek out poor communities – because that is not where the money is. In this context, community empowerment agenda means opposing the removal of barriers between banking and other forms of finance, limiting the merger of banks and bank holding companies, and advocating more rigorous use of antitrust mechanisms,[130] concepts which ran counter to IMF prescriptions.

VI CONCLUSIONS

Private financial markets failed to extend credit to poor communities because of information asymmetries and discrimination. Anti-discrimination and affirmative action policies tried to provide a remedy. However, the formulations of these policies are not up to the task of challenging the structural imperatives of the emerging global

[127] Ibid 211.
[128] Sara Webb, 'Asia's Race to Consolidate', *The Far Eastern Economic Review* (Hong Kong), 13 June 2002.
[129] Taibi, above n 12, 1503-1504.
[130] Ibid 1519.

financial system that is driven by highly mobile transnational capital and large corporate interests.

Market-based CED as an important tool for poverty alleviation suffers from limitations and contradictions. Given the small size of the loans involved, the high transaction costs, and the costs of providing technical assistance, it is unlikely that microenterprise and microfinance programmes can be sufficient or self-sustaining. The role of NGOs in lowering transaction costs in CED programmes and organising social services formerly provided for by the state, is important. However, their efforts are obstructed by the ambivalence of major lending institutions. On one hand, the World Bank has imposed stringent standards of accountability on these voluntary associations. On the other, the IMF has encouraged the banking industry to undergo mergers and consolidations. While global banks have considerable advantages over their smaller local counterparts – cheaper costs of funds, economies of scales, and their international expertise, their banking strategy is however inimical to small businesses and community institutions constituting the backbone of CED programmes.

While the economic feasibility and sustainability of CED programmes are highly debatable, they represent a responsible hybrid of business and social welfare institutions. It cannot be denied that successful program participants have learned economically, socially, culturally, and politically useful skills and emerge with a track record of business success, a credit history, and a small asset base.

To address poverty in a comprehensive and holistic manner, some CED advocates are already deviating from the market-based framework and are now engage in political activism that advances the goal of a broader economic justice agenda. The 'law and organising' model privileges grassroots movement politics over law reform efforts and transactional law and litigation. But the question that remains to be answered is should political activism take precedence over private sector interventions. If CED advocates stick to purely market-based approaches, community-based economic development will be criticised as a charitable afterthought. If advocates become all the more politically engaged, they run the risk of redirecting the anti-poverty strategy since such strategy may alienate commercial interventions in the discourse of free market orthodoxy. CED advocates must then strike a balance working within the market-based model while not totally overlooking the circumstances of economic injustice.

The author recommends that a comprehensive documentation be done using established economic parameters to determine with greater certainty, the extent market-based CED has ameliorated poverty incidence in both rural and inner-city communities. At this point, there should be an effort on the part of the microenterprise industry in particular to document results in actual small business development including income patching, assistance in job placement and sole income self-employment in both developed and developing countries. Also, governments should reconsider regulatory and bureaucratic barriers, particularly those enacted and enforced at the local level, that impair the ability of microentrepreneurs to succeed. In addition, government must pass legislation aimed at providing various tax and accounting incentives not only to banks but other financial services companies when they include CED programmes in their corporate agenda.