

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

Faculty Scholarship

---

2019

### A Better Approach to Urban Opportunity

Nestor M. Davidson

*Fordham University School of Law*, [ndavidson@law.fordham.edu](mailto:ndavidson@law.fordham.edu)

Follow this and additional works at: [https://ir.lawnet.fordham.edu/faculty\\_scholarship](https://ir.lawnet.fordham.edu/faculty_scholarship)



Part of the [Housing Law Commons](#)

---

#### Recommended Citation

Nestor M. Davidson, *A Better Approach to Urban Opportunity*, 27 *J. Affordable Housing* 449 (2019)

Available at: [https://ir.lawnet.fordham.edu/faculty\\_scholarship/1003](https://ir.lawnet.fordham.edu/faculty_scholarship/1003)

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).



## FROM THE READING ROOM

# A Better Approach to Urban Opportunity

*Nestor M. Davidson*

*Collaborative Capitalism in American Cities: Reforming Urban Market Regulations*  
Rashmi Dyal-Chand  
Cambridge University Press (2018)  
283 pages. \$110

### Introduction

In 2017, federal tax legislation quietly, somewhat surprisingly, ushered in a new and potentially quite significant program to spur investment in areas of concentrated poverty.<sup>1</sup> Opportunity Zones are designed to incentivize long-term private investment in designated low-income census tracts by allowing investors to defer certain gains and eventually receive a step-up in basis for qualified investments.<sup>2</sup> Predictably, although the Internal Revenue Service is only beginning to provide regulatory guidance,<sup>3</sup> commentators and market participants eager to capitalize on the program are already moving to define strategies to deploy the new resources that the program would generate.<sup>4</sup>

It is at this timely juncture that Rashmi Dyal-Chand's prescient new book, *Collaborative Capitalism in American Cities: Reforming Urban Market*

---

Nestor Davidson holds the Albert A. Walsh Chair in Real Estate, Land Use, and Property Law at Fordham Law School.

1. See Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, §§ 1400Z-1, 1400Z-2, 131 Stat. 2054, 2183-88 (2017).

2. *Id.* at 2184-85.

3. See Internal Revenue Service, Investing in Qualified Opportunity Funds (proposed Oct. 19, 2018) (to be codified at 26 C.F.R. pt. 1), <https://www.irs.gov/pub/irs-drop/reg-115420-18.pdf>; see also Special Rules for Capital Gains Invested in Opportunity Zones, 26 U.S.C.A. § 1400Z-2 (West Supp. 2017).

4. See, e.g., Bruce Katz & Jeremy Nowak, *Guiding Principles for Opportunity Zones*, LOCALISM (Mar. 9, 2018), <https://www.thenewlocalism.com/research/guiding-principles-for-opportunity-zones>; Rachel Reilly Carroll, *Opportunity Zones Program: An Early Overview of Program Details and What's Ahead*, ENTERPRISE POLICY FOCUS (Jan. 2018), <https://www.enterprisecommunity.org/download?fid=8856&nid=6212>.

*Regulations*,<sup>5</sup> has hit the shelves. Told through deep, qualitative research on several enterprises that have thrived in what was once called the “inner city,” as well as a sophisticated analysis of the legal infrastructure needed to support and replicate those successes, the book’s message at this moment is simple and clear. The investment capital that the new Opportunity Zones (not to mention similar programs) generate would best be invested not in top-down city-led revitalization plans or investor-driven blueprints for drawing traditional for-profit companies to occupy the economic niche that Michael Porter identified decades ago,<sup>6</sup> in the hope that spillovers from such investments will eventually improve the lives of those living in poverty. Rather, investors and policymakers should focus on empowering homegrown businesses committed directly to improving the welfare of employees—and their communities.

Dyal-Chand, a law professor at Northeastern Law School and an expert on community economic development and consumer law, identifies an intriguing model for this kind of poverty-focused, multiple bottom-line enterprise. Building on case studies of a worker-owned home health-care cooperative, a pioneering community lender, and a nonprofit/for-profit social-enterprise cluster, Dyal-Chand argues for the advantages of networked affiliates and supportive intermediary institutions sharing resources and local knowledge to advance their missions. This option is not, Dyal-Chand is clear to point out, the more familiar “sharing economy,” in which considerations of the economic stability of those engaged in its work are tangential at best. Rather, her model involves sharing in a different, more collaborative sense, where risk and resources are spread to advance a common set of goals around economic growth and social stability in low-income communities.

