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INTRODUCTION

Professor Derrick Bell's renowned interest convergence theory is a remarkable tool for analyzing the interplay of power and subordination in this country. Broadly stated, the interest convergence theory holds that where there are power dynamics and divergent interests between parties with unequal bargaining power, the subordinate party's interests will not advance unless that interest does not offend the status quo of the majority party.¹ To date, legal scholars have discussed the interest convergence theory in a rights-based context as a direct or indirect explanation for certain judicial outcomes or as a community organizing strategy for subordinated groups.² This essay seeks to broaden its application by exploring its utility as a transactional mechanism for alleviating metropolitan poverty. Specifically, this essay is a thought experiment positing that the pursuit of equitable economic development, a framework for pursuing economic justice and equity throughout metropolitan regions,³ may be advanced by the alignment of

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¹ See *infra* Part I.A. for a discussion of how Professor Bell specifically articulated the interest convergence theory in terms of the interests of black and white Americans in desegregated public education.

² See *infra* Part I.

³ Equitable development is based on four guiding principles. (1) Policies and programs that focus on the physical environment and those that focus on families and individuals should be integrated to affect both the place and the people who live there. (2) Strategies should concentrate on reducing both local and regional disparities in income, wealth, and access to opportunity. (3) Investments should generate a "double bottom line": both economic returns and community benefits. (4) Decision-making should include meaningful community participation and community leadership. See JUDITH BELL, CARL

certain regional interests through a transactional interest convergence framework. The importance of designing comprehensive methods for addressing regional economic disparities and poverty is becoming increasingly urgent because poverty is now deeply entrenched in both urban and suburban communities across metropolitan regions; and a transactional approach, an approach that seeks to bring value to the involved parties as opposed to “providing a win” for only one party against another or others, may be one such method. To operationalize Professor Bell’s theory, this essay uses equitable economic development as a lens to explore whether interest convergence can be employed in a transactional context to compel a convergence of regional interests to address regional poverty. Part I presents Professor Bell’s interest convergence theory as articulated in his analysis of *Brown v. Board of Education* and as it is perceived today. Part II details regional poverty and presents the transactional opportunities in equitable economic development. Part III presents the application of interest convergence as a transaction and identifies relevant regional interests and interest holders for convergence.

I. INTEREST CONVERGENCE THEORY AND INTEREST DIVERGENCE

At the most fundamental level, interest convergence theory can explain how and when to align divergent interests, begging the question of what happens when formerly aligned interests become unaligned. As demonstrated below through a discussion of our currently desegregating public school system, without significant coalition building among all relevant interest groups concerned about a particular issue, the unalignment of interests cannot only undo the outcome that resulted from a convergence of those interests but can actually abrogate any progress made during the period of convergence.

A. Interest Convergence Theory

Professor Bell presented the interest convergence theory in a 1980 *Harvard Law Review* article to explain the Supreme Court’s decision to desegregate public education in *Brown v. Board of Education*.⁴ He theorized that the Court decided to desegregate public education because there was a convergence of the interests

OSHIRO & HARRY SNYDER, *ADVOCATING FOR EQUITABLE DEVELOPMENT* (2004), available at <http://www.policylink.org/find-resources/library/advocating-for-equitable-development>.

⁴ See Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980). Professor Bell’s article was a direct response to Professor Herbert Wechsler’s critique of the Supreme Court’s rationale in *Brown*.

deemed relevant at the time. These interests belonged to the following two groups: elite white Americans and black Americans.⁵ Professor Bell identified the interests of elite white Americans as (i) wanting to stem the flow of communism in the black community; (ii) protecting America's reputation regarding human rights throughout the world; and (iii) promoting the industrialization of the American South.⁶ Unsurprisingly, he identified the interests of black Americans as obtaining equal access to quality K-12 public schools, which meant eradicating the system of segregation that kept black students from attending white schools.⁷ Professor Bell reasoned that the convergence of these two sets of interests created space for the *Brown* decision. Elite whites would not object to desegregation because desegregation would work to (i) appease black Americans and thus stem the spread of communism in the black community; (ii) demonstrate to the global community that America was addressing its race question; and (iii) move the South from an agrarian economy towards the industrialization of the North.⁸ As such, Professor Bell theorized that the Court deemed the decision viable because the elite white interests did not perceive that their status in America would change in any way from the desegregation of public schools. In other words, elite white Americans would not become less elite because of desegregation, and, in fact, would benefit reputationally from the decision. Thus, the first articulation of the interest convergence theory was in a rights-based context—where the identified interests concerned the rights of black children to attend public schools.⁹

B. *Contemporary Views on Interest Convergence and Unaligned Interests*

Although not without controversy or critique, interest convergence theory is a pillar of the Critical Race Theory (“CRT”) movement.¹⁰ CRT advances it as a framework for naming subordination and power differentials.¹¹ It identifies relevant and subordinated interests and finds points of convergence among the different interests at stake. Scholars have explored interest convergence frameworks by

⁵ The interests of poor white Americans were deliberately excluded. *See id.* at 525–26.

