

Introduction

The Current Moment and the Need for Investment that Directly Addresses Social, Economic, and Racial Inequities

As the book goes to press, the COVID-19 pandemic, beginning in 2020, is highlighting long-standing social and economic inequities worldwide alongside the necessity for equitable treatment of people of color and underserved communities.¹ In the United States, those inequities permeate every aspect of society, including health, wealth, life expectancy, income, and employment. From the killing of George Floyd, an unarmed Black man killed by on-duty police officer Derek Chauvin, who was subsequently criminally convicted of his murder,² to the January 2021 attack on the U.S. Capitol by white nationalists aimed at disrupting a peaceful transfer of democratic power, and bold efforts to deny Americans the right to vote, America, a divided nation, is at a crossroads.

1. John Elflein, *Distribution of Covid-19 Deaths in the United States as of February 2, 2022, by Race*, STATISTA (Feb. 7, 2022), <https://www.statista.com/statistics/1122369/covid-deaths-distribution-by-race-us/>.

2. Since 2020, there have been eighteen unarmed black men and women who have been killed at the hands of the police. David Fallis and Danielle Rindler, *1,021 People Have Been Shot and Killed by Police in the Past Year*, WASH. POST (Feb. 9, 2022), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

This moment requires renewed attention to social, economic, and racial divisions and their root causes: social, economic, and racial inequities. Long before the COVID-19 pandemic, investors concerned with combating inequities and community economic development practitioners (called “practitioners” in this book) were heeding low-income communities and communities of color’s calls to urgent action that both stems the social and economic losses and builds fair and just economic systems.

Growing Field of Impact Investment

A range of interrelated environmental, social, and economic global trends are driving growth in social enterprises and impact investing. These trends include accelerating climate changes and the impacts of more severe weather events such as floods and hurricanes, growing economic inequality, shifting demographics, deepening political tensions from the erosion of public trust in democratic institutions, declining social cohesion and social unrest in the United States and worldwide. When the US SIF: The Forum for Social and Responsible Investment, began measuring “the size of the U.S. sustainable investment universe” in 1995 it was \$639 billion.³ Significantly, by 2020, there was \$17.1 trillion in professionally managed sustainable investments—investments that consider environmental, social, and governance (ESG) factors.⁴

Investment priorities of financial institutions, foundations, and high-net-worth individuals are shifting to address these global ESG challenges. One of the principal drivers in the United States for this shift is and will continue to be the investment priorities of Millennials born between 1981 and 1996⁵ and Generation Z, those born after 1996.⁶ “Today’s millennials and Gen Z have more economic power than any generation that preceded them . . . Not only are millennials the largest workforce in U.S. history . . . When they deploy that capital, they are investing with a different set of expectations than their parents: 95% say they want to use their financial capital for socially responsible investing.”⁷ The investment decisions of Millennials and Gen Z will influence the field of social enterprise and impact investment for the foreseeable future.

Lawyers’ Roles in Stemming Economic and Social Losses and Remaking the Economy

These shifts in investment priorities of individual and institutional (public and private) investors toward socially responsible investments take many forms and require lawyers to have a range of skills. To meet the current moment’s charge to stem the economic losses in

3. *Report on US Sustainable and Impact Investing Trends 2020*, US SIF Foundation, <https://www.ussif.org/files/US%20SIF%20Trends%20Report%202020%20Executive%20Summary.pdf>.

4. *Id.*

5. Richard Fry, *Millennials Overtake Baby Boomers as America’s Largest Generation*, Pew Research Center (Apr. 28, 2020), <https://www.pewresearch.org/fact-tank/2020/04/28/millennials-overtake-baby-boomers-as-americas-largest-generation/>.

6. Kim Parker & Ruth Igielnik, *On the Cusp of Adulthood and Facing an Uncertain Future: What We Know about Gen Z So Far*, Pew Research Center (May 14, 2020), <https://www.pewresearch.org/social-trends/2020/05/14/on-the-cusp-of-adulthood-and-facing-an-uncertain-future-what-we-know-about-gen-z-so-far-2/>.

7. Jean Case, *Millennials and Gen Z Are a Growing Force in Investing. The Market Needs to Catch Up*, FORTUNE (Nov. 18, 2021), <https://fortune.com/2021/11/18/millennials-genz-investing-markets-wealth-transfer/>.

communities and build new, more just economic systems, lawyers must be prepared with the skills to achieve both goals.

Over ten chapters, *Investing for Social Impact, Economic Justice, and Racial Equity* provides lawyers with an understanding of current U.S. private and public investment strategies, legal tools, and checklists created by lawyers and practitioners serving both investors and investees. These experts examine community stakeholders' needs, lawyers' roles in impact investment deals, and practice tips for a range of legal issues in developing and executing diverse investment strategies.

This premier book shows the range of strategies being deployed in communities to address the present social and economic challenges and strategies to undo inequitable systems. The first half of the book uplifts strategies to reduce the economic and social losses in communities. Some of these traditional economic development strategies have been scrutinized for privileging investor interests over the interests of low-income communities and communities of color. To illustrate, the Opportunity Zone program offers clear financial boon to Opportunity Zone investors funding activities in underserved neighborhoods. At the same time underestimated and underrepresented communities strive to craft innovative ways to benefit from this existing tax program. Another vehicle with possible unequal investor versus community benefits, is social impact bonds (SIBs), contractually negotiated social services provided by social service organizations with proven track records, perhaps enabling greater community participation.

The second half of the book focuses on strategies aimed at shifting the underlying policies and practices of the inequitable economy. The work of building a new economy is broad and deep—from regenerative finance, a concept at the intersection of impact investing and ESG investments aimed at using capital to solve problems and support healthy communities,⁸ to nonextractive finance that requires a lender's return on investment and the cost of capital to never exceed the wealth created by the borrower.⁹

Given impact investing's international roots, chapter 1, *Global Impact on Domestic Investment Landscape*, explores international lessons and models that can be brought to the United States from addressing the world's most pressing problems. It also explores the distinctions between global and U.S. investing impact models and tools, and strategies for blended finance.

Demonstrating the overlap of community economic development (CED) and impact investing, chapter 2, *The Intersection of Community Economic Development and Impact Investing: History and Key Terms*, integrates a brief history of the CED movement and the rise in impact investing. It will be especially useful to readers new to these fields and those seeking a deeper understanding of their essential interrelationship. The chapter includes key concepts and definitions, including public sector community investment approaches, the role of philanthropy, the importance of Community Development Financial Institutions

8. Regenerative Finance refers to using money as a tool to solve systemic problems and to regenerate communities and natural environments. Jasper van Brakel, *Regenerative Finance Is No Longer the Future—It Has Arrived*, *IMPACT ENTREPRENEUR* (Nov. 15, 2021), <https://impactentrepreneur.com/regenerative-finance-is-no-longer-the-future-it-has-arrived/>.

9. In non-extractive finance deals, the "returns of the lender" will not ever exceed "the wealth created by the borrower using the capital." *Our Model of Finance*, SEED COMMONS, <https://seedcommons.org/about-seed-commons/seed-commons-approach-to-non-extractive-finance/>.

(CDFIs), and the range of investor strategies, