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**The Economic Justice Imperative for Lawyers in “Trump Country”**

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## ABSTRACT

*This article serves as a call to action for rural law schools to meaningfully incorporate economic justice into transactional legal education, and in doing so, train much needed rural advocates, legal experts, and local leaders. Rural areas are continuously portrayed as “Trump Country” in today’s mainstream media coverage, which largely focuses on socio-cultural differences between urban and rural areas. Many rural scholars and activists are troubled by the “Trump Country” label as it masks the structural poverty issues that lead to housing insecurity, water insecurity, poor public health indicators, unemployment, underemployment, troubled public education systems, and environmental degradation impacting both rural and urban spaces. Moreover, the “Trump Country” narrative makes it difficult to engage in inclusive and intersectional economic justice work, which is necessary to build coalitions and advocate for disenfranchised populations in both urban and rural places.*

*Dr. Martin Luther King, Jr’s Poor People’s Campaign championed a more inclusive and intersectional vision of economic justice in 1968. Fifty years later, the Poor People’s Campaign has been revived and its vision of economic justice expressly identifies the role of interlocking systems of oppression in creating poverty. The Poor People’s Campaign embraces an intersectional and holistic definition of economic justice, one that acknowledges the importance of combatting structural racism, misogyny, xenophobia, religious nationalism, anti-LGBTQIA movements, and ecological devastation.*

*This article advocates for rural communities to support intersectional economic justice efforts and for rural law schools to train intersectional economic justice advocates. Rural areas are plagued with a number of problems, including decaying infrastructure and environmental degradation, that collectively create a bleak economic reality. Additionally, when combined with pervasive poverty, the low population density in rural areas makes it difficult for these communities to advocate for requisite structural changes on the local and national level.*

*In order to further economic justice in rural areas, these communities require legal experts and local leaders committed to dismantling systems of oppression on the local, state, and national level. Transactional attorneys possess the technical expertise and critical thinking skills to help communities create innovative solutions through transactional lawyering. Moreover, many attorneys in rural areas serve in formal and informal leadership positions, increasing their potential positive impact beyond their law degree. Thus, rural law schools have the unique opportunity to maximize benefits for communities by training transactional lawyers who understand their obligations to further economic justice. Through the lens of Appalachia, and West Virginia specifically, this article highlights the importance of economic justice work in rural America.*

*“[The poor] live in a cruelly unjust society,” and “[i]f they can be helped to take action together, they will do so with a freedom and a power that will be a new and unsettling force in our complacent national life.” – Rev. Martin Luther King, Jr.*

## I. THE POOR PEOPLE'S CAMPAIGN –DEFINING ECONOMIC JUSTICE IN BROAD, INTERSECTIONAL TERMS

This Symposium grapples with the ongoing economic plight of the vast majority of Americans and examines the role transactional lawyers and law clinics must play in order to advocate for a more equitable country. In 1967, Dr. Martin Luther King, Jr. was moved by the crippling poverty he encountered in the United States and began his effort to build a national movement centered on economic justice—The Poor People's Campaign.<sup>1</sup> Dr. King's core contention was that economic rights did not subrogate or displace other important issues of the time, including racial justice. Rather, Dr. King framed economic justice as intentionally intersectional, acknowledging the role of racism, imperialism, and anti-democratic structures in creating and perpetuating poverty.<sup>2</sup> The Poor People's Campaign leadership included activists from Latino, Native, White, and African American communities.<sup>3</sup> The coalition was geographically and regionally diverse, including activists from California and Appalachia.<sup>4</sup> The Poor People's Campaign was deliberately designed to dismantle structures of oppression and injustice, all of which contributed—and continue to contribute—to the economic disenfranchisement of vulnerable populations throughout the United States.

Fifty years later, The Poor People's Campaign has been revived by a new coalition. Building on Dr. King's original vision, the resurrected Campaign's definition of economic justice remains intersectional, explicitly devoted to addressing issues concerning race discrimination, misogyny, xenophobia, anti-LGBT sentiment, Christian nationalism, and ecological devastation.<sup>5</sup> The coalition includes activists drawn from communities throughout the United States, including the industrial Midwest, coastal elite regions, and rural America.<sup>6</sup>

This broad, inclusive, and intersectional framing of economic justice is an important alternative to the emphasis on the socio-cultural divide narrative that is oft-repeated in the

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<sup>1</sup> *Dr. King's Vision: The Poor People's Campaign of 1967-68*, POOR PEOPLE'S CAMPAIGN, <https://www.poorpeoplescampaign.org/history/> (last visited Nov. 8, 2018); See Drew Dellinger, *The Last March of Martin Luther King Jr.*, ATLANTIC MONTHLY (Apr. 4, 2018), <https://www.theatlantic.com/politics/archive/2018/04/mlk-last-march/555953>.

<sup>2</sup> “Three evils – the evil of racism, the evil of poverty, and the evil of way. These are the three things that I want to deal with today.” Opening statement from Dr. King's speech to the Hungry Club Forum in Atlanta on May 10, 1967. *Martin Luther King Jr. Saw Three Evils in the World*, ATLANTIC (2018), <https://www.theatlantic.com/magazine/archive/2018/02/martin-luther-king-hungry-club-forum/552533/>.

<sup>3</sup> “In March 1968, King brought together a group of more than 50 leaders representing Black Belt sharecroppers, Appalachian coal miners, Chicano farmworkers, and American Indians, among others, to join the Poor People's Campaign.” William J. Barber, *America's Moral Malady*, ATLANTIC (2018), <https://www.theatlantic.com/magazine/archive/2018/02/a-new-poor-peoples-campaign/552503/>; see *Dr. King's Vision*, *supra* note 1 (“[K]ey leaders and organizations at this session included: Tom Hayden of the Newark Community Union, Reis Tijerina of the Federal Alliance of New Mexico, John Lewis of the Southern Regional Council, Myles Horton of the Highland Center.”).

<sup>4</sup> *Dr. King's Vision*, *supra* note 1.

<sup>5</sup> *Fundamental Principles*, POOR PEOPLE'S CAMPAIGN, <https://www.poorpeoplescampaign.org/history/> (last visited Nov. 8, 2018).

<sup>6</sup> See generally *Partner Organizations*, POOR PEOPLE'S CAMPAIGN <https://www.poorpeoplescampaign.org/partners/> (last visited Nov. 8, 2018).

modern media and exploited by politicians and pundits.<sup>7</sup> As a society, we need to embrace and support the Poor People's Campaign's broad definition of economic justice to build a sustainable future for this country. The current media often characterize rural America as "Trump Country" while emphasizing the socio-cultural elements that divide the urban from rural areas of the nation. The "Trump Country" narrative centers on the unemployed coal-miner in West Virginia<sup>8</sup> or the angry farmer,<sup>9</sup> i.e. stereotypically rural, white, and male voices who feel in danger of cultural erasure<sup>10</sup> in addition to economic concerns. The "Trump Country" narrative for rural America largely ignores historic economic exploitation and political subrogation designed to entrench poverty in both urban and rural communities.<sup>11</sup> This socio-cultural narrative also masks the complicity, and even endorsement, of economically privileged actors in both suburban and urban areas. For example, exit polling data indicates that Trump won the majority of voters in suburban areas and also won the majority of votes in

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<sup>7</sup> There are no shortage of Articles chronicling the "Trump Country" phenomenon, usually focusing on rural communities. In the words of Appalachian Scholar & Activist Elizabeth Catte – "I began to notice more and more a sort of genre taking shape [in the media], which I call a "Trump Country" genre, that you also see reflected in *Hillbilly Elegy*. The Trump Country genre gave uses Appalachia to explain various manifestations of toxic politics and self-defeat, which were thought to be the side effect of the presidential election and the symptoms that called it into being." Regan Penaluna, *Elizabeth Catte: Appalachia Isn't Trump Country*, GUERNICA (Mar. 7, 2018), <https://www.guernicamag.com/elizabeth-catte-appalachia-isnt-trump-country/>. See generally Claire Galofaro, *In the Heart of Trump Country, His Base's Faith is Unshaken*, ASSOCIATED PRESS (Dec. 28, 2017),

[https://apnews.com/ee19ceb7cf0d4af4ab73c393708148bf?utm\\_campaign=SocialFlow&utm\\_source=Twitter&utm\\_medium=AP](https://apnews.com/ee19ceb7cf0d4af4ab73c393708148bf?utm_campaign=SocialFlow&utm_source=Twitter&utm_medium=AP); Michael Kruse, *Johnstown Never Believed Trump Would Help*, POLITICO (Nov. 8, 2017), <https://www.politico.com/magazine/story/2017/11/08/donald-trump-johnstown-pennsylvania-supporters-215800>; Sheryl Gay Stolberg, *Trump's Promises Will Be Hard to Keep, but Coal Country Has Faith*, N.Y. TIMES (Nov. 28, 2016), [https://www.nytimes.com/2016/11/28/us/donald-trump-coal-country.html?\\_r=0](https://www.nytimes.com/2016/11/28/us/donald-trump-coal-country.html?_r=0).

<sup>8</sup> Declan Wash, *Alienated and Angry, Coal Miners See Donald Trump as Their Only Choice*, N.Y. TIMES (Aug. 18, 2016), <https://www.nytimes.com/2016/08/20/world/americas/alienated-and-angry-coal-miners-see-donald-trump-as-their-only-choice.html>; see also Larissa MacFarquhar, *In The Heart of Trump Country*, N. Y. TIMES (Oct. 10, 2016),

<https://www.newyorker.com/magazine/2016/10/10/in-the-heart-of-trump-country>.

<sup>9</sup> Tom Philpott, *Farmers Are Huge Trump Supporters. Here's Why*, MOTHER JONES (Oct. 31, 2016), <https://www.motherjones.com/environment/2016/10/trump-farmers/>.

<sup>10</sup> "[T]hat those voting for Trump felt what we would call white vulnerability, racial resentment, and mixed in with that, an anxiety about losing cultural status." This phenomenon is often exclusively applied to rural whites, although data indicates it is shared by many whites regardless of geographic location. Matthew Fowler, Vladimir E. Medenica & Cathy J. Cohen, *Why 41 Percent of White Millennials Voted for Trump*, WASH. POST (Dec. 15, 2017), [https://www.washingtonpost.com/news/monkey-cage/wp/2017/12/15/racial-resentment-is-why-41-percent-of-white-millennials-voted-for-trump-in-2016/?utm\\_term=.a0501376973f](https://www.washingtonpost.com/news/monkey-cage/wp/2017/12/15/racial-resentment-is-why-41-percent-of-white-millennials-voted-for-trump-in-2016/?utm_term=.a0501376973f).

<sup>11</sup> Anne Marie Lofaso & Nicholas F. Stump, *De-Essentializing Appalachia: Transformative Socio-Legal Change Requires Unmasking Regional Myths*, 120 W. VA. L. REV. 823, 834 (2018) ("Rather than examining how structural racism, sexism, and xenophobia--endemic to the entire U.S., including coastal elite regions--and hegemonic capital interests (i.e., corporations and the 1%) and neoliberalism at large contributed to Trump's victory, Appalachia instead often served *in its entirety* as a convenient socio-cultural scapegoat.").

higher income brackets, the latter of whom are not residents of rural areas.<sup>12</sup> Geographically and economically privileged actors maintain unjust economic systems through a variety of tactics, including gentrification and support for policies that maintain inequitable public education systems.<sup>13</sup> This is not to say there is no truth to the rural “Trump Voter” and “Trump Country” narratives.<sup>14</sup> Instead, these narratives are incomplete and, thus far, perpetuate the myth that *only* rural areas promote injustice. Moreover, the current “Trump Country” narrative minimizes diverse populations and progressive movements within Appalachia, which can serve as important collaborators in a national movement for economic justice.<sup>15</sup>

This Article does not excuse the racism, misogyny, xenophobia, and general bigotry identified by the deluge of reporting that explores the “Trump Country” phenomenon. The United States has a long history of structural racism, and urban regions also perpetuate the cycle of poverty for low-income communities and communities of color. Rather than assigning blame, this Article accepts the complicity of both regions and advocates for a return to the ideals inherent in Martin Luther King Junior’s Poor Peoples Campaign—a racially and geographically diverse coalition of groups advocating for economic justice.

This article also serves as a call to action for rural law schools and legal professionals. Using West Virginia as a case study, this article highlights the important role transactional attorneys and transactional clinics play in furthering the national economic justice movement. Transactional work is focused on creating value for clients, and often this value is tied to building some form of capital or investing in resources. Transactional legal services are

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<sup>12</sup> Skye Gould & Rebecca Harrington, *7 Charts Show Who Propelled Trump to Victory*, BUS. INSIDER (Nov. 10, 2016), <https://www.businessinsider.com/exit-polls-who-voted-for-trump-clinton-2016-11>; see also Joel Kotkin & Wendell Cox, *It Wasn’t Rural Hicks Who Elected Trump*, FORBES (Nov. 10, 2016), <https://www.forbes.com/sites/joelkotkin/2016/11/22/donald-trump-clinton-rural-suburbs/#2fb3b96f38b5>.

<sup>13</sup> Elizabeth Catte, *There Is No Neutral There: Appalachia as a Mythic “Trump Country”*, MEDIUM (OCT. 17, 2016), <https://medium.com/@elizabethcatte/there-is-no-neutral-there-appalachia-as-a-mythic-trump-country-ee6ed7f300dc>. (“[H]istorically, cultural elites ... Have used flawed representations of Appalachia” to both “enhance the cultural difference between progressive white individuals and those thought to be ‘yesterday’s people’ and to absolve cultural elites from the responsibility of thinking critically about race and racism.”) Catte has explored the “Trump Country” phenomenon at length and is the foremost contemporary commentator on this subject. She has also made vital contributions to this discourse in her new book, *What You Are Getting Wrong About Appalachia*.

<sup>14</sup> Penaluna, *supra* note 7.

<sup>15</sup> In his article, *De-essentializing Appalachia*, Nick Stump highlights several important factors that uncover diversity in Appalachia that “have often been rendered invisible” by the dominant socio-culture narrative. Lofaso & Stump, *supra* note 11, at 830. Of particular note, “a recent study indicates that West Virginia - the only state whose boundaries are wholly included in the A[ppalachian] R[egional] C[ommission]-designated Appalachian region—has the highest estimated per capita rate of teenagers who identify as transgender.” *Id.* at 833. Likewise, Stump notes “Latina/o in-migration into Southern Appalachia is responsible for nearly half of all the Region’s population growth since 1990, which contrasts with greater levels of white out-migration and lower cultural diversity in the North.” *Id.* Additionally, Appalachia has launched several progressive movements in the era of Trump, including the West Virginia Teacher’s Strike and organizing surrounding fracking and environmental degradation. For a more robust discussion on the diversity and progressive movements within Appalachia *Id.* at 834.

essential for the success of more than tech start-ups in building and retaining capital or resources. In the face of economic pressure, the creativity and innovation of forgotten communities to fight poverty and preserve their homes is truly remarkable. This cutting edge legal work is also an excellent teaching and learning opportunity for students. Transactional lawyers must be facile. They must understand client objectives, reconcile client goals with legal limitations, and explore creative legal solutions that work in challenging situations.

This Article outlines in detail the importance of engaging in economic justice work within the legal academy for two central reasons. First, the creation of an equitable, sustainable future for many American communities requires support from creative, thoughtful, and well trained transactional attorneys. Second, law schools, and especially law schools in rural areas, are tasked with educating and training local leaders. An economic justice focused education creates local leaders who can think creatively when making policy or promulgating state or local regulations. Part One of this article introduces the reader to Appalachia, past and present, highlighting important economic and other factors that have influenced the region and contributed to its entrenched poverty. This section also highlights the unique role that “Appalachian elites”—corrupt local leadership—have played in engendering Appalachia’s economic crises. Part Two of this article uses an infrastructure development case from West Virginia University’s Entrepreneurship & Innovation Law Clinic (EILC) to demonstrate the breadth of economic justice work needed in rural areas. Part Three of this article emphasizes the importance of engaging students in intersectional economic justice work in the transactional lawyering context.

#### A. APPALACHIA – MORE THAN JUST “TRUMP COUNTRY?”

Appalachia provides an excellent case study for the study of economic justice in rural areas because data from the Federal Government indicated the region is more rural than many other areas in the nation.<sup>16</sup> Appalachia is “a 205,000-square-mile region that follows the spine of the Appalachian Mountains from southern New York to northern Mississippi.”<sup>17</sup> The region includes parts of Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia. West Virginia is completely Appalachian, as communities are more remote, have poorer health, have less access to public services, and have crumbling infrastructure.<sup>18</sup> If Appalachia is an extreme example

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<sup>16</sup> According to the Appalachian Regional Commission (ARC), “Forty-two percent of the Region’s population is rural, compared with 20% of the national population.” *The Appalachian Region*, APPALACHIAN REGION COMMISSION, [https://www.arc.gov/appalachian\\_region/TheAppalachianRegion.asp](https://www.arc.gov/appalachian_region/TheAppalachianRegion.asp) (last visited Nov. 8, 2018). Most of our modern understanding of Appalachia is derived from the work of the Appalachian Regional Commission. “ARC is a regional economic development agency that represents a partnership of federal, state, and local government. Established by an act of Congress in 1965, ARC is composed of the governors of the 13 Appalachian states and a federal co-chair, who is appointed by the president.” *See About ARC*, APPALACHIAN REGION COMMISSION, [https://www.arc.gov/appalachian\\_region/TheAppalachianRegion.asp](https://www.arc.gov/appalachian_region/TheAppalachianRegion.asp) (last visited Nov. 8, 2018).

<sup>17</sup> *Id.*

<sup>18</sup> *See generally Community Infrastructure*, APPALACHIAN REGIONAL COMMISSION, [https://www.arc.gov/program\\_areas/index.asp?PROGRAM\\_AREA\\_ID=6](https://www.arc.gov/program_areas/index.asp?PROGRAM_AREA_ID=6) (last visited Nov. 8, 2018) (discussing health disparities). For public services and infrastructure development see generally *Key Findings Appalachian Region*, APPALACHIAN REGIONAL COMMISSION,

of rural America, West Virginia is an extreme example of Appalachia. As the only state contained entirely within Appalachia, West Virginia provides a helpful case study of the structural factors that create and perpetuate economic injustice in rural areas.<sup>19</sup>

The modern perception of Appalachia has been deeply influenced by a historical rendering of Appalachia as an “other America.”<sup>20</sup> It is important to understand Appalachia’s history for two critical reasons. First, it helps to identify the structural forces of oppression in Appalachia, some of which are still active today, and many of which overlap with similar forces in other geographic areas. Second, it is impossible to dispel the socio-cultural narrative without detailing the historic, exploitive systems endemic to the region.

The primary exploitive systems in Appalachia arose from abuse by extractive industries and discussions of Appalachia’s economy, both historically and in the present, inevitably centered on coal.<sup>21</sup> The fight to keep coal relevant stems from over a century of entrenched subrogation that has left the region with little other viable employment in the region.<sup>22</sup> West Virginia’s economy is an excellent example of the economic instability and abuse in the larger region. From the early 1800s, West Virginia was controlled by coal companies, which consolidated political and economic power, subrogating the rights of West Virginians through legal and political systems designed to preserve the industry’s dominance.<sup>23</sup>

Corporate control in West Virginia extended far beyond serving as the major source of employment in the state and included mechanisms that created company towns (also known as coal towns) on unprecedented scales.<sup>24</sup> As one historian noted, coal towns were designed to create “a system of closed, artificial communities which functioned to limit the growth of social freedom and self-determination.”<sup>25</sup> Workers in coal towns lived in company-owned housing, bought goods at the company store, prayed in the company-owned church, and were paid in company scrip rather than U.S. currency.<sup>26</sup> Many residents of coal towns even voted the company slate during election time, ensuring only politicians with the industry’s blessing remained in power.<sup>27</sup> The coal town’s prevalence in the region effectively undercut any ability for workers to build economic independence, security, and mobility.

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[https://www.arc.gov/images/appregion/fact\\_sheets/HealthDisparities2017/AppRegionHealthDisparitiesKeyFindings8-17.pdf](https://www.arc.gov/images/appregion/fact_sheets/HealthDisparities2017/AppRegionHealthDisparitiesKeyFindings8-17.pdf) (last visited Nov. 8, 2018).

<sup>19</sup> *The Appalachian Region*, APPALACHIAN REGIONAL COMMISSION

[https://www.arc.gov/appalachian\\_region/TheAppalachianRegion.asp](https://www.arc.gov/appalachian_region/TheAppalachianRegion.asp) (last visited Nov. 8, 2018)

(“[Appalachia] includes all of West Virginia.”).

<sup>20</sup> For a discussion about Appalachia as “other America” see MICHAEL HARRINGTON, *THE OTHER AMERICA: POVERTY IN THE UNITED STATES* 42–43 (1962). For other work describing Appalachia, see Ronald D. Eller *Forward to BACK TALK FROM APPALACHIA: CONFRONTING STEREOTYPES*, IX (Dwight B. Billings et al. eds., 2013).

<sup>21</sup> Lofaso & Stump, *supra* note 11, at 829.

<sup>22</sup> *Id.*

<sup>23</sup> See generally SHANNON ELIZABETH BELL, *FIGHTING KING COAL: THE CHALLENGES TO MICROMOBILIZATION IN CENTRAL APPALACHIA* 18 (2016). Additionally, unlike automobiles, coal created very little additional industry within the state. Auto companies created a market for smaller manufacturers that specialized in everything from ball bearings to fabric. While much of the region’s wealth was tied to the auto-industry, the industry itself was more than the Big 3.

<sup>24</sup> RICHARD B. DRAKE, *A HISTORY OF APPALACHIA* 147 (2001).

<sup>25</sup> CRANDALL SHIFLETT, *COAL TOWNS: LIFE WORK CULTURE COMPANY TOWNS* 1 (1995).

<sup>26</sup> DRAKE, *supra* note 24, at 147–48.

<sup>27</sup> RONALD D. ELLER, *UNEVEN GROUND: APPALACHIA SINCE 1945* 34 (2008).



It is important to understand the methods used and parties involved in the creation and maintenance of coal towns. Coal companies were able to use existing legal regimes to consolidate corporate ownership of land or “lease under fraudulent promises, millions of acres of mineral and timber rich land.”<sup>28</sup> As a result, coal companies owned most of the land in several Appalachian counties and held exclusive mineral rights for parcels they did not own outright.<sup>29</sup> Companies simultaneously built the necessary infrastructure and railroads to ensure that raw materials could be transported out of Appalachia and into the nation’s industrial centers.<sup>30</sup> Only after securing the necessary land infrastructure, did coal operators “turn their attention to the subsequent stages of hiring labor.”<sup>31</sup> The high-levels of corporate land ownership and need for manual labor precipitated the building of coal-towns, which caused increased displacement of miners from traditional family farms.<sup>32</sup> Additionally, the operation of mines cause major environmental damage to both owned and leased land, making it difficult to return to small hold farming, the other economic alternative in the region.<sup>33</sup> As raw materials, natural resources, and wealth flowed out of West Virginia for over a century, the companies invested only the bare minimum of resources required to keep the system operational.<sup>34</sup> The lion’s share of the remaining resources were enjoyed by “Appalachian elites,” that is, local power brokers who helped engineer “King” Coal’s dominance over their fellow Appalachians.