⁶ *See id.*

⁷ *See id.*

⁸ *See id.*

⁹ Or, more generally stated, the rights of all children to attend desegregated public schools.

¹⁰ *See, e.g.*, RICHARD DELGADO & JEAN STEFANIC, CRITICAL RACE THEORY 16–20 (2001).

¹¹ *See id.*

applying the theory to a variety of legal contexts, including criminal law¹² and gay rights.¹³ Despite the context of application, the intent of the application is always the same—to demonstrate an alignment of interests between multiple and distinct interest holders where at least one set of the interest holders is a subordinated group in American society.¹⁴

While not disagreeing with the theory as an explanation for *Brown*, many scholars describe the theory as pessimistic because it asserts that the interests of subordinated peoples will only advance where the majority does not perceive a threat to its status quo.¹⁵ In the application of interest convergence as a collaborative transaction, this essay intentionally deviates from Professor Bell's idea that a majority party's interest must remain unchanged to accomplish an interest convergence. As explored later, variations of interest convergence operate effectively in distinct transactional disciplines, an arguably much more optimistic demonstration of the theory; however, in the rights-based context of public education, Professor Bell's pessimism seems warranted considering the rampant desegregation of our public schools currently underway.

Desegregation never actually mirrored the language of the Supreme Court's holding in *Brown*. Many scholars and commentators believe this is because the Court failed to provide a specific framework for the implementation of desegregation, leaving that work to the states and local governments to determine and enforce. Thus, while desegregation certainly occurred in many communities throughout the country, the country's public school system never reached full integration. Not only was integration never fully achieved, today the American public school system is quickly reverting back to a segregated system (through both informal and formal practices). "Black children across the South now attend

¹² See, e.g., Cynthia Lee, *Cultural Convergence: Interest Convergence Theory Meets the Cultural Defense*, 49 ARIZ. L. REV. 911 (2007) (using interest convergence theory as the foundation for a new normative theory, cultural convergence, for predicting when cultural evidence will be successfully used by defendants in criminal trials).

¹³ See, e.g., Catherine Smith, *Unconscious Bias and "Outsider" Interest Convergence*, 40 CONN. L. REV. 1077 (employing interest convergence theory as an organizing strategy to promote what she coined "outsider convergence").

¹⁴ For an overview of articles with interest convergence applications, see Justin Driver, *Rethinking the Interest-Convergence Thesis*, 105 NW. U. L. REV. 149, 150–51 (2011).

¹⁵ See Sheryll D. Cashin, *Shall We Overcome? Transcending Race, Class, and Ideology through Interest-Convergence*, 79 ST. JOHN'S L. REV. 253, 272–74 (2005).

majority-black schools at levels not seen in four decades”;¹⁶ and resegregation is not strictly a southern phenomenon.

There are many reasons for the desegregation of America’s public schools, however, keeping with Professor Bell’s assertions about the underlying reasons for the *Brown* decision, it could be argued that a primary reason for resegregation is that the interests that converged for the Court in *Brown* are now unaligned.¹⁷ Sixty years after *Brown* was decided, elite white America is no longer concerned with stemming the flow of communism in the black community; protecting America’s reputation regarding human rights throughout the world; and promoting the industrialization of the American South. Black Americans, however, are still concerned about obtaining access to quality public education for black American school children. This unalignment of interests is evidenced by our rapidly resegregating public schools and highlights a challenge of using interest convergence in rights-based contexts. In such cases, the identified interests are static, forever to be the basis of a convergence—with no room for those interests to evolve over time without upending the convergence. As outlined in Part III, the application of interest convergence in a transactional context (as opposed to a rights-based context) can enhance the identification of the affected interests to facilitate an alignment of those interests that is more likely to remain converged once aligned. In other words, interest convergence in a transactional framework provides for the opportunity to identify the true interests of the relevant parties in a context that encourages a more permanent alignment of those interests because of the collaborative nature of transactional practice. Next, however, this essay presents a brief synopsis of metropolitan development to frame the origins of regional inequities and illustrate opportunities for interest convergence as a transaction.

II. REGIONAL INEQUITY AND POVERTY

One of the legacies of the Great Recession¹⁸ is the deep expansion of poverty beyond the boundaries of urban central cities, expanding the inequality gap to

¹⁶ Nicole Hannah-Jones, *Segregation Now*, PROPUBLICA (Apr. 16, 2014, 11:00 PM), <http://www.propublica.org/article/segregation-now-full-text>. See also Trymaine Lee, *White School District sends Black Kids back to Failed Schools*, MSNBC (July 7, 2014, 4:31 PM), <http://www.msnbc.com/msnbc/white-district-sends-black-kids-back-failed-schools> (detailing the decision of the affluent Francis Howell school district to disenroll 400 black transfer students).