To Dyal-Chand, fostering these distinctive business networks requires reform across a swath of property, contract, business, labor, employment, and finance law. Relevant legal structures developed, Dyal-Chand argues, to regulate—and support—more traditional single-bottom-line for-profit companies, constraining the choices available to residents of low-income communities seeking employment and entrepreneurial activity. The current regulatory landscape has required collaborative enterprises dedicated to employee well-being to adapt, often with some difficulty. Dyal-Chand accordingly provides a detailed roadmap of local, state, and federal measures centered on creating a more conducive legal environment for her cooperative model.

The book’s ambition, ultimately, is not limited to identifying the underlying logic of a new approach to revitalizing what Dyal-Chand calls the urban core and to determining how law can help. For Dyal-Chand, her

5. RASHMI DYAL-CHAND, *COLLABORATIVE CAPITALISM IN AMERICAN CITIES: REFORMING URBAN MARKET REGULATIONS* (2018).

6. Michael E. Porter, *The Competitive Advantage of the Inner City*, *HARV. BUS. REV.*, May–June 1995, at 55.

model crystallizes nothing less than a distinctive variety of capitalism. This counterpoint to the paradigmatic (if inconsistent) American form of laissez-faire capitalism is more familiar in countries like Germany that actively facilitate worker democracy and sectoral support for industry-focused economic empowerment goals. The politics of adopting anything like a German approach at scale in the United States are challenging—although by no means impossible, especially at the local level. But at a particular moment when significant new investments are likely to start flowing to some of our most impoverished communities, having a detailed roadmap for a genuinely different and promising alternative path could not be more timely.

### I. Revitalizing the Urban Core from the Inside Out

Dyal-Chand begins *Collaborative Capitalism* with an examination of a cluster of home health companies that have thrived in the Bronx for decades. In 1985, Rick Surpin and Peggy Powell, two members of a local community economic development nonprofit seeking ways to create sustainable employment opportunities, founded Cooperative Home Care Associates (CHCA). The idea was to develop a worker-owned company that could provide high-quality care by investing in long-term relationships with clients—a kind of stability that would allow the company to create quality jobs. As CHCA began to grow in its early years, its leaders came to understand that training for care workers was critical to the model, but training for CHCA alone would not have been viable. So in 1991 they founded a nonprofit organization called the Paraprofessional Healthcare Institute, to focus on training, research, and consulting for the home healthcare industry more broadly. The next barrier to growth that CHCA's founders encountered was the rise of a managed care model that disfavored home healthcare services, so they started their own managed-care company, Independence Care System. Through these collaborations, CHCA grew to be the largest worker-owned cooperative in the country, with more than 2,000 employees, and has been replicating the model, starting with a cooperative in Philadelphia.

For her second case study, Dyal-Chand revisits the well-studied rise (and eventual fall) of ShoreBank, the pioneering Chicago community lender, unearthing aspects of ShoreBank's model that offer new insights into what made it a success. Starting in 1973, the founders of ShoreBank—Ronald Grzywinski, Mary Houghton, Milton Davis, and Jim Fletcher—established a bank holding company that would not just be a lender, but also act directly as a community development corporation itself. That organization allowed the founders to take a more holistic approach to their work on the South Shore of Chicago, directly developing real estate through a wholly owned subsidiary, making equity investments where lending was not feasible because of creditworthiness, and, like CHCA, establishing a nonprofit affiliate, in ShoreBank's case to focus on community services related to their lending and investments. The local expertise that the bank developed through all of this work allowed it to foster several networks of related

businesses, starting with local rehabbers and then replicated with fast-food franchise owners, other local businesses, and even a targeted small manufacturing hub. Not all of these networks thrived, but, when they did, they rewarded not only local entrepreneurship but also brought an intentional focus on neighborhood stability and individual employee advancement.

Dyal-Chand's final paradigm example moves her analysis from New York and Chicago to East Austin, Texas, the birthplace of a cluster of entities under the umbrella of Southwest Key. Founded in 1987 by Dr. Juan Sanchez, Southwest Key began with nonprofit educational and related programs in immigrant communities. As with the other case studies, Southwest Key grew by expanding its mission, in this case adding shelters for unaccompanied immigrant children and opening a charter school, and then developing related social enterprises to complement these nonprofits. Today, the Southwest Key cluster includes everything from a seasonal florist to a café to a construction company to a major workforce development enterprise, and the larger network of for-profit and nonprofit entities has grown to include activities in eight states. The social enterprises in the network collaborate to provide opportunity for low-income workers while advancing Southwest Key's larger nonprofit mission with both their services and with revenue.