## B. COMPLICITY OF APPALACHIAN ELITES

King Coal’s corporate control was largely possible because “Appalachian elites,”<sup>35</sup> the educated and powerful members of Appalachian communities, created an environment that protected corporate abuse at the expense of Appalachian communities. These individuals held positions of influence, both formally and informally, through a mixture of elected positions, civil service appointments, high-level employment in the industry, and general economic control over local communities. Appalachian elites often move from one sphere of influence to another, beginning the cycle of control as an elected official and later transitioning to an employee of powerful local industry. The impact of the Appalachian elite system is entrenched through networks of powerful families who have consolidated political and economic resources over generations.

Appalachian elites, which include civil servants and elected officials in both the Democratic and Republican parties, have played a pivotal role in almost every era of Appalachian development. Their ubiquitous control and influence encompassed—and

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<sup>28</sup> SHIFLETT, *supra* note 25, at 27.

<sup>29</sup> RONALD D. ELLER, *MINERS, MILLHANDS, AND MOUNTAINEERS: INDUSTRIALIZATION OF THE APPALACHIAN SOUTH* 54–58 (1982).

<sup>30</sup> “There was no use to open coal-mines if the coal could not be transported to distant markets. Railroad building accompanied the investment in land.” SHIFLETT, *supra* note 25, at 29.

<sup>31</sup> An excellent example of this phenomenon is Wise County, VA – the home of the Big Stone Gap coalfield. “By 1920, two-thirds of the land in Wise County was owned and controlled by four large companies. With the purchase of land and mineral land and mineral rights and the laying of railroad lines, the coal operators could turn their attention to the subsequent stages of hiring labor[.]” *Id.* at 32.

<sup>32</sup> ELLER, *supra* note 29, at 196–98.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> JOHN R. BURGH JR., *OWSLEY COUNTY, KENTUCKY AND THE PERPETUATION OF POVERTY* 11 (2007).

continues to permeate—local school boards, county commissions, the state legislature, and even the Governorship. During the rapid industrialization period, Appalachian elites often served as brokers and agents for absentee corporations.<sup>36</sup> Unsurprisingly, coal companies endorsed these very same elites in local and state-wide elections, and thus, they generally received the votes from miners trapped in the respective company towns.<sup>37</sup> During the New Deal, local elites used the New Deal Work Programs “to ensure their control over county politics” by offering “the promise of a public job in return for the votes of the applicant and his or her kin.”<sup>38</sup> The expansion of welfare programs in the 1950s and the War on Poverty further galvanized the power of the Appalachian political machines. As historian Ronald Eller summarizes “[a]rtful use of public funds could control not only who received food and income assistance for their families but which truck mine operator received a new road up the hollow to his mine and who was employed as a schoolteacher, busdriver, cook, or janitor at the local school.”<sup>39</sup>

Connections between various professionals<sup>40</sup> in mountain communities worked in concert to ensure local elites maintained their dominance. Your political patron could arrange for the right combination of court orders and medical documentation to ensure the unemployed claimant (you) received disability benefits from the Department of Social Welfare. In fact, your political patron may even be a physician in your community and, coincidentally, one of the principle investors in local land development efforts. By securing your benefits, your patron has secured your continued allegiance to his political entrenchment.<sup>41</sup>

More blatant examples of Appalachian elite abuse include engaging in rampant voter fraud (by buying votes) and selling of public office (including a Sheriff position).<sup>42</sup> These incidents are not from some by-gone era. Instead, they were revealed by a federal investigation of local corruption in West Virginia conducted during the mid-1980s.<sup>43</sup> This phenomenon continues to the present day in Appalachia, with many state level politicians in West Virginia defining themselves as “friends of coal.”<sup>44</sup> In fact, the current Governor of West Virginia is

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<sup>36</sup> SHIFLETT, *supra* note 25, at 27. *See also* ELLER, *supra* note 27, at 54–58.

<sup>37</sup> ELLER, *supra* note 29, at 34.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> I use this term to refer to individuals who possess professional degrees, such as doctors and lawyers.

<sup>41</sup> ELLER, *supra* note 29, at 35.

<sup>42</sup> B. Drummond Ayres Jr., *Corruption Inquiry Brings Hope to “Bloody Mingo,”* N. Y. TIMES (Mar. 25, 1988), <https://www.nytimes.com/1988/03/25/us/corruption-inquiry-brings-hope-to-bloody-mingo.html>.

<sup>43</sup> BLOOD ON THE MOUNTAIN (Evening Star Productions 2016).

<sup>44</sup> *Trump – Justice Plan Will Protect Coal Industry*, FRIENDS OF COAL, <https://www.friendsofcoal.org/1117-trump-justice-plan-will-protect-coal-industry.html>. “During his rally in Charleston in March, President Trump wore a Friends of Coal hardhat as he vowed to ‘put miners back to work’ – a claim he repeated during his withdrawal from the Paris Accord. Politicians as far away as Australia have even caught wind of the campaign and attempted to launch a local Friends of Coal chapter.” *See* Prianka Srinivasan, *Appalachia’s Fickle Friend*, JACOBIN (Dec. 5 2017), <https://jacobinmag.com/2017/12/appalachia-friends-of-coal-mining-industry-jobs-environmental-just-transition>.

himself a coal baron.<sup>45</sup> It is understandable that these Appalachian elites, who benefitted from the industry subsidies and political influence, were reticent to explore or promote other economic avenues.

### C. CURRENT ECONOMIC LANDSCAPE IN APPALACHIA

Ultimately, coal's monopoly of—and minimal investment in—Appalachia left little room for the development of other major industries in the region. For example, a 2016 study in West Virginia identified a continued decline in the number of available jobs that provided strong wages and medical benefits.<sup>46</sup> In comparison, the second and third largest private industries, hospitality and retail, paid wages below average in West Virginia.<sup>47</sup> These minimum wage positions are hardly adequate replacements for the high wage and benefitted employment opportunities created by the manufacturing and coal industries.<sup>48</sup> The dwindling economic opportunities for West Virginians are exacerbated by state actors' refusal to support meaningful investment to develop other economic sectors.<sup>49</sup>

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<sup>45</sup> Current Governor, Jim Justice, is a mine owner who has a history of mine-safety violations and accusations of environmental pollutions. Dylan Stafford & Grace Hauck, *Who is Jim Justice, the West Virginia Governor who Switched Parties?*, CNN POLITICS (Aug. 3 2017), <https://www.cnn.com/2017/08/03/politics/jim-justice-west-virginia-governor-party-switch/index.html>; Srinivasan, *supra* note 44; *see also* Mark Olalde, *Coal Tycoon Governor Jim Justice uses Loophole to Leave Mines and Workers Idle*, CLIMATE HOME NEWS (2018); Lacie Pierson, *WV Supreme Court Rules Justice Coal Company Didn't Contaminate Wells*, CHARLESTON GAZETTE-MAIL (APR. 8, 2018), [https://www.wvgazette.com/news/cops\\_and\\_courts/wv-supreme-court-rules-justice-coal-company-didn-t-contaminate/article\\_16b94c26-982b-52a1-b022-2c0cb3d2c588.html](https://www.wvgazette.com/news/cops_and_courts/wv-supreme-court-rules-justice-coal-company-didn-t-contaminate/article_16b94c26-982b-52a1-b022-2c0cb3d2c588.html).

<sup>46</sup> “The jobs lost in recent years have been largely good-paying jobs in high wage industries . . . West Virginia has lost nearly 11,200 high-wage private-sector jobs since 2000. This includes 7,000 mining jobs and 1,500 construction jobs lost.” W. VA. CTR ON BUDGET & POLICY, STATE OF WORKING WEST VIRGINIA 22–23 (2016). “[I]n 1979, nearly 73% of West Virginia s working in the private sector were covered by employer-proved health care plan, and 57% were covered by an employer provided pension plan. By 2014 those figures had fallen to 52% and 42% respectively.” *Id.*

<sup>47</sup> *Id.* at 21

<sup>48</sup> “The collapse of the steel industry in the 1980s and the subsequent decline of the coal industry dealt West Virginia an economic blow from which it has yet to recover. This led to a sharp decline in wages and benefits, as good paying mining and manufacturing jobs were replaced with low-paying service jobs.” *Id.*

<sup>49</sup> ELLER, *supra* note 29, at 15 (“Moreover, a single industry economy frustrated the diversification of local enterprises and tied mountain communities to the vagaries of national and increasingly international markets. Local political leaders, many of whom benefitted from their relationship with outside interests, continued to defend the status quo”).

Contrary to assertions by industry advocates, the decline of coal in Appalachia is not the result of Obama-era environmental regulation,<sup>50</sup> but market forces.<sup>51</sup> Other sources of energy, including natural gas, are simply cheaper.<sup>52</sup> Additionally, there is simply less coal left to mine. More than a century of mining has depleted the natural resource, making mines less productive and more expensive to operate.<sup>53</sup> Some lawmakers are demonstrating an increased interest in securing natural gas as the new economic driver in Appalachia, but that approach merely trades one industrial master for another. The economic future of West Virginia, and the region, requires active diversification from an extractive industry mono-economy, whether coal or natural gas. While President Trump's narrative focuses on buttressing the coal industry,<sup>54</sup> Appalachian communities are committed to cultivating more diverse and sustainable opportunities throughout the region.<sup>55</sup>

A proliferation of nonprofit incubators, higher education institutions, and West Virginian entrepreneurs are cultivating more diverse and sustainable opportunities throughout the state. Two leading examples include efforts spearheaded by West Virginia University ("WVU") and the Coalfields Development Corporation ("CDC"). WVU has created a WVU Innovation, Design, and Applied Entrepreneurship ("IDEA") HUB to help incubate and commercialize West Virginia based businesses.<sup>56</sup> The WVU IDEA HUB invests significantly in developing student entrepreneurship, supporting students through the ideation, design, product testing, and launch phases of business development. WVU connects students to West Virginia based investors, manufacturers, trade associations, and other resources to develop locally anchored student enterprises.<sup>57</sup> Although many universities offer similar business incubation programs, WVU's IDEA HUB is notable for promoting more than just high-tech innovations.<sup>58</sup>

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<sup>50</sup> CHARLES D. KOLSTAD, STANFORD INST. FOR ECON. POLICY RESEARCH, WHAT IS KILLING THE US COAL INDUSTRY (2017) ("Many Republicans have blamed environmental regulations enacted during the Obama administration for the decline of the country's coal industry." "What is clear from this discussion is that environmental regulations did not kill coal. Progress is the culprit."); see Justin Worland, *Rick Perry Wanted to Prove the Obama Administration Killed Coal*, TIME (AUG. 24, 2017), <http://time.com/4913856/rick-perry-trump-coal-energy-grid-study-obama/>.

<sup>51</sup> Jobs were disappearing long before environmental rules. Justin Fox, *Not Working in the Coal Mine*, BLOOMBERG (Dec. 4, 2015), <https://www.bloomberg.com/view/articles/2015-12-04/working-in-the-coal-mine-isn-t-what-it-used-to-be>.

<sup>52</sup> OWEN COMSTOCK, UNITED STATES ENERGY INFORMATION ADMINISTRATION, NATURAL GAS-FILLED ELECTRICITY EXPECTED TO REACH RECORD IN 2016 (2016).

<sup>53</sup> Fox, *supra* note 51.

<sup>54</sup> Exec. Order No. 13,783, 83 Fed. Reg. 16093 (Mar. 28, 2017); see also Press Release, White House, President Trump: Putting Coal Country Back to Work (Feb. 16, 2017), <https://www.whitehouse.gov/briefings-statements/president-trump-putting-coal-country-back-work/>.

<sup>55</sup> Courtney Balestier, *Coal is Dying – Coal Country Doesn't Have to: Creating the Post-Coal Economy in Appalachia*, FAST COMPANY (Dec. 12, 2016), <https://www.fastcompany.com/3065766/coal-is-dying-coal-country-doesnt-have-to-creating-the-post-coal-economy-in-appalachia>.

<sup>56</sup> The WVA IDEA HUB network was launched in 2016 to coordinate campus wide services to support student entrepreneurs through the ideation, modeling, product-testing, formation, and launch stages. WVA's Idea Ecosystem, IDEA HUB, <https://ideahub.wvu.edu/> (last visited Nov. 8, 2018).

<sup>57</sup> *About HSIC*, IDEA HUB, <https://hsic.wvu.edu/about-hsic> (last visited Nov. 8, 2018).

<sup>58</sup> *Id.*

Many successfully incubated student businesses build on West Virginia's emerging economic sectors, including local farming and tourism-based businesses, which serve as important and sustainable alternatives to extractive industries.<sup>59</sup> The Coalfield Development Corporation operates a series of connected social enterprises dedicated to building the economic capacity of communities in Southern West Virginia through workforce development and land reclamation efforts. Each of the CDC's five programs focuses on growing a particular economic sector and training workers to compete in a growing market.<sup>60</sup>

Reclaim Appalachia focuses on converting former mining sites into arable land or solar banks.<sup>61</sup> Refresh Appalachia retrains displaced workers to farm and pursue food enterprises.<sup>62</sup> Revitalize Appalachia "develops the green-collar construction workforce through on-the-job training in modern construction techniques."<sup>63</sup> Finally, Rewire Appalachia coordinates community solar projects and provides in-depth, on-site training transferrable to solar and broadband deployment.<sup>64</sup>

#### D. DEMOGRAPHICS AND PROGRESSIVE MOVEMENTS IN APPALACHIA

National reporting on Appalachia often problematically focuses on its geographic isolation, poverty, and racial homogeneity.<sup>65</sup> However, it is important to highlight the missing elements of this socio-cultural narrative that provide a more accurate representation of Appalachia's demographics and economic conditions. The current "Trump Country" narrative further reifies assumption that Appalachia is *exclusively* white, heterosexual, and conservative. While significant parts of Appalachia, and West Virginia in particular, are part of what might be deemed "Trump Country," the region nevertheless contains important, diverse constituencies. For instance, there are historically African American communities throughout

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<sup>59</sup> *Id.*

<sup>60</sup> *Rebuilding the Appalachian Economy Coalfield Development Corporation*, WVU TODAY (Sept. 17, 2017), [http://www.register-herald.com/news/money/rebuilding-the-appalachian-economy-coalfield-development-corporation-founder-to-share/article\\_5eb1c1c3-6072-595f-a787-65d53af82fdd.html](http://www.register-herald.com/news/money/rebuilding-the-appalachian-economy-coalfield-development-corporation-founder-to-share/article_5eb1c1c3-6072-595f-a787-65d53af82fdd.html).

<sup>61</sup> *See generally Reclaim Appalachia: About Us*, RECLAIM APPALACHIA (2017), <http://reclaimappalachia.com/about-us/>.

<sup>62</sup> *See generally Refresh Appalachia: About Us*, REFRESH APPALACHIA (2017), <http://refreshappalachia.com/about-us/>.

<sup>63</sup> *See generally Revitalize Appalachia: About Us*, REVITALIZE APPALACHIA (2017), <http://revitalizeappalachia.com/about-us/>.

<sup>64</sup> *See generally Rewire Appalachia: About Us*, REWIRE APPALACHIA (2017), <http://rewireappalachia.com/about-us/>.

<sup>65</sup> *See generally* Thomas Blake Earle, *No White Man Left Behind*, WASH. POST (Oct. 27, 2017), [https://www.washingtonpost.com/news/made-by-history/wp/2017/10/27/no-white-man-left-behind/?noredirect=on&utm\\_term=.77a01303c917](https://www.washingtonpost.com/news/made-by-history/wp/2017/10/27/no-white-man-left-behind/?noredirect=on&utm_term=.77a01303c917); Terrence McCoy, *After the Check Is Gone*, WASH. POST (Oct. 6, 2017), [https://www.washingtonpost.com/sf/local/2017/10/06/her-disability-check-was-gone-and-now-the-only-option-left-was-also-one-of-the-worst/?noredirect=on&utm\\_term=.ab357719c1b4](https://www.washingtonpost.com/sf/local/2017/10/06/her-disability-check-was-gone-and-now-the-only-option-left-was-also-one-of-the-worst/?noredirect=on&utm_term=.ab357719c1b4); Terrence McCoy, *56 Miles from Temptation*, WASH. POST (Dec. 21, 2017), [https://www.washingtonpost.com/sf/local/2017/12/21/56-miles-from-temptation-disabled-addicted-and-desperately-trying-to-save-their-marriage/?utm\\_term=.f0ca5d421707](https://www.washingtonpost.com/sf/local/2017/12/21/56-miles-from-temptation-disabled-addicted-and-desperately-trying-to-save-their-marriage/?utm_term=.f0ca5d421707); J.D. Vance, *How the White Working Class Lost Its Patriotism*, WASH. POST (July 25, 2016), [https://www.washingtonpost.com/posteverything/wp/2016/07/25/how-the-white-working-class-lost-its-patriotism/?utm\\_term=.0ce386c612be](https://www.washingtonpost.com/posteverything/wp/2016/07/25/how-the-white-working-class-lost-its-patriotism/?utm_term=.0ce386c612be).

Appalachia, and the region is also home to a growing Latino population.<sup>66</sup> Refusing to acknowledge these demographics erases these communities and ensures that their voices remain unheard.

Likewise, Appalachia is not completely devoid of progressive politics or policies. For example, West Virginia is one of the few states in Appalachia that prohibits subjects of domestic violence protective orders from possessing guns or ammunition.<sup>67</sup> This is a surprising policy development and runs counter to many of the “Trump Country” tropes. Polling generally shows the unpopularity of restricting access to firearms among conservative voters and politicians, including President Trump.<sup>68</sup> The cultural value of gun ownership to rural residents is also well documented, including its role as family heirlooms or seasonal recreational uses central to the fabric of the community.<sup>69</sup> As firearms hold significant cultural and recreational importance of guns in rural America, West Virginia’s law is a particularly meaningful as it demonstrated a divergence from the conservative rhetoric to best meet the needs and interests of West Virginia’s communities.

In addition to actual policy and legislative victories, Appalachia is also home to important grassroots organizing on a number of progressive issues. Historically, progressive Appalachians have joined national activists in advocating for economic justice, including the 1968 Poor People’s Campaign.<sup>70</sup> Kentuckians for the Commonwealth and West Virginia Highlands Conservancy have each led grassroots campaigns surrounding environmental degradation from the coal and fracking industries. In 2018, the West Virginia Teacher’s Strike gained national coverage and spawned similar movements for fair wages and benefits in Oklahoma and North Carolina.<sup>71</sup>

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<sup>66</sup> See *Data Snapshot: Appalachia’s Population*, APPALACHIAN REGIONAL COMMISSION (Mar. 2018), <https://www.arc.gov/noindex/research/ACS-infographics2012-2016/DataSnapshot-AppalachiasPopulation.pdf>.

<sup>67</sup> W. VA. CODE § 61-7-7(a)(7) (2016).

<sup>68</sup> See Philip Bump, *Trump Country is Gun Country*, WASH. POST (Feb. 27, 2018), [https://www.washingtonpost.com/news/politics/wp/2018/02/27/trump-country-is-gun-country/?utm\\_term=.ca0552841d8c](https://www.washingtonpost.com/news/politics/wp/2018/02/27/trump-country-is-gun-country/?utm_term=.ca0552841d8c); Philip Bump, *52 Senators Have an A-minus NRA Rating or Higher — Including Four Democrats*, WASH. POST (Feb. 15, 2018), [https://www.washingtonpost.com/news/politics/wp/2018/02/15/52-senators-have-an-a-minus-nra-rating-or-higher-including-four-democrats/?utm\\_term=.b84dbc1d637b](https://www.washingtonpost.com/news/politics/wp/2018/02/15/52-senators-have-an-a-minus-nra-rating-or-higher-including-four-democrats/?utm_term=.b84dbc1d637b).

<sup>69</sup> “The values of this culture are best typified as rural rather than urban: they emphasize independence, self-sufficiency, mastery over nature, closeness to the land, and so on. Within this culture, the ownership and use of firearms are both normal and normatively prescribed, and training in the operation and use of small arms is very much a part of what fathers are expected to provide to their sons—in short, this training is part and parcel of coming of age.” Joseph Blocher, *Firearm Localism*, 123 YALE L.J. 82, 96 (2013) (quoting JAMES D. WRIGHT, ET AL., UNDER THE GUN: WEAPONS, CRIME, AND VIOLENCE IN AMERICA 113 (1983)).

<sup>70</sup> *Dr. King’s Vision*, *supra* note 1 (“The first gathering of over fifty multiracial organizations that came together with SCLC to join the Poor People’s Campaign, took place in Atlanta, Georgia in March 1968. Key leaders and organizations at this session included . . . Myles Horton of the Highlander Center, Appalachian volunteers from Kentucky”).

<sup>71</sup> See Bob Moser, *The Resistance Is Infiltrating Trump Country* ROLLING STONE (Apr. 18, 2018), <https://www.rollingstone.com/politics/politics-features/the-resistance-is-infiltrating-trump-country-630145/>.

## II. TRANSACTIONAL LAWYERING NEEDS IN WEST VIRGINIA: PEDAGOGY & PRACTICE

West Virginia stakeholders and communities in West Virginia dedicated to fighting poverty and building sustainable and diverse local economies require dynamic and creative transactional attorneys. Although the moniker “transactional lawyer” is often misinterpreted as “corporate lawyer,” transactional lawyering is a diverse subset within the larger profession and such attorneys fulfill a number of specialized needs ranging from taxation, financing, intellectual property, real estate, land use, infrastructure development, corporate structuring, compliance, and enterprise succession planning. At its core, all transactional lawyering shares one central premise: creating value for clients through non-litigation centric legal work.<sup>72</sup>

Transactional attorneys often play the role of “deal lawyer,”<sup>73</sup> assisting nascent enterprises in successfully entering the market by raising capital, protecting proprietary information, navigating state and federal regulations, allocating risks based on future growth, incorporating mission-based policies or goals, and planning for succession.<sup>74</sup> Transactional attorneys also engage in community economic development (“CED”) lawyering by representing organizations working to address issues of inequity within communities.<sup>75</sup> CED lawyering includes assisting community groups to mitigate blight in their neighborhood by reclaiming abandoned lots, converting local businesses into sustainable community-owned enterprises, such as cooperatives, and providing general transactional legal services to existing or new nonprofits.<sup>76</sup> In West Virginia and other rural areas, transactional attorneys continue to play an important role in community owned infrastructure development including alternative water systems, rural electrical cooperatives, and rural broadband.<sup>77</sup>

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<sup>72</sup> ALICIA ALVAREZ & PAUL TREMBLAY, INTRODUCTION TO TRANSACTIONAL LAWYERING PRACTICE 4 (2013) (“Many observers point out that transactional lawyering is at its essence value creation . . . not everything that a transactional lawyer does qualifies as a deal, but everything a lawyer contributes must offer some value to the client.”).

<sup>73</sup> *Id.* at 5. (“A transaction is essentially a deal, so transactional lawyers do deals. . . . But transactional practice involves a lot more than simply doing deals. Perhaps most of the projects in which you work will involve creating products or devices to be used by businesses of business people, or guiding those entities or people through regulatory thickets.”).

<sup>74</sup> Praveen Kosuri, *Beyond Gilson: The Art of Business Lawyering*, 19 LEWIS & CLARK L. REV. 463, 474–83 (2015).

<sup>75</sup> Patience A. Crowder, *Inequality, Economic Development, and the New Regional Community*, 43 SW. L. REV. 569, 571 (2014) (“Traditional CED practice is designed to alleviate poverty by promoting 1) efforts to develop housing, jobs, or business opportunities for low-income people, 2) in which a leading role is played by non-governmental organizations, and 3) that are accountable to residentially defined communities.”).

<sup>76</sup> This list is comprised of client examples from projects undertaken by various CED Clinics at AALS Member Law Schools.

<sup>77</sup> See generally *College of Law: Land Use and Sustainable Development Clinic*, WEST VIRGINIA UNIVERSITY, <https://landuse.law.wvu.edu/> (last visited Nov. 8, 2018) (“The Land Use and Sustainable Development Law Clinic (Land Use Clinic) provides legal and planning services to conserve land and water, supports local land use planning, and offers educational opportunities for law students and citizens of West Virginia.”).

One of the debates in recent transactional pedagogy centers on whether a social justice framework adds sufficient value to students and clients.<sup>78</sup> Some critics argue that “social justice” oriented clinics, which include clinics that support community organizations and individuals advocating for economic justice, may fail to maximize the “learning for transfer”<sup>79</sup> goals and alienate students by exposing them to the political leanings of faculty.<sup>80</sup> Other critics worry the social justice emphasis may limit the complexity of selected cases, denying students the opportunity to engage in interesting legal projects.<sup>81</sup> Even other critics have argued that the function of representing creative entrepreneurs adds sufficient value to larger economies such that the inquiry into whether transactional work is sufficiently intentional and social justice oriented is unnecessary.<sup>82</sup> Such contentions derive from the luxury of working with communities of means.<sup>83</sup> Rural areas *require* transactional attorneys committed to combatting poverty through economic justice.

In her article examining transactional clinics and poverty alleviation, Professor Alicia Alvarez proposes a framework for transactional clinics that incorporates 1) the politically engaged CED framework championed by Professor Scott Cummings with 2) Professor Shah’s community lawyering model that emphasizes education and capacity building efforts.<sup>84</sup> This article refers to this type of transactional lawyering, which includes both politically engaged CED efforts and lawyering support during the pre-mobilization period, as an economic justice model.

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<sup>78</sup> Lynnise E. Pantin, *The Economic Justice Imperative for Transactional Law Clinics*, 62 VILL. L. REV. 175, 180 (2017) (“In fact, in the transactional clinical space, there is substantial debate about whether social justice should be a primary or secondary goal or even a goal at all in the design of such a clinic, further raising questions about the justice-oriented lawyering happening in a business law practice.”).

<sup>79</sup> See Caroline Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLINICAL L. REV. 489, 494–95 (2013).

<sup>80</sup> Julie Lawton, *Teaching Social Justice in Law Schools: Whose Morality Is It?*, 50 INDIANA L. REV. 824, 847 (2017) (“The exposure model also restricts law professors’ ability to shape how law students view and define social justice” and “encourage law schools to teach such pro bono and legal clinics serving the indigent as an option along an educational continuum—a continuum that includes, for example, legal clinics with complex business or tax legal work on behalf of medium and large businesses that may be more reflective of the work students will encounter upon graduation.”).

<sup>81</sup> Pantin, *supra* note 78, at 193–94.

<sup>82</sup> Paul R. Tremblay, *Transactional Legal Services, Triage, and Access to Justice*, 48 WASH. U. J. L. & POL’Y 11, 12 (2015) (In his thesis, Professor Tremblay criticizes the “Triage” Lawyer and focuses on value creation by representing the creative entrepreneur.).

<sup>83</sup> Praveen Kosuri, *Clinical Legal Education at a Generational Crossroads: X Marks The Spot*, 17 CLINICAL L. REV. 205, 218 (2010) (“The house that the Baby Boomers built had the luxury of being designed to highlight public interest . . . . Today, all students are looking to the clinics to provide them with real-life, practical, and professional skills. There will inherently be more students in our presence who simply do not care about any underlying social mission which the clinics employ. They want someone to show them what it means to be a lawyer, not just a public interest lawyer.”). This vision of lawyering presupposes that students will not be serving communities or smaller level enterprise but work exclusively for large private law-firms that represent MNCs and a more sophisticated and wealthy cliental. This is certainly true for a certain caliber of law school, but not true for graduates of many other educational institutions including rural law schools.

<sup>84</sup> Alicia Alvarez, *Community Development Clinics: What Does Poverty Have To Do With Them?*, 34 FORDHAM URB. L.J. 1269, 1277–79 (2007).



Rural areas would benefit immensely from widespread application of this economic justice model because many such communities are in the early stages of organizing and need to combat decades of political disenfranchisement. The politically engaged CED model uses a legal advocacy approach to support community organizing efforts on issues of economic justice, emphasizing the importance of community-based political responses to best advocate for economic justice and structural change.<sup>85</sup> The politically engaged CED approach is particularly resonant to the needs of Appalachia, and many other rural areas, as it seeks to rebuild political agency. According to Professor Cummings, the dominant market-based CED approach fails to address the “crucial political dimension of poverty”<sup>86</sup> The bifurcation of political power and communities has repeatedly been criticized in Appalachia as enabling abuse by Appalachian elites. As discussed in Section I(B) of this article, Appalachian elites sought to create a political patron system that ensured “a network of political and economic interests where a few individuals controlled the meager resources for the whole community.”<sup>87</sup> The most notable effort to subvert this political system came in Southern West Virginia by “creating a participatory democracy that would overthrow decades of corruption”<sup>88</sup> through the Mingo County Economic Opportunity Commission resulting in the local political machine threatening violence and accusing the organizers of election fraud and other crimes.<sup>89</sup> In addition to enhancing the political agency of local citizenry, the politically engaged CED model also advocates for broad-based coalition building by connecting community advocacy efforts to broader regional and national campaigns for structural change.<sup>90</sup> This offers rural areas, and Appalachia in particular, the opportunity to collaborate with other geographic regions and populations to combat issues of structural oppression.<sup>91</sup> Finally, many Appalachian communities are still in the pre-mobilizations phase. These communities would benefit immensely from capacity building efforts, which improve their knowledge and understanding of relevant laws and regulatory regimes that should inform their decision-making. In addition to counseling and collaborative lawyering, Professor Shah’s model advocates for lay-lawyering, that is, having lawyers serve as “educators at the initial stages of community organizing.”<sup>92</sup>

This is not to say that transactional attorneys should stop engaging in traditional transactional legal work in Appalachia. The politically engaged CED approach is inclusive of the standard definitions of transactional lawyering—viewing value addition in terms of transaction costs, reputational intermediaries, or controlling regulatory costs.<sup>93</sup> Rather, these rural communities require the more holistic approach proposed by the economic justice model;

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<sup>85</sup> Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 *STAN. L. REV.* 399, 458–64 (2001).

<sup>86</sup> *Id.* at 451.

<sup>87</sup> ELLER, *supra* note 27.

<sup>88</sup> HUEY PERRY, THEY’LL CUT OFF YOUR PROJECT: A MINGO COUNTY CHRONICLE xix (2011).

<sup>89</sup> *Id.* at 246–52.

<sup>90</sup> Cummings, *supra* note 86, at 464.

<sup>91</sup> See MARTIN LUTHER KING JR., *THE TRUMPET OF CONSCIENCE* 60 (1st ed. 1989) (“There are millions of poor people in this country who have very little, or even nothing, to lose. If they can be helped to take action together, they will do so with a freedom and a power that will be a new and unsettling force in our complacent national life[.]”).

<sup>92</sup> Alvarez, *supra* note 85, at 1277.

<sup>93</sup> Kosuri, *supra* note 74, at 466–67.

one that grows both local development and local political agency to ensure such development comports to the needs of the community.

#### A. APPLYING THE ECONOMIC JUSTICE MODEL IN APPALACHIA

One opportunity for transactional clinics to apply the economic justice framework lies in the current infrastructure development efforts in West Virginia. Much of Appalachia's current infrastructure crisis can be directly linked to corporate control and weak local governments, which possess neither the power nor funds to either build new systems or maintain the region's existing infrastructure.<sup>94</sup> For example, the lack of consistent broadband internet access in West Virginia has adversely impacted the State's economic prospects.<sup>95</sup> It is impossible to promote a "business-friendly" environment, let alone an inclusive, community driven local economy, without internet access.

The lack of broadband infrastructure outside of West Virginia's primary population centers is linked to the lack of profitability for corporate actors.<sup>96</sup> Simply stated, companies have determined the expense of building the necessary infrastructure to reach and serve these rural communities is too large at the current juncture. Simultaneously, local governments lack the authority under pertinent state statutes to build municipal broadband infrastructure and develop internet service provider services.<sup>97</sup> Even assuming local governments did possess such authority, their precarious financial positions make it difficult to provide standard services like trash removal and residential water.<sup>98</sup>

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<sup>94</sup> As will be discussed in section II(C), West Virginia's aging water infrastructure has caused continued water-insecurity and outmigration throughout the state. Some systems struggle in the wake of pollution from industry and governments often lack the finances to make needed updates. *See* Michael Bastasch, *Report: Mine Closings Have Made Coal Country's Drinking Water Worse*, DAILY CALLER (Aug. 17, 2017), <http://dailycaller.com/2017/08/17/report-mine-closings-have-made-coal-countrys-drinking-water-worse/> ("The crash of the coal mining industry in southern West Virginia has left hundreds of residents in charge of their own small water systems – some of which date to the Civil War . . . Residents in the mountains of Wyoming and Fayette counties say they are getting too old to maintain water treatment plants and pipes. . . and they lack funding to carry out proper treatment on the water, which comes from springs in old coal mines.").

<sup>95</sup> *See* Associated Press, *Report Shows 554,124 West Virginians Lack Broadband Access*, U.S. NEWS & WORLD REP. (Oct. 4, 2017), <https://www.usnews.com/news/best-states/west-virginia/articles/2017-10-04/report-shows-554-124-west-virginians-lack-broadband-access> (reporting that nearly one third of the state does not have reliable access to broadband, impacting 554,124 West Virginians).

<sup>96</sup> The number of truly rural communities with low density is exceedingly high in West Virginia. For example, the largest city in West Virginia is the state capital, Charleston, with a population of 47,929. QUICK FACTS: CHARLESTON CITY, WEST VIRGINIA, U.S. CENSUS BUREAU (2017), <https://www.census.gov/quickfacts/fact/table/charlestoncitywestvirginia/PST045217>.

<sup>97</sup> *See* W.VA. CODE § 8-12 (1969) (providing that the general powers granted to municipal government does not expressly include Broadband).

<sup>98</sup> *See* Agnel Philip, ET. AL., *Millions Consumed Potentially Unsafe Water in the Past 10 Years*, TEX. TRIB. (Aug. 16, 2017), <https://www.texastribune.org/2017/08/16/millions-consumed-potentially-unsafe-water-past-10-years/> ("In Garwood, a 55-person Wyoming County town surrounded by coal mines, the community water system stopped testing in 2014 . . . neighbors say maintenance seems like a full-time job, and they can only afford to patch up leaks and fix busted pipes.").

The combination of corporate disinterest and government stagnation leaves rural West Virginia communities without internet access, which impacts the ability to support and grow rural economies. For example, reliable broadband access is an important component of distance learning, which can help increase both the employability of local residents and simultaneously mitigate shortages in high-needs fields. West Virginia currently faces a rural nursing shortage.<sup>99</sup> In response, local universities have created nursing programs with significant online components to reach more rural residents.<sup>100</sup>

However, it is impossible to participate in the program without reliable broadband access.<sup>101</sup> Likewise, the growing tourism economy cannot thrive without consistent broadband access. Businesses need the internet to advertise their services and connect with platforms like AirBnB, Yelp, or TripAdvisor to attract customers.<sup>102</sup> Businesses also need access to the numerous administrative and back-office functions that are facilitated by the internet, including tax and accounting software. Consideration of the level of internet use and connectivity necessary in the modern world to operate a standard business makes it easy to imagine the development challenges faced by a community stymied by limited or slow broadband access.

There is also real danger in limiting transactional lawyering to “deal lawyering” small enterprises in rural communities. In the broadband access example, it is clear that the issues preventing economic growth are structural in nature. Appealing to the traditional actor that drives infrastructure development, the government, is not an option due to legal and financial restrictions. The only viable option is a community-driven solution through community-owned infrastructure, similar to the electrical cooperative model that brought electricity to rural communities. While transactional attorneys can assist an endless number of innovative businesses in forming in West Virginia, those businesses will never grow to scale or truly thrive without the necessary infrastructure to draw and sustain a customer base. They will become subsistence businesses rather than economic drivers. The economic justice model of transactional lawyering, by contrast, actively engages with the structural issues impacting a community’s growth.

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<sup>99</sup> See James Castro, *W. Va. Nursing Shortage Said to be ‘Worst Ever’*, STATE J. (Dec. 9, 2017), [https://www.wvnews.com/statejournal/w-va-nursing-shortage-said-to-be-worst-ever/article\\_32302564-2691-53a3-9ae6-95462e7b153d.html](https://www.wvnews.com/statejournal/w-va-nursing-shortage-said-to-be-worst-ever/article_32302564-2691-53a3-9ae6-95462e7b153d.html).

<sup>100</sup> See Kara Lofton, *Lack of Nurse Educators is Likely Contributing to the Nurse Workforce Shortage*, PITTSBURGH’S NPR NEWS STATION (Nov. 14, 2017), <http://www.wesa.fm/post/lack-nurse-educators-likely-contributing-nurse-workforce-shortage#stream/0> (“But nursing programs are trying new strategies to bring more people into the profession. For instance, schools are launching online nursing programs, but the reach is limited because parts of rural West Virginia don’t have access to the broadband needed for students to take the classes.”).

<sup>101</sup> *Id.*

<sup>102</sup> See *Why Host an AirBnB?*, AIRBNB, [https://www.airbnb.com/host/homes?from\\_nav=1](https://www.airbnb.com/host/homes?from_nav=1) (last visited Nov. 8, 2018) (“No matter what kind of home or room you have to share, Airbnb makes it simple and secure to earn money and reach millions of travelers looking for unique places to stay, just like yours.”); *About Us*, YELP, <https://www.yelp.com/about> (“Yelp was founded in 2004 to help people find great local businesses like dentists, hair stylists and mechanics. Yelp had a monthly average of 32 million unique visitors who visited Yelp via the Yelp app and 72 million unique visitors who visited Yelp via mobile web in Q2 2018.”) (last visited Nov. 8, 2018); *About TripAdvisor*, TRIP ADVISOR, <https://tripadvisor.mediaroom.com/us-about-us> (“TripAdvisor also compares prices from more than 200 hotel booking sites so travelers can find the lowest price on the right hotel that’s right for them.”) (last visited Nov. 8, 2018).

In the broadband context, the West Virginia legislature recently passed a statute that enables the creation of “broadband cooperatives.” These cooperative entities, which may be either for-profit or non-profit, are organized by community members for the exclusive purpose of building broadband infrastructure. Although there is no accompanying funding for the creation of cooperatives or financing for the infrastructure, it is nonetheless promising that the legislature created a vehicle to develop community-owned infrastructure.<sup>103</sup>

The enactment of the broadband statute illustrates not only the power of corporate interests within West Virginia, but the necessity of community driven mechanisms. A previous version of the Broadband Bill, which advocated for a state-wide, state-owned network was voted down in 2016.<sup>104</sup> The new Broadband Bill, which passed by significant margins in both house of the West Virginia state legislature, enables communities to develop smaller local networks. This bill passed with significant margins in both houses of the West Virginia state legislature. Despite the clear economic development need for Broadband and the popularity among State residents, the Bill barely passed the legislature.<sup>105</sup> The Senate President, a former executive for Frontier, was fired by the company shortly after the statute passed.<sup>106</sup>

#### B. ECONOMIC JUSTICE CASE STUDY: THE WVU ENTREPRENEURSHIP & INNOVATION LAW CLINIC’S BROADBAND INITIATIVE

The Entrepreneurship & Innovation Law Clinic initially began working on broadband development issues through a partnership with Generation West Virginia, a nonprofit organization “dedicated to attracting, retaining, and advancing young talent in the Mountain State.”<sup>107</sup> Generation West Virginia builds networks of engaged citizenry and advocates for state and local policies designed to support young people in West Virginia.<sup>108</sup> As part of its work, the organization was instrumental in lobbying for the Broadband Bill.<sup>109</sup> Although the legislation was an important, hard-won victory, West Virginia communities desperately needed specialists to help them understand the legal landscape and provide essential support and guidance during the broadband system design and implementation processes. Generation West Virginia approached the EILC in hopes of creating additional, practical resources tailored for West Virginia communities interested in developing broadband infrastructure.

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<sup>103</sup> The Broadband Bill included language to create a fund, though no mandates to populate the fund with a designated funding source. As of September 2018, the fund has a zero balance. The State’s Department of Commerce has reallocated Community Block Grants, a federal funding source, to provide limited broadband planning and implementation grants as a one-time initiative.

<sup>104</sup> Eric Eyre, *Frontier Axes WV Senator President Weeks After Broadband Vote*, CHARLESTON GAZETTE MAIL (June 5, 2017), [https://www.wvgazette.com/business/frontier-axes-wv-senate-president-weeks-after-broadband-vote/article\\_0af5f278-e8a7-5c33-8c18-45b95a3a9da7.html](https://www.wvgazette.com/business/frontier-axes-wv-senate-president-weeks-after-broadband-vote/article_0af5f278-e8a7-5c33-8c18-45b95a3a9da7.html).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *About*, GENERATIONS WEST VIRGINIA, <http://generationwv.org/about/> (last visited Nov. 8, 2018).

<sup>108</sup> *Id.*

<sup>109</sup> Rod Snyder, *New Broadband Law Provides High-Speed Hope for West Virginia*, OBSERVER (June 13, 2017), <https://wearetheobserver.com/new-broadband-law-provides-high-speed-hope-west-virginia/> (“A strong coalition of citizen groups, led by Generation West Virginia and AARP, joined forces this year to urge the Legislature to pass HB 3093, a bill that would take several key steps to reducing barriers to broadband access. The legislation focuses on increasing competition in the state by allowing for the creation of local broadband cooperatives[.]”).

The EILC quickly ascertained both the eagerness and frustration of communities when attempting to navigate the new law. For many of these communities, broadband access could play an important role in improving public education, growing local businesses, and tapping into the growing tourism economy.<sup>110</sup> However, community leaders needed transactional attorneys to broker broadband development in order to enhance their communities' understanding of the law and provide support in navigating the complex, infrastructure development process.<sup>111</sup> Because the law was so new and many communities were still in the information-gathering stage, the EILC agreed to develop a Broadband Cooperative Toolkit.

The Broadband Cooperative Toolkit attempted to create a single resource, which explained the major facets of the West Virginia broadband law, summarized common obstacles, addressed common misconceptions, and clearly outlined the various phases of broadband development. For example, the Broadband Cooperative Toolkit outlines each stage of broadband development and the requisite legal and financial considerations for each stage.

## 1. FORMING THE BROADBAND COOPERATIVE AS A WEST VIRGINIA COOPERATIVE ASSOCIATION

This first section of the toolkit includes a summary of who is eligible to form a cooperative, membership requirements, management and leadership requirements, costs associated with formation, and what broadband cooperatives may or may not do under the state statute. This section also addresses common misconceptions, including the federal tax status of broadband cooperatives.

## 2. CONDUCTING A FEASIBILITY STUDY

The second section of the toolkit introduces communities to the requisite “feasibility studies”<sup>112</sup> – engineering studies that analyze the various technical options for creating a broadband network. Additionally, these studies include important financial components, including estimated costs for constructing the various broadband system options. For example, some broadband systems involve burying cable and some involve using above-ground telephone or utility poles. The studies will generally include cost estimates for constructing each option, including associated taxes, permitting, and other financial considerations. Likewise, the studies include funding requirements for the actual infrastructure development, including raising capital to “buy bandwidth.”<sup>113</sup> Finally studies also include some level of legal

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<sup>110</sup> See generally Chamber of Commerce of the United States of America, Letter to Congress on the Importance of Broadband Tourism (June 12, 2013) (available at <https://www.uschamber.com/letter/importance-broadband-tourism>).

<sup>111</sup> Alvarez, *supra* note 85, at 1277–78 (“Lay-lawyering demystifies the law and fosters self-help activities... Lawyers can educate low-income people about their rights regarding . . . governmental policies and decisions that affect the structure of opportunity in our cities.”).

<sup>112</sup> See CARLTON COUNTY BROADBAND FEASIBILITY STUDY, CARLTON CTY, MINN. (Dec. 18, 2016), <https://www.co.carlton.mn.us/ArchiveCenter/ViewFile/Item/113> for an excellent example of a rural broadband feasibility study.

<sup>113</sup> The simplest way to understand broadband systems is to draw a corollary to residential water systems. The Community Broadband Cooperative will construct a system that connects broadband cables to houses and businesses in the community, much like how water pipes connect to houses. In a water system, the pipes (via the local government and water treatment plant) draw from a larger water source (river, lake, groundwater, etc.). Similarly, community owned broadband systems need to be

issue spotting that will require additional research, such as potential issues involving easements, environmental regulations, and other land use concerns.

### 3. COMMON OBSTACLE

The third section of the toolkit outlines potential obstacles to community-owned broadband, including costs and fundraising, land-use and environmental concerns, and administrative burdens connected to the operation of the systems (serving customers, billing, etc.)

### 4. APPENDICES: FUNDING OPTIONS AND MODEL DOCUMENTS

The toolkit also includes an appendix listing funding sources, including federal grants and loans from the USDA and NTIA. The EILC also created model documents for broadband cooperatives, including sample Articles of Association, Bylaws, and Membership Agreements.

As the EILC began designing the Broadband Cooperative Toolkit, we uncovered two problems that could potentially frustrate the formation of broadband cooperatives. First, the statute contained a technical error, which mandated the minimum number of Board Directors as “no less than twenty” in Section 31G-2-6(5) but as “no less than three” in Section 31G-2-10(a).<sup>114</sup> Interested community groups expressed concern regarding the practicality of such a large Board of Directors. Communities struggled to identify twenty individuals who would be willing to serve on the Board of Directors. Additionally, such a large Board would be unwieldy to manage. The twenty directors requirement was also an outlier compared to a number of other cooperative and corporate entities in the state, which all required a minimum of three directors on their respective Boards.<sup>115</sup> The second issue involved the standardized formation documents on the West Virginia Secretary of State website, which had not been updated to reflect the new broadband law. Thus some communities, in their rush to start the process and compete for funding, were incorrectly forming agricultural cooperatives. This structuring caused a variety of problems, including the denial of certain grant opportunities explicitly reserved for utility cooperatives.

The statutory language conflict would typically be rectified by the legislature via amendment. Given the contentious nature of the bill, however, the legislature was unwilling to prioritize the matter and put it on the agenda. Unfortunately, the legislature’s reluctance to address the error conflicted with the needs of communities, many of whom were incredibly

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connected to a larger broadband source. Just as the local government builds the pipes that draw water from the river, connecting it to the local water treatment facilities and then to residential pipes, broadband cooperatives must build connections to existing broadband sources. Purchasing this broadband from an existing source is called “buying bandwidth.” Generally, the broadband cooperative is also responsible for building the infrastructure to connect the community broadband system to the broadband source.

<sup>114</sup> The error was most likely a clerical error, as the statute requires 20 members in multiple sections. Previous versions of the bill also list only 3 directors in all relevant sections. See W.VA. CODE § 31D (2002) (the corporate statute); *see also* W.VA. CODE § 19-4 (2015) (the agricultural cooperative statute).

<sup>115</sup> *See generally Leadership Team, GENERAL MOTORS*, <https://www.gm.com/our-company/leadership.html> (showing that General Motors has 11 board members).

eager to begin the cooperative formation process as federal funding sources would soon begin issuing RFPs and NOFAs. The EILC created an important alternative solution for communities. The West Virginia Secretary of State's Office, as the agency administering the statute, was willing to issue a determination letter that stated their interpretation of the statute as requiring "no less than 3 Directors" as per Section 31G-2-10(a) of the West Virginia Code. Additionally, they agreed to work with the EILC to design new Articles of Association specifically for Broadband Cooperatives, which eliminated the above-described formation issues.<sup>116</sup>

As a final measure, the EILC is working to ensure the Broadband Cooperative Toolkit has greater impact. During the 2018-2019 academic year, the EILC will collaborate with communities and the West Virginia University Land Use & Sustainable Development Clinic to hold educational events and workshops related to the Broadband Bill and the Toolkit.

Transactional attorneys are necessary to broker broadband development in West Virginia. How can communities, many of which are struggling financially, access the necessary legal services to build community-owned infrastructure? This dilemma illustrates the importance of legal clinics engaging in the economic justice lawyering model. Limiting the definition and value of transactional clinics to "deal lawyering" would prevent the creation of incredibly important infrastructure necessary to create rural economic development, let alone an environment conducive to economic justice. Before "deal lawyering," it is imperative that transactional attorneys serve important capacity-building and education functions.

Transactional attorneys must work with communities to help leaders and community members understand the various broadband options and the associated costs. Such work may necessitate community meetings and information sessions. Lower densities and topography may require the creation of multi-community or county wide systems. This does not mean we should abandon the value of "deal lawyering," but instead, acknowledge that deal-making is just one tool in the transactional lawyering wheelhouse. Within the broadband example, there is ample opportunity in the future for traditional "deal lawyering." As communities begin developing broadband infrastructure, deal lawyers must help communities select favorable structures for their cooperatives, including considering whether to pursue federal tax-exempt status. Deal lawyers must advise cooperatives on key governance issues surrounding membership and corresponding rights and obligations, including the payment of patronage dividends.<sup>117</sup> Deal lawyers must help cooperatives navigate land-use and real estate issues involved with the actual construction of the infrastructure. Once the broadband system development begins, there will be no shortage of contract needs that demand the services of deal lawyers, including the creation of agreements with the Internet Service Provider (ISP) or contracts with customers if the broadband cooperative is the ISP.

### C. LAWYERS AS LEADERS IN RURAL COMMUNITIES

West Virginia clearly demonstrates the need for comprehensive, economic justice oriented transactional lawyering in rural communities. These reasons alone ought to compel rural law schools to actively train economic justice oriented lawyers. However, law schools

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<sup>116</sup> W. Va. SEC'Y OF STATE, W. VA. ARTICLES OF INCORPORATION TEMPLATE FOR A BROADBAND COOPERATION ASS'N, <https://sos.wv.gov/FormSearch/Business/Corporation/cbd-1.pdf>.

<sup>117</sup> Patronage dividends refer to payments made to members of a cooperative. Because of the complexity of tax issues associated with these dividends, consulting with an attorney is vital.

that serve rural states train far more than the local bar and bench. Graduates of rural law schools often hold both informal and formal leadership positions in communities. Formal positions may include serving as local elected officials or appointed civil servants. Informal positions may include holding positions of influence in communities of faith or local nonprofits. As the history of Appalachia is rife with examples of abuse from Appalachian elites, the current economic crises underscores the pressing need for engaged, community-oriented local leaders. Rural law schools must incorporate these factors into their academic efforts, training both lawyers with the necessary expertise and professionalism, and compassionate, thoughtful local leaders capable of building regional coalitions and advocating for legislative and policy changes that best serve their communities.

In West Virginia, some local leaders have responded to community needs and contributed significantly to the EILC's efforts. The Broadband Cooperative Toolkit's success would have been impossible without the support of local leadership within the West Virginia Secretary of State's Office. Steven Connolly,<sup>118</sup> the Deputy Secretary of State and General Counsel, immediately understood the importance of creating an accessible tool to assist West Virginia communities. Without his collaboration and understanding, the above-identified issues with the broadband legislation would have remained unsolved, and communities would be left with faulty foundational documents, which in turn would have negatively impacted their operations and ability to obtain funding.

Certainly, West Virginia clients and communities in West Virginia benefit enormously from this holistic approach, which addresses immediate legal needs while working to build overall resources and capacity for the community. However, some of the structural economic problems in West Virginia require collective action and coalition building to garner the necessary media attention and to effect real change. West Virginia is a small state and the "Trump Country" narrative only furthers its characterization as an "other America."<sup>119</sup> In reality, West Virginia is replete with the same structural poverty and inequality as urban areas. Although this article uses broadband as an example, there are other troubling West Virginia infrastructure deficits that perpetuate economic injustice and mirror crises in urban areas. One such growing concern in both urban and rural areas is water security, which is defined as:

The capacity of a population to safeguard sustainable access to adequate quantities of and acceptable quality water for sustaining livelihoods, human well-being, and socio-economic development, for ensuring protection against water-borne pollution and water-related disasters, and for preserving ecosystems in a climate of peace and political stability.<sup>120</sup>

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<sup>118</sup> Steven Connolly is also an alumnus of the West Virginia University College of Law, reinforcing the importance of training community-minded advocates in all levels of local and state leadership.

<sup>119</sup> Harrington, *supra* note 19, at 42–43; *See also* Ronald D. Eller, *Foreword to BACK TALK FROM APPALACHIA: CONFRONTING STEREOTYPES*, at ix (Dwight B. Billings et al. eds., 2013) (describing how Appalachia has been othered).

<sup>120</sup> U.N. DOCS, ANALYTICAL BRIEF OF WATER SECURITY & THE GLOBAL WATER INITIATIVE (Oct. 2013), <http://www.unwater.org/publications/water-security-global-water-agenda/>.



Large swaths of West Virginia recently experienced some level of water insecurity,<sup>121</sup> including contaminated drinking water and frequent water turn-offs or system failures. In 2014, a leak from a coal detergent manufacturer contaminated the drinking water in nine counties, impacting 300,000 residents and forcing the Governor to declare a state of emergency.<sup>122</sup> The impacted area included Charleston, the state capital. In addition to industrial pollution issues, a number of rural West Virginia communities have experienced water insecurity due to aging infrastructure. The town of Keystone in McDowell County has been under a boil-water advisory<sup>123</sup> for over six years due to leaks from old water pipes.<sup>124</sup> In January of 2018, the town experienced a temporary shutdown of the water system when the central pumping mechanism broke.<sup>125</sup> Other rural areas throughout the United States have experienced similar issues with water insecurity, including contamination from coal slurry ponds in North Carolina resulting in a community relying on bottled water for one-thousand days<sup>126</sup>, fracking-related contamination of public drinking water in Texas, Wyoming, and Pennsylvania<sup>127</sup>, nitrate pollution (which is linked to reproductive issues and cancer) in Arizona and Oklahoma<sup>128</sup>, and

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<sup>121</sup> Water insecurity is generally conceptualized as a lack of water security. For purposes of this article, it is a lack of access to sustainable and adequate water supplies to ensure human well-being and socio-economic development, including protection against pollution and water-related disasters.

<sup>122</sup> See W. VA. DEP'T OF HOMELAND SEC. AND EMERGENCY MGMT., REPORT TO THE JOINT COMM. ON GOV'T AND FIN. BY THE PUBLIC WATER SYSTEM SUPPLY STUDY COMM'N (Dec. 15, 2014), <https://dhsem.wv.gov/West%20Virginia%20Public%20Water%20Supply%20Study%20Commission/Documents/December%202014%20Report%20of%20the%20Water%20Commission.pdf>.

<sup>123</sup> See *What is a Boil Water Advisory?*, BOILWATERWATCH.ORG (March 8, 2017), <http://www.boilwaterwatch.org/index.php/2017/03/08/what-is-a-boil-water-advisory/> (explaining that boil water advisories are a precautionary measure made to the public advising them to boil tap water before use, and that boil water advisories indicate only that there could be contamination, whereas a boil water notice indicates that there is a confirmed contamination).

<sup>124</sup> In Keystone, the sustained state of the boil advisory runs counter to the temporary nature of boil water advisories and may be indicative of a larger, systemic issue. See David Horack, *Aged Water Mainline, Budget Both Under Pressure for City of Keystone*, WVNSTV.COM (Jan. 11, 2018), <https://www.wvnstv.com/local-news/mcdowell-county/aged-water-mainline-budget-both-under-pressure-for-city-of-keystone/909713317>.

<sup>125</sup> *Id.*; see also Memorandum from Wendy Braswell, Staff Attorney, on *Appalachia Power Company v. Keystone Municipal Water Works* (Oct. 2, 2015), <http://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=435725&NotType=> (documenting the water shortages experienced by residents due to broken pumping mechanisms or pipes, including stoppages that lasted for two weeks).

<sup>126</sup> Kevin Ridder, *1,000 Days on Bottled Water*, APPALACHIAN VOICES (Feb. 19, 2018), <http://appvoices.org/2018/02/19/1000-days-on-bottled-water-2/>.

<sup>127</sup> See generally U.S. ENVTL. PROT. AGENCY, HYDRAULIC FRACTURING FOR OIL AND GAS: IMPACTS FROM THE HYDRAULIC FRACTURING WATER CYCLE ON DRINKING WATER RESOURCES IN THE U.S. (Dec. 2016). See also Elaine Hill & Lala Ma, *Shale Gas Development and Drinking Water Quality*, 107(5) AM. ECON. REV. (PAPERS & PROC.) 522–25 (2017) (Pennsylvania-specific study).

<sup>128</sup> Craig Cox, *Trouble in Farm Country: As Runoff Fouls Tap Water Across Rural America*, ENVTL. WORKING GRP'S TAP WATER DATABASE, <https://www.ewg.org/tapwater/trouble-in-farm-country.php#.W2MqQdhKi8o> (last visited Nov. 8, 2018) (“Two-thirds of communities with nitrate levels at or above 5 ppm are in 10 states where agriculture is big business. Almost three-fourths of

general aging infrastructure which requires updating or complete redesign in order to provide adequate and safe water.<sup>129</sup> Of course, it is impossible to discuss water insecurity without recounting the tragic situation in Flint, Michigan.<sup>130</sup>

The prevalence of water security issues in rural and urban areas confirms that there are opportunities to build powerful coalitions across regions by focusing on core economic justice issues that impact all disenfranchised communities.<sup>131</sup> The water contamination crisis in Flint was driven by government disinterest in making the necessary financial commitments to protect poor people.<sup>132</sup> This same logic fuels the government's failure to invest in crumbling water infrastructure in Keystone, West Virginia.<sup>133</sup> Water insecurity provides an opportunity to engage in collective action and demand a meaningful government response on both the federal and local levels. Additionally, as evidenced by an open letter<sup>134</sup> of support from communities impacted by the 2014 industrial contamination in Charleston, West Virginia to

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communities whose drinking water is at or above the legal limit are found in just five states – Arizona, California, Kansas, Oklahoma and Texas.”).

<sup>129</sup> See generally BIPARTISAN POLICY CTR, AMERICA'S AGING WATER INFRASTRUCTURE 1 (2016) (“Our nation’s treatment works and water systems are failing and impacting our communities. All across America, we are faced with massive challenges to replace critical water and wastewater infrastructure. The American Society of Civil Engineers estimates \$3.6 trillion would need to be invested into U.S. infrastructure by 2020 just to raise the country’s support systems to acceptable levels.”); Joel Kurth & Mike Wilkinson, *Water Crisis Hits Michigan Suburbs: ‘We’ve Been Sounding Alarm For Years’*, CRAIN’S DETROIT BUS. (Oct. 26, 2017), <http://www.craindetroit.com/article/20171026/news/643266/water-crisis-hits-michigan-suburbs-weve-been-sounding-alarms-for-years> (“When a massive water main broke this week in Oakland County and made tap water unsafe to drink for 305,000 residents, a top utility official called the mishap ‘unprecedented.’ Experts fear it could be something else: a byproduct of aging infrastructure in Michigan whose failings are becoming more frequent and dangerous.”).

<sup>130</sup> See ANNA CLARK, THE POISONED CITY: FLINT’S WATER AND THE AMERICAN URBAN TRAGEDY 1–9 (1st ed. 2018) (explaining that in 2014, state officials in Michigan switched the water source serving the city to the Flint River; the new system had many problems and led to high-levels of contamination in the city’s water, including high levels of lead).

<sup>131</sup> See James L. Agee, *Protecting America’s Drinking Water: Our Responsibilities under the Safe Drinking Water Act*, 1 ENVTL. PROT. AGENCY J. 2, 3 (1975) (“This may seem to be a restatement of the obvious, but it is a principle all too often violated by the Federal Government. Paperwork cannot protect health – only action can.”).

<sup>132</sup> Clark, *supra* note 130, at 16–19 (documenting the numerous red flags ignored by the city’s Emergency Manager and MDEQ, the state’s environmental agency. Also, explaining that the very appointment of an Emergency Manager subverted the political system since the residents of Flint elected their City Council and Mayor but the actual decision regarding the water infrastructure was made by the appointed Emergency Manager. The Emergency Manager could not be removed by residents and was not accountable to them through the political process. The Emergency Manager did allow the City Council and Mayor to vote on the plan to switch the water source, but it was purely decorative and designed to gather public support.).

<sup>133</sup> CITY-DATA, <http://www.city-data.com/city/Keystone-West-Virginia.html> (reiterating that Appalachia and West Virginia’s portrayal as completely white is not an accurate narrative as Keystone’s population is majority African-American).

<sup>134</sup> Letter from the People of W. Va. to the People of Flint, Mich. (Feb. 9, 2016), <https://ohvec.org/blog/wp-content/uploads/2016/02/flint.pdf>.

the residents of Flint, Michigan – there is suffering and genuine empathy that can be found and marshalled in “Trump Country.”

Perhaps there is no greater evidence that drives home the importance of training thoughtful lawyers and leaders than the story of the two students assigned to create the Broadband Cooperative Toolkit. Both of the students assigned to the Broadband Cooperative Toolkit case were native West Virginians who self-identified as conservative. Both were committed to remaining in the state, possessing an incredibly deep knowledge of the issues plaguing their home counties and the state at large. By the end of the semester, the students were both inspired to advocate for infrastructure development through public investment, a decidedly not conservative viewpoint.<sup>135</sup> They began to openly question the objectives of “Appalachian elites” – concerns they had previously nurtured in private but never felt empowered or enabled to explore. Through their research, including support from the Michigan Broadband Cooperative<sup>136</sup> in western Washtenaw County, they began to draw parallels with structural, oppressive forces that cause disenfranchisement and divestment across impoverished areas of the country. Surprisingly, they found themselves agreeing more with their progressive professor than conservative pundits.<sup>137</sup> They also began to believe that collective action may be necessary for West Virginia’s future, as “we are not powerful enough or important enough on our own.”<sup>138</sup> Although these students did not transform overnight into racially conscious, social justice advocates, their exposure and training through the economic justice work has started an important process that will benefit their communities as well as other vulnerable communities across the U.S.

In his article examining the merit of social justice orientation in transactional clinical education, Professor Praveen Kosuri notes that “[l]aw school is first and foremost about educating students. Even though faculty members often use their positions to pursue their own social and political agendas (both inside and outside their institutions), without students, there are no law schools. Thus, the fundamental goal of every law school faculty member should be to educate students as ably as possible.”<sup>139</sup> I agree fervently with Professor Kosuri, although my conclusion is that the incorporation of justice is necessary to “ably” educate rural law students.

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<sup>135</sup> See Jena Baker McNeill, *Building Infrastructure Resiliency: Private Sector Investment in Homeland Security*, HERITAGE FOUND., <https://heritageaction.com/toolkit/infrastructure> (last visited Nov. 8, 2018) (a conservative think-tank championing private sector infrastructure projects as opposed to Federal projects).

<sup>136</sup> *Who We Are*, MICH. BROADBAND INITIATIVE, <http://www.mbcoop.org/who-we-are/> (A rural broadband cooperative located in western Washtenaw County in Southeastern Michigan, working to “working to bring affordable high quality, reliable, and uncapped internet access to our area.”).

<sup>137</sup> See Interview by Steve Inskeep, NPR with Peter Morici, Professor of Econ., Univ. of Md. (March 17, 2017) (“Heck, we’ve been pouring money into Appalachia since the Roosevelt administration. At what point do we say, we’ve done what we can?”).

<sup>138</sup> This sentiment was included in a student’s reflection paper.

<sup>139</sup> Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 B.C. J. L. & SOC. JUST. 331, 336 (2012).

## III. THE PATH FORWARD

If rural law schools narrow their educational focus to “deal lawyering,” they will consign rural communities to economic ruin. The dominant economic system, neoliberal capitalism, is supported by interlocking systems of structural subordination used to disenfranchise entire communities.<sup>140</sup> Structural racism has created growing wealth disparities for communities of color, even negatively impacting the success rates for minority owned businesses.<sup>141</sup> Likewise, feminist economists have long noted the importance of unpaid or underpaid female labor in buttressing global economies.<sup>142</sup> These structural inequities are not limited to communities of color or urban communities, but also reinforce poverty in the rural context. In Appalachia, the dominance of corporate monopolies led to large scale environmental degradation and the systematic subversion of political and economic autonomy.<sup>143</sup> This, in turn, leads to greater dependence on the corporate actors, who invested only the bare minimum into the community to ensure continued control over the population and exploitation of natural and human resources. Corporate actors weaponize any element that can be leveraged for their benefit, including capitalizing on racism, xenophobia, and perpetuating the geographic isolation of Appalachian communities.<sup>144</sup> The result is that eighteen percent of West Virginians live in poverty, with women and people of color bearing a disproportionate share of that burden.<sup>145</sup>

The path forward requires rural law schools and lawyers to engage in an economic justice approach to transactional lawyering to best serve communities. This approach to transactional lawyering best serves the needs of rural communities and is inclusive of the work and contributions of “deal lawyers.” Rather than focusing solely on entrepreneurship, which cannot truly alleviate poverty in a structurally unjust and resource poor environment, the economic justice approach to transactional lawyering champions legal and policy reforms designed to reclaim economic power on the community level. Moreover, law schools have a responsibility to train lawyers and leaders who can build coalitions to challenge economic injustice.

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<sup>140</sup> Lofaso & Stump, *supra* note 11, at 108.

<sup>141</sup> See Lynnise Pantin, *The Wealth Gap and the Racial Disparities in the Startup Ecosystem*, 62 ST. LOUIS UNIV. L. J. (forthcoming 2018) (discussing the historical and structural barriers that have prevented black-owned businesses from competing successfully in the American market); see generally Robert W. Fairlie & Alicia M. Robb, *Why Are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital*, 25 J. LABOR ECON. 289 (2007); W. Sherman Rogers, *The Black Quest for Economic Liberty: Legal, Historical, and Related Considerations*, 48 HOW. L. J. 1 (2004).

<sup>142</sup> Mary Mellor, *Ecofeminist Political Economy*, 1 INT’L J. GREEN ECON. 139 (2005).

<sup>143</sup> RONALD D. ELLER, *UNEVEN GROUND: APPALACHIA SINCE 1945* 7 (2008) (“Much of the story of Appalachia describes the exploitations of the region at the hands of outside economic interests.”).

<sup>144</sup> *Id.* at 254 (“The region’s poverty, politics, and long history of environmental exploitation subjected mountain communities to disproportionate threats from health hazards and environmental damage.”).

<sup>145</sup> See Press Release, W. Va. Ctr. on Budget & Policy, *New U.S. Census Data Shows Poverty Remains A Problem in West Virginia* (Sept. 14, 2017), [http://www.wvpolicy.org/new\\_u\\_s\\_census\\_data\\_shows\\_poverty\\_remains\\_a\\_problem\\_in\\_west\\_virginia](http://www.wvpolicy.org/new_u_s_census_data_shows_poverty_remains_a_problem_in_west_virginia) (Although 18% of West Virginians lived in poverty during 2016, approximately 19% of women and 27% of African Americans lived in poverty).

West Virginia and the Appalachian region lack the resources and power to effectuate structural changes without making common cause with other disenfranchised communities. Ultimately, this is the lesson from the Poor People's Campaign. Concerted, collective action organized by diverse coalitions, united to combat the interlocking systems of subordination that create economic injustice is the only way to create meaningful change. We must train our students to champion their communities and protect their futures. We must be more than deal lawyers. We must be more than the Trump Country narrative.