¹⁷ Professor Bell acknowledged the return to divergent interests. See Bell, *supra* note 4, at 527–28.

¹⁸ The Great Recession officially began in December 2007 and ended in June 2009. See NAT’L BUREAU OF ECON. RES., BUS. CYCLE DATING COMMITTEE REP. (Sept. 2010).

historic widths. For example, in 2010, 23 million more people were poor than in 2000; and the number of suburban poor rose by over 50% during this ten-year period.¹⁹ Despite the end of the Great Recession, poverty continues to spread and the inequality gap continues to widen.²⁰ Our metropolitan regions are growing in domestic and global import as economic actors;²¹ and as we move to celebrate these regions as yardsticks for measuring economic growth, it is important to also track regional poverty rates and to create corresponding poverty alleviation programs because of spreading regional inequities. Metropolitan regions are urban center cities and their lesser-populated but socially and economically connected suburban localities.²² Regional inequities encompass disparities between these types of localities within in the same region in categories such as wages and income,²³ the location of affordable housing, and the availability of jobs.²⁴ While the geography and demographics of poverty are changing in ways that have triggered a national conversation about class and inequality, anti-poverty advocates must continue to be vigilant because the stark inequalities present in the post-recession economy compel the need to examine anew the pervasiveness of poverty as it spreads across metropolitan regions.

Poverty has historically been an urban problem, and, as such, a black America problem, but, now, it is a suburban problem too. Regional poverty is a pervasive problem that lies unseen by many state and local government leaders because, for many, the idea of poverty in the suburbs is a completely unfamiliar concept. This is largely due to the fact that, as briefly outlined below, the suburbs were designed to provide relief to white America from poverty and other urban ills associated with burgeoning city populations. Moreover, the suburbs were intentionally constructed

¹⁹ See ELIZABETH KNEEBONE & ALAN BERUBE, *CONFRONTING SUBURBAN POVERTY IN AMERICA* (2013).

²⁰ See, e.g., Dionne Searcey & Robert Gebeloff, *Middle Class Shrinks Further as More Fall Out instead of Climbing Up*, N.Y. TIMES, Jan. 26, 2015.

²¹ See, e.g., BRUCE KATZ & JENNIFER BRADLEY, *THE METROPOLITAN REVOLUTION* (2013) (arguing that metropolitan leaders in state and local governments are advancing economic development).

²² See *Metropolitan Statistical Area*, UNITED STATES CENSUS BUREAU, http://quickfacts.census.gov/qfd/meta/long_metro.htm (last visited Apr. 30, 2014).

²³ See, e.g., U.S. METRO ECONOMIES, INCOME AND WAGE GAPS ACROSS THE US (2014), available at <http://www.usmayors.org/metroeconomies/2014/08/report.pdf>.

²⁴ See generally MANUEL PASTOR, JR. ET AL., *THIS COULD BE THE START OF SOMETHING BIG: HOW SOCIAL MOVEMENTS FOR REGIONAL EQUALITY ARE RESHAPING METROPOLITAN AMERICA* (Cornell Univ. Press 2009).

with no regard for social service infrastructure as it was assumed that suburbanites would have no need for such services.

Before the creation of the first suburbs, the American landscape was basically either industrial city or rural space, with African Americans overwhelmingly residing in the South. During the Great Migration millions of blacks migrated to the North, West, and Midwest to escape the dire economic and violent conditions of the South,²⁵ and, given the hostile agrarian conditions they abandoned in the South, most did not arrive in their new locations with significant amounts of wealth. The discriminatory conditions they encountered in these locations, while different, also restricted opportunities for black wealth accumulation—cementing the foundation of the wealth gap between blacks and whites in America. Regardless of their geographic location, housing segregation ensured that black neighborhoods suffered from high poverty rates almost by default. When President Lyndon Johnson declared the War on Poverty in 1964,²⁶ black America was simultaneously viewed as both victim and enemy. The federal government presented the Urban Renewal Program as a means for fighting the War on Poverty.²⁷ The effects of urban renewal, however, were disastrous for blacks in central cities because these projects simultaneously destroyed the social fabric and economic health of black communities by designating these communities as locales for large-scaled development projects such as highway construction and forcibly displacing blacks from established communities and concentrating them in public housing projects, demolishing thousands of homes and uprooting thriving businesses.²⁸

As inner cities were being physically rearranged and culturally altered, suburban communities were being nurtured and protected.²⁹ Mortgages enabled home purchases for whites while redlining and restrictive covenants barred blacks from suburban communities.³⁰ As affordable and fair housing advocates and

²⁵ See, e.g., THOMAS J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS* 23–24, 33–34 (2005). The date range for the Great Migration is typically reported as from 1910–1970. However, that date range has been divided into two segments: 1910–1930 and 1940–1970.