What Dyal-Chand draws from these case studies, and several other examples to which she alludes, is nothing short of a new, distinctive approach to social enterprise in the urban core. Each of these businesses, for example, is involved in a discrete and manageable market or industry niche that facilitates long-term coordination and collaboration among community insiders able to leverage distinctly local knowledge. Each also involves intermediary institutions of various kinds to aid in their collaboration as well as to serve as a conduit for worker participation. Coordination, in turn, lowers the cost of doing business while spreading risk and facilitating creative approaches to common challenges, such as workforce development and finance. All of this development, ultimately, is designed in each case not just to generate profit but also explicitly to support social goals such as local hiring and neighborhood revitalization. The proverbial lifting of boats is not—in Dyal-Chand's telling—the result of a rising tide or even a pull from the surface by some traditional for-profit company. Rather, it results from intentional, focused, collaborative efforts to foster businesses that prioritize workers and their communities.

Dyal-Chand is a legal scholar, and, not surprisingly, law reform is central to her narrative. Throughout *Collaborative Capitalism*, Dyal-Chand highlights the reality of a legal infrastructure that makes it difficult for the kinds of collaborative social enterprises that she has studied to make their model work. Together, these represent regulatory choices that developed blithely unaware of their consequences for social enterprise in low-income communities—communities that tend to take the blame for market failures, as though law does not matter. This perspective leads Dyal-Chand to ask, "Could the problem be with the way current policies address inner-city

difference rather than with inner-city difference itself? That is the central puzzle that this book examines."<sup>7</sup>

Her short answer is yes, but her longer answer, taken up over the course of several chapters, is nothing less than a call for sweeping reform of laws that affect every aspect of business practice. For example, Dyal-Chand would reform the options available for business forms to reflect the values and needs of collaborative social enterprises, allowing for something akin to a holding company to tie together related entities with common missions but varied roles. She would have states that do not allow them yet to provide for worker-owned cooperatives. She would change zoning and state and local permitting to encourage these networks. She would reform crowdfunding regulation. She would clarify that the kind of inter-enterprise collaboration that she has identified does not raise antitrust concerns. And so much more—this list hardly scratches the surface of a comprehensive vision that would support the intermediary institutions, protect the market niches, develop the human capital infrastructure, and help generate the financing that these companies need.

Dyal-Chand also nods to more fundamental structural reforms in areas such as minimum wage and general infrastructure investments in the urban core. These broader policy reforms would take to heart the lessons of her collaborative enterprises, with their emphasis on workers' economic advancement and stability as well as the reforms' focus on community revitalization driven by local priorities. That takes her a little afield of her core focus on the legal infrastructure for social enterprise, but, as Dyal-Chand notes, her model enterprises have also taken to advocacy for law reform to advance their goals, so not all *that* far afield.

The book's larger ambition, ultimately, is more than just enterprise ethnography and law reform. Rather, drawing on rich theoretical literature on "varieties of capitalism,"<sup>8</sup> Dyal-Chand argues that her collaborative capitalism model represents a genuine alternative to the prevailing approach to markets in the United States. She supports this assertion with a comparative examination of Germany's approach, where cities work alongside industry to provide targeted vocational training with costs shared across the relevant sector, work councils and supervisory boards in even the largest companies protect workers' voice and worker rights, and companies coordinate their approach to work conditions as well as finance, governance, and asset development. Dyal-Chand does not present Germany as some workers' paradise, but rather as an empirical answer to the question whether the model she claims as a distinctive form of capitalism actually operates outside the particular examples that she has studied.

\* \* \*

---

7. DYAL-CHAND, *supra* note 5, at 58–59.

8. See, e.g., VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE (Peter A. Hall & David Soskice eds., 2001).

The book, or at least its prescriptive case for the advantages of collaborative capitalism, is convincing and impressively researched. It is not without its limitations, however, particularly in considering Dyal-Chand's call to reform the legal system to replicate her model broadly. By her account, for example, the success of each of the three core case studies seems to rely heavily on a personal, visionary style of leadership and on the ability of individual connectors to make their local collaborative networks work. This emphasis on leadership is not unheard of in more traditional business contexts; indeed, we seem to have an entire industry devoted, for better or worse, to highlighting executive leadership as the lynchpin for the success of companies.<sup>9</sup> But in reading Dyal-Chand's case studies, the emphasis on individual initiative to hold the networks together is notable nonetheless and raises a question about how—in whatever legal and regulatory environment we might adopt—it is possible to expand collaborative capitalism without the right people at the helm.<sup>10</sup>

More generally, there is a risk in the kind of in-depth qualitative research on which Dyal-Chand bases her model of collaborative capitalism—research that provides wonderfully nuanced details about the history and strategies of the businesses she profiles, to be sure—that unique features of each of the networks that she studies may make the collaboration hard to generalize. It is, again, striking in the interviews she relates how much the enterprises grew and adapted through a process of trial and error, at times with some intentionality, but often as a by-product of hard lessons learned in operation. Perhaps this evolutionary process, witnessed three times over, is enough to identify a truly new species, but, at times, the book's broad extrapolation from its small sample size seems aspirational.<sup>11</sup>

These are minor quibbles, however, about a book that has so much to offer for policymakers, for lawyers working in community economic development, and, more directly, for those seeking to adopt the model that Dyal-Chand crystallizes so well. As we will turn to now, it is to that last audience that the book is perhaps most timely.

---

9. See, e.g., JIM COLLINS, *GOOD TO GREAT: WHY SOME COMPANIES MAKE THE LEAP . . . AND OTHERS DON'T* (2011).

10. Moreover, many of the challenges—and solutions—that Dyal-Chand highlights are not limited to the urban context, as she briefly acknowledges. Rural collaborative economies have a long history, and, as scholars have increasingly recognized, the problems long associated with so-called “urban” dysfunction are all too common in rural America today. See, e.g., Ann Eisenberg, *Rural Blight*, 12 HARV. L. & POL'Y REV. (forthcoming 2018). It would be fruitful in future work for Dyal-Chand to expand her lens beyond the urban core.

11. However, the book's exploration of international models, notably the German example in Chapter 7, even if they do not resemble the book's domestic case studies entirely, lends convincing support to the broad claim for an identifiable variety of capitalism.

## II. The Timeliness of Dyal-Chand's New Approach

Dyal-Chand has not just provided an abstract scholarly exegesis of a compelling variety of capitalism—although the book does provide that. She has also offered a strong normative case for the right way to approach economic development in the urban core at precisely the moment when, as noted, a significant new federal incentive for that very purpose is about to emerge.

It is something of a wonder that with so many generations of federal and state programs targeted at generating private capital in distressed low-income communities yet another variety would emerge in our current environment.<sup>12</sup> But, as noted, 2017's federal tax legislation included a new Opportunity Zone program.<sup>13</sup> The Opportunity Zone program is a community development tool designed to unlock long-term private investment to facilitate economic growth and revitalization in low-income communities—identified by individual states<sup>14</sup>—throughout the United States.

In exchange for certain federal tax benefits, such as temporary tax deferrals, investors can roll passive, unrealized capital gains into flexible Opportunity Funds, which act as a type of aggregated private investment vehicle. A broad array of projects may be funded—from affordable housing to start-up businesses to transit—so long as a minimum of 90% of the assets in the Opportunity Fund are invested in Opportunity Zones.<sup>15</sup> Because capital is pooled through this fund structure, a variety of investors throughout the country can participate in the program. An eye-popping estimated

---

12. Other similar efforts have included Empowerment Zones, Enterprise Communities, and Renewal Communities, *see* CONG. RESEARCH SERV., EMPOWERMENT ZONES, ENTERPRISE COMMUNITIES, AND RENEWAL COMMUNITIES: COMPARATIVE OVERVIEW AND ANALYSIS (Feb. 11, 2011), [https://www.everycrsreport.com/files/20110214\\_R41639\\_b18ae5bf0fbc93505d7b6c2b13b744b76124b9ed.pdf](https://www.everycrsreport.com/files/20110214_R41639_b18ae5bf0fbc93505d7b6c2b13b744b76124b9ed.pdf); the Community Development Financial Institutions Fund, *see* CONG. RESEARCH SERV., COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS (CDFI) FUND: PROGRAMS AND POLICY ISSUES (Jan. 25, 2018), <https://fas.org/sgp/crs/misc/R42770.pdf>; the New Markets Tax Credit Program, *see* CONG. RESEARCH SERV., NEW MARKETS TAX CREDIT: AN INTRODUCTION (Aug. 31, 2016), <https://fas.org/sgp/crs/misc/RL34402.pdf>. These programs all have different criteria and funding mechanisms, but all have the same basic mission of incentivizing private capital in low-income communities.