²⁶ See, e.g., Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 *YALE L.J.* 1317 (1964).

²⁷ See generally MINDY THOMPSON FULLILOVE, *ROOT SHOCK: HOW TEARING UP CITY NEIGHBORHOODS HURTS AMERICA AND WHAT WE CAN DO ABOUT IT* (2004) (describing the impact and physiological harm of urban renewal on central city residents).

²⁸ See *id.*

²⁹ See generally DAVID RUSK, *INSIDE GAME/OUTSIDE GAME: WINNING STRATEGIES FOR SAVING URBAN AMERICA* (1999).

³⁰ See DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID* (1993).

community groups challenged discriminatory housing practices, however, their efforts led to the construction of affordable housing in many suburbs that became more socially and economically diverse as residents moved from the central city. As a result of the influx of mixed incomes, the housing stock in the suburbs also diversified. Single-family homes were still the norm, but multi-family housing and apartment buildings were also constructed. Through formal litigation and an informal shift in cultural norms, the suburbs became less exclusive and more economically and ethnically diverse. This change in complexion combined with the 1990's strong economy and housing boom prompted many affluent, and typically white, residents to move deeper into regions and further from central cities to populate new suburban communities called "exurbs"³¹—designating the first suburbs adjacent to the central cities the "inner-ring or first-tier suburbs," and extending metropolitan regional boundaries.³²

Discriminatory housing and lending practices sanctioned by the federal government and public policy along with commercial disinvestment from the center cities in favor of the suburbs by business and industry to pursue white flight formed the basis of a deepening and persistent wealth gap between black and white America.³³ The same lending and housing discriminatory practices that oppressed black America provided much of white America with opportunities for quality public education, access to higher education, employment, and housing (in terms of both accessibility and equity)—and thus enabled white families to accumulate wealth.³⁴ When white America moved into the suburbs, that exodus depleted center city tax bases, decreasing the overall economic health of center cities, weakening the quality of services that cities could provide to the remaining residents, and engendering the racialization of poverty so that "black," "poor," and "city" became synonymous terms.³⁵ Black Americans, including those with financial means, were

³¹ Exurbs are generally considered low-density communities that extend beyond suburban communities and house affluent residents. *See, e.g.,* Judith Welch Wegner, *North Carolina's Annexation Wars: Whys, Wherefores, and What Next*, 91 N.C. L. REV. 165, 257 n.414 (2012).

³² *See, e.g.,* Bernadette Hanlon, *A Typology of Inner-Ring Suburbs: Class, Race, and Ethnicity in U.S. Suburbia*, 8 CITY & CMTY. 221, 227 (2009).

³³ For a fascinating historical account of the origins of the wealth gap and inequity in America, *see* Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/>.

³⁴ It goes without saying that white Americans are not immune to or unaffected by poverty. The intent here is to list the barriers that prohibited black families from accumulating wealth in the same rates as white families.

³⁵ *See supra* note 30, at 45.

effectively trapped in center cities by discriminatory (but legal) banking and housing practices. Not only were they confined to center city boundaries, but blacks were then typically confined to particular neighborhoods within those boundaries by restrictive housing covenants that limited where blacks could reside, regardless of their social economic status.³⁶

Regional inequities emerged with the dawn of the first suburbs, creating both literal and figurative boundaries between the suburbs and center cities. Just as the center cities were racialized as poor and black, the suburbs became to mean “affluent” and “white.” The character of many of today’s suburbs, however, is exceedingly different from the character that was prevalent when these suburbs were first formed, with the boundaries between center cities and inner-ring suburbs becoming blurred.³⁷ Although the suburbs originated as enclaves of affluence, over the course of the last 30 years poverty has spread from the center cities to take up residence in American suburbs as well. Today, 15% of the American population lives below the federal poverty line,³⁸ and the suburbs collectively hold the “largest poor population in the country.”³⁹ Thus, poverty is now steadfastly both an urban and suburban challenge. As poverty spread to the suburbs, it simultaneously entrenched itself deeper into urban communities.⁴⁰ Urban residents are still more likely to be poor than suburban residents, however, poverty in the suburbs is growing at a faster rate.⁴¹

Although poverty has never been solely a black America problem, it has operated in black America very differently from its operations in white America due to the race and class intersections that are the unique experience of blacks in

³⁶ *See id.*

³⁷ *See* Alan Berube, Senior Fellow and Deputy Director, Brookings Metro. Policy Program, The State of Metropolitan America: Suburbs and the 2010 Census (July 14, 2011), *available at* <http://www.brookings.edu/research/speeches/2011/07/14-census-suburbs-berube>.

³⁸ For a family of four in 2012 the federal poverty rate was \$23,492. *See* Elizabeth Kneebone & Cary Lou, *Suburban—and Poor: The Changing Landscape of Race and Poverty in the U.S.*, PLANNING, 17 (June 2014), *available at* <http://confrontingsuburbanpoverty.org/wp-content/uploads/2014/06/Suburban-and-Poor.pdf>.

³⁹ KNEEBONE & BERUBE, *supra* note 19, at 3.

⁴⁰ *See id.* at 16–20.

⁴¹ *See id.*

America.⁴² Nevertheless this intersection of race and class extends beyond the experience of black America. In 1964, the country's demographics looked very different from those of today. In particular, conversations about race were focused on a black/white dichotomy, with white Americans representing a large majority of the American population. The country's demographics are dramatically different now, with an increased number of racial and ethnic groups contributing to the conversation. In fact, ethnic and racial minorities are projected to outnumber non-Hispanic whites by 2042.⁴³ Before this date arrives, however, it is necessary to take steps to avoid sentencing these increased populations to poverty. Today, people of color are disproportionately represented in the ranks of the poor. For example, in 2012 non-Hispanic whites comprised 63% of the population and 41% of individuals in poverty.⁴⁴ In comparison, blacks comprised 13% of the nation's population and more than 20% of individuals in poverty and Latinos comprised 17% of the general population and 27% of individuals in poverty.⁴⁵ Both Blacks and Latino consistently register poverty rates above 25%, whereas non-Hispanic whites register 9%.⁴⁶ Thus, the contours of modern poverty cut across demographics. The changing demographics of the country, the worsening conditions in urban communities, and the suburbanization of poverty cry out jointly for a new approach to poverty alleviation because existing models are ill suited and outdated. To be effective, any new approach must adopt a regional perspective and be comprehensive in scope (meaning it must recognize the connections between areas such as the proximity of affordable housing to living wage jobs) and obtain the involvement of all concerned interest groups. As explored in the next section, the economic equitable development movement may provide the transactional opportunities for interest convergences that meet those requirements.

⁴² "Negro poverty is not white poverty. Many of its causes are the same. But there are differences—deep, corrosive, obstinate differences—radiating painful roots into the community, the family, and the nature of the individual." MASSEY & DENTON, *supra* note 30, at 45.

⁴³ See Sam Roberts, *Minorities in the U.S. set to become majority by 2042*, N.Y. TIMES (Aug. 14, 2008), available at http://www.nytimes.com/2008/08/14/world/americas/14iht-census.1.15284537.html?_r=0 (last visited May 20, 2015).

⁴⁴ See Kneebone & Lou, *supra* note 38.

⁴⁵ See *id.*

⁴⁶ See *id.*

III. INTEREST CONVERGENCE TRANSACTIONS AND EQUITABLE ECONOMIC DEVELOPMENT

Transactional practice is fundamentally about value creation—more specifically, about creating value for all parties to a transaction.⁴⁷ In other scholarship, I have written about the application of interest convergence in a transactional context by presenting an interest convergence methodology that incorporates a variety of variables to navigate the alignment of multiple interests through regional governance.⁴⁸ This essay follows in that vein by exploring the transactional nature of interest convergence in a more general fashion and its potential as a transactional mechanism for poverty alleviation. This potential exists because a transactional framework can move interest convergence beyond a rights-based focus and the typically collaborative nature of transactional practice for the production of value could be an optimistic application of interest convergence in such a fashion as to produce more permanent interest alignments and outcomes in equitable economic development to counter regional inequities and poverty.

Until now, scholars have generally presented interest convergence in litigation and other rights-based contexts, and these contexts have certain limitations.⁴⁹ For example, while the navigation of rights-based controversies has been significant for securing fundamental rights for subordinated groups, the framework of such controversies can lead to a narrow interpretation of the interests involved, having the effect of a zero-sum game where one party's gain is a corresponding loss for another.⁵⁰ In addition, there is the challenge of moving from the "social ideal" of the rights recognized to "an institutional program" to effectuate those rights.⁵¹ In other words, the execution or fulfillment of rights does not necessarily follow their formal recognition. A transactional approach, in contrast, is a more collaborative

⁴⁷ See, e.g., Ronald J. Gilson, *Lawyers as Transaction Cost Engineers* (Aug. 1997), available at <http://ssrn.com/abstract=11418>.

⁴⁸ See Patience A. Crowder, *(Sub)Urban Poverty and Regional Interest Convergence*, 98 MARQ. L. REV. 101 (2015).

⁴⁹ But see Sheryll D. Cashin, *Shall We Overcome? Transcending Race, Class, and Ideology Through Interest-Convergence*, 79 ST. JOHN'S L. REV. 253 (2005) (presenting interest convergence theory as an appropriate organizing strategy for forming multi-racial coalitions to promote politically progressive legislation to challenge racial inequalities).