13. The concept of the Opportunity Zones Program has been attributed to a report from a public policy consulting firm called the Economic Innovation Group, work that led originally to a bipartisan bill called the Investing in Opportunity Act. A version of that Act was then enacted in the Tax Cuts and Jobs Act of 2017. *See* Carroll, *supra* note 4.

14. Using low-income community census tracts to determine which areas are eligible for an Opportunity Zone designation, governors are ultimately responsible for determining which tracts qualify. Up to 25% of the total number of census tracts that qualify as Opportunity Zones can then be designated as an official Opportunity Zone per state or territory. *See id.*

15. *Id.*



\$6.1 trillion of potential capital is eligible for reinvestment in Opportunity Zones,<sup>16</sup> which, even if the actual amount of capital deployed is likely to be much, much more modest,<sup>17</sup> could create an impressive potential market.

Commentators and investors are already trying to define the best approach to this program, even though its operational and programmatic details are yet to be detailed by the IRS. One leading example comes from Bruce Katz and Jeremy Nowak, as part of their work on the “New Localism.”<sup>18</sup> Katz and Nowak argue that investments through Opportunity Zones should be guided by four principles: social-needs index and job cluster data should be combined with a screen for equitable development potential through additional employment and transportation access data to target the right areas for investment; capital investment and human capital strategies should be linked; investments should be part of a comprehensive long-term leveraging strategy across the public, private, and independent sectors; and a data feedback loop should be deployed to continually improve operations and ensure accountability.<sup>19</sup>

There is much to commend in Katz and Nowak’s appreciation for the need for cross-sectoral support and emphasis on data in the service of benefiting low-income communities. But reading their prescriptions in light of *Collaborative Capitalism* underscores what more might be accomplished if Dyal-Chand’s model were at the center of these investment efforts. Dyal-Chand argues convincingly for prioritizing the economic stability of workers through democratic participation, vocational training focused on long-term individual growth, and strong wages and benefits. She likewise argues for businesses to find niches that would allow for multiple bottom-line approaches, tools for connecting to broader markets and sources of finance, and collaborative structures to spread risk and leverage management expertise. These parallel employee and enterprise principles could work within the Katz and Nowak framework and others emerging, but would begin with a very different premise from much outside-in economic development. Dyal-Chand would instead urge that investors and policymakers seek homegrown, local expertise, dedicated to using the tools of economic development to open long-term pathways for workers and

---

16. *Opportunity Zones: Tapping into a \$6 Trillion Market*, ECONOMIC INNOVATION GROUP (Mar. 21, 2018), <https://eig.org/news/opportunity-zones-tapping-6-trillion-market>.

17. Jennifer Pryce, *There’s a \$6 Trillion Opportunity in Opportunity Zones; Here’s What We Need to Do to Make Good on It*, FORBES (Aug. 14, 2018), <https://www.forbes.com/sites/jenniferpryce/2018/08/14/theres-a-6-trillion-opportunity-in-opportunity-zones-heres-what-we-need-to-do-to-make-good-on-it/#475eb7316ffc> (explaining that estimates of the total unrealized capital gains held by American households and corporations are not the same thing as the actual serviceable market for Opportunity Zone investment funds, indeed, “likely not even close”).

18. BRUCE KATZ & JEREMY NOWAK, *THE NEW LOCALISM: HOW CITIES CAN THRIVE IN THE AGE OF POPULISM* (2018).

19. Katz & Nowak, *supra* note 4.

deeper revitalization for neighborhoods, built on a model that has succeeded—and could, under the right conditions and with the right support, be replicated.

### Conclusion

In *Collaborative Capitalism*, Dyal-Chand has provided an important contribution to the literature and practice of community economic development. Her model of networked social enterprises dedicated to multiple bottom lines, growing up from within the urban core—rather than imposed on it—is promising, not the least because it is drawn from a number of long-standing examples of the model actually working. This empiricism in the service of law reform holds important lessons as yet another round of capital is set to make its way into our most distressed communities, with lawyers playing a critical role in implementation. That capital is welcome, but everyone involved in making the Opportunity Zone program, as well as other similar predecessors, a success would do well to heed Dyal-Chand's call for a new collaborative, mission-driven approach to opportunity.