⁵⁰ See John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129, 2215–16 (1992).

⁵¹ See *id.* Again, the failure to establish a national, comprehensive process for ending segregation demonstrates this point.

undertaking.⁵² Typically documented by some form of contract, a transaction is a voluntary exchange between two or more parties of goods, services, money, information knowledge, land, or some other item of value to the parties involved. Under most circumstances, all parties to the transaction find some sort of value in their participation in it. Unlike the most typical rights-based or litigation-oriented controversies, transactions are not about A versus B where one party is seeking some sort of recompense from the other at that other's expense. Instead, in most typical transactions, A and B want something from each other; but it is a mutual exchange that they both seek and work collaboratively towards a certain outcome. Banks lend to borrowers who want to borrow money; commercial landlords lease to commercial tenants who want to lease property; nonprofit organizations execute memorandums of understanding to memorialize strategic partnerships and collaborate on service delivery and grant expenditures; and companies execute joint venture agreements to launch new projects. Thus, transactions are reciprocal relationships of influence where the future behavior of the parties is governed by the terms of the deal.⁵³

As a transaction, interest convergence has many of the same elements as a typical contractual arrangement. Like the execution of a contract, interest convergence, in both transactional and rights-based contexts, necessitates the participation of multiple parties, here multiple interest holders. Also, the purpose for executing a contract, interest convergence in a transactional context is about providing a path for a course of action to set expectations for the parties' future behavior. Skilled transactional lawyers are prized for their creative but detailed drafting skills and their ability to engage in preventative lawyering on behalf of their clients, which is lawyering to minimize future risks and litigation.⁵⁴ Interest convergence as a transaction is also preventative in nature by seeking to effectively align interests in a manner that will avoid a later divergence (as with the current state of resegregation in the public school system).⁵⁵ A main distinction between most transactions and interest convergence as a transaction is that interest convergence is not about an exchange where the possession or ownership of a thing

⁵² See ALICIA ALVAREZ & PAUL R. TREMBLAY, INTRODUCTION TO TRANSACTIONAL LAWYERING PRACTICE 4 (2013).

⁵³ *Id.*

⁵⁴ See Rachel Amow-Richman, *Employment as Transaction*, 39 SETON HALL L. REV. 447, 450 (2009). See also ALVAREZ & TREMBLAY, *supra* note 52, at 5.

⁵⁵ See *supra* Part I.B.

is changed, but, instead, is a mechanism for the collaborative exchange of information to align interests for the purpose of increasing social and economic value of the interest holders through a particular outcome (such as affordable housing).⁵⁶ Through a transactional process, the interest holders' interests are unearthed as the interests were in *Brown*. Interest convergence in a transactional context may be a useful tool for addressing metropolitan poverty because it can address inequities that are existing interest divergences at regional levels.

Transactional mechanisms in poverty alleviation are not new. As both a movement for social justice and a legal practice,⁵⁷ community economic development (CED) emerged to develop, support, and promote community-based economic development initiatives designed to generate and maintain wealth within specific neighborhoods through direct community engagement by the efforts of nonprofit organizations and community development corporations. While community engagement lies at the center of all CED efforts, CED efforts are bookended by business law and government-sponsored economic development programs designed to support initiatives such as small business development, the construction of affordable housing, and workforce development. As such, much of CED is transactional law practice. Many of CED's transactional elements are replicated in the movement for equitable economic development. In fact, in many instances, equitable economic development is, arguably, regionalized CED.⁵⁸ Equitable economic development is a framework that seeks to ensure all of the residents in a metropolitan region have the opportunity to participate in and benefit from the benefits of regional growth.⁵⁹ On the macro level, the equitable economic development movement is more policy oriented than CED; but its policy and organizing efforts seeks to create the possibility for CED-type projects to occur throughout metropolitan regions. CED efforts have historically focused on obtaining and enhancing the participatory democracy rights of residents in low-income neighborhoods to foster community participation in redevelopment and

⁵⁶ See *supra* notes 44–51 and accompanying text.

⁵⁷ See, e.g., Roger A. Clay, Jr. & Susan R. Jones, *A Brief History of Community Economic Development*, 18 J. AFFORDABLE HOUS. & CMTY. DEV. L. 257 (2009); Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399 (2001).

⁵⁸ See Scott L. Cummings, *Recentralization: Community Economic Development and the Case for Regionalism*, 8 J. SMALL & EMERGING BUS. L. 131 (2004). See also Patience A. Crowder, *Inequality, Regional Economic Development, and the New Community*, 43 SW. L. REV. 569 (2014).

⁵⁹ See BELL, OSHIRO & SNYDER, *supra* note 3.

economic development projects directed by local nonprofit organizations using federal and/or state grant funds for particular projects or programs. Organizations at the forefront of the equitable economic development movement seek to build policy equity agendas around growing good jobs, building human capabilities, and erasing racial barriers and expanding economic opportunities.⁶⁰ The goal is for these sorts of policy initiatives to manifest throughout metropolitan regions. For example, public transit is an equitable economic development platform.⁶¹ Equity in regional public transit demands that transit construction projects provide quality jobs that pay living wages for low-income residents and that the burdens and benefits of public transportation (e.g. the locations of stations and stops) are fairly distributed throughout a region.⁶² These sorts of campaigns are facilitated through regional organizing and coalition efforts that are reminiscent of the community engagement in CED but also quite distinct, largely because of the types of interests involved at the regional level.⁶³

Similar to CED, regional coalition building seeks to identify the interests and engender the participation of residents but in regional planning processes. In addition to the larger geographic space (a region versus a neighborhood), however, the institutional and categorical interests are much broader. There are strong synergies between the interest convergence theory's alignment of interests and the coalition building strategies fundamental to CED practice and the equitable economic development movement,⁶⁴ and these synergies lie in transactional practice. Conceiving interest convergence as a transaction may provide a roadmap for engaging with regional interest holders to find points of convergence that would lead to the implementation of regional poverty alleviation mechanisms. In comparison to how it plays out in rights-based controversies, interest convergence in a transactional context can yield a more permanent convergence where interests are unlikely to later diverge (avoiding the outcome of public school desegregation

⁶⁰ See *Equitable Economy: Policy & Strategies*, POLICYLINK, <http://www.policylink.org/focus-areas/equitable-economy/policy-strategies> (last visited Aug. 31, 2014).

⁶¹ See, e.g., THE LEADERSHIP CONFERENCE EDUCATION FUND, GETTING HOME: TRANSPORTATION EQUITY AND ACCESS TO AFFORDABLE HOUSING (July 2011), available at <http://www.civilrightsdocs.info/pdf/docs/transportation/getting-home-july21.pdf>.

⁶² See *id.*

⁶³ See generally PASTOR ET AL., *supra* note 24.

⁶⁴ See, e.g., Clay & Jones, *supra* note 57; Cummings, *supra* note 57, at 422–40; Sheila R. Foster & Brian Glick, *Race, Economic Justice, and Community Lawyering in the New Century, Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CALIF. L. REV. 1999 (2007).

previously discussed). This is because a transactional application of the interest convergence theory would (i) identify relevant interest holders and their relevant interests; (ii) identify avenues for alignment of those interests; and (iii) encourage interest holders to reconceive their self-interests by demonstrating that the focus is no longer on rights that might be gained or lost but on coalition-building for the benefit of all interest holders. Thus, this essay suggests that interest convergence operating in a transactional context could facilitate sustainable alignments between distinct sets of interests and that such alignments would be fluid and responsive to changes in interests over time.

Metropolitan regions house several different categories of regional interest holders. For the sake of simplicity of this thought experiment and the limited scope of this essay, this essay briefly contemplates the following broadly-defined categories of regional interest holders: the upper, middle,⁶⁵ working, and lower economic classes.⁶⁶

Professor Bell identified both interest holders (i.e. blacks and elite whites) and their interests (i.e., respectively, a desegregated public school system and strengthening America's international reputation on race relations, placating the black community, and moving the South towards industrialization).⁶⁷ Here, we could imagine that the corresponding interests of the regional interest holders are as follows: upper-class residents want to maintain their status quo; middle-class residents want to alleviate regional poverty by stemming the expansion of suburban poverty which was significantly implied the middle class; and low- and working-class residents want equitable economic development. Each of these are interests that must be aligned to advance the equitable economic development movement. Whether a rights-based or transactional context, interest convergence theory requires a mechanism for convergence. In *Brown* it was the Supreme Court. Here, the mechanism for interest convergence as a transaction for alleviating regional poverty is regional organizing and coalition building.⁶⁸ Like all transactions,

⁶⁵ For the purposes of this essay, "middle class" includes both upper and lower middle class.

⁶⁶ There are no uniform definitions for these terms aside from the definition of the federal poverty level. See, e.g., Craig K. Elwell, *The Distribution of Household Income and the Middle Class*, CONGRESSIONAL RESEARCH SERVICE REPORT, available at <https://fas.org/sgp/crs/misc/RS20811.pdf>. These distinctions work for the purposes of this essay.

⁶⁷ See *supra* notes 4–8 and accompanying text.

⁶⁸ Variations of interest convergence models exist in different types of transactional practice, including negotiation. In negotiation theory, interest convergence theory is found in interest-based negotiation strategies, which are centered on identifying and meeting the underlying needs of all parties to a negotiation. Negotiation is, of course, both a skill found in both transactional and litigation practice. See,

interest convergence is a value driven process; and those values are determined by the self-interests of the relevant interest groups. Regional organizing can work to unearth the self-interests of the class groups and provide context for linking those interests to regional-equity poverty alleviation for the benefit of all class members.⁶⁹ The identification and exploration of the regional organizing tactics that could actually facilitate that alignment of interests is beyond the scope of this essay but certainly appropriate for future scholarship.⁷⁰

There are, admittedly, potential obstacles to the aligning regional interests to address regional inequities, and the acknowledgment of the intersection between race and class in this country is necessary to achieve any effective subordination analysis. As discussed in Part II, poverty in America is raced and the intersection between race and poverty is intermingled in the history of metropolitan development.⁷¹ It is, therefore, not possible to seriously discuss questions of economic justice and regional equity without considering race and the historical and current effects of racial discrimination. “Discussing race without including class analysis is like watching a bird fly without looking at the sky: it’s possible,

e.g., Jim Hilbert, *Collaborative Lawyering: A Process for Interest-Based Negotiation*, 38 HOFSTRA L. REV. 1083 (2010). The principal attributes of interest-based negotiation are “stakeholder interaction” and “bargaining that is based on mutual interests and overlapping objectives” to achieve “a mutually beneficial solution.” See Leonard J. Marcus, Barry C. Dorn & Eric J. McNulty, *The Walk in the Woods: A Step-by-Step Method for Facilitating Interest-Based Negotiation and Conflict Resolution*, 28 NEGOTIATION J. 337, 340 (July 2012). The idea of working to facilitate mutual interests is a theme shared by interest-based negotiation and the interest convergence theory. The point of interest convergence as a negotiation strategy is that parties articulate their actual reasons for doing the deal and negotiate around those motives. For example, where a seller seeks \$5,000 for her car, she explains to the potential buyer that she needs that amount to both buy a motorcycle and payoff a credit card bill so that the buyer now understands the seller’s motivation and the parties negotiate around those points and instead of being fixated on the seller’s asking price. The buyer understands the seller’s fundamental motivations and may offer alternatives to cash to facilitate the deal. For example, perhaps the buyer knows where the seller can purchase a less expensive motorcycle. See generally ROGER FISHER & WILLIAM URY, *GETTING TO YES* (1981) (using the phrase “principled negotiation” instead of “interest-based negotiation”). My example is intentionally oversimplified to make the point of how the parties do not have to negotiate from adversarial positions. There are, of course, negotiations in other contexts where it would be disastrous from the clients’ perspective to be perceived as too accommodating regarding the sharing of information about a party’s underlying reasons for a deal.

⁶⁹ For a methodological examination of the convergence of interests in a transactional context, see Crowder, *supra* note 48.

⁷⁰ *But see* Crowder, *supra* note 48.

⁷¹ See *supra* Part II.

but it misses the larger context.”⁷² The intersection between class and race is only more recently becoming part of CRT scholarship,⁷³ but that intersection has always lied at the heart of conversations concerning inner-city spaces. While the economic classes are not racially or ethnically homogenous because no class category is singularly raced, this essay highlights the potential alignment of these interests to demonstrate the application of interest convergence in a transactional context. This essay’s contribution to the conversation explores how a transactional framework of the interest convergence theory might work to address both urban and suburban poverty throughout metropolitan regions.⁷⁴

CONCLUSION

By promoting interest convergence as a transaction, this essay hopes to contribute to the regional coalition building conversation in equitable economic development. This essay hopes to contribute to those conversations by suggesting that the exploration of interest convergence theory in a transactional context can provide guidance for a more effective alignment of diverse interests. Because of its purpose to create value, the application of interest convergence in a transactional context presents an optimistic mechanism that can unearth points of commonality and opportunities for convergence despite the deep entrenched history of subordination and exclusion that inhabit our metropolitan regions. This essay holds promise for this approach because of its potential to elucidate all self-interests of regional interest holders to build coalitions around shared economic concerns; and thus, by identifying ways that we are more alike than different, a transactional approach to interest convergence could counter the pessimistic interpretations of the interest discussed in Part I.⁷⁵

⁷² See Rhonda Soto, *Race and Class: Taking Action at the Intersections*, available at <http://www.diversityweb.org/DiversityDemocracy/vol11no3/soto.cfm>.

⁷³ See Kevin R. Johnson, *The Intersection of Race and Class in U.S. Immigration Law and Enforcement*, 72 LAW & CONTEMP. PROBS. 1–36 (Fall 2009), available at <http://scholarship.law.duke.edu/lcp/vol72/iss4/2> (explaining CRT’s split from Critical Legal Studies to focus on question on race and the law and CRT’s more recent focus on class issues).

⁷⁴ As explained earlier, the identification of regional organizing tactics that can accomplish this while considering race is a topic worthy of significant consideration and but the targeted scope of this essay.

⁷⁵ See *supra* note 8 and accompanying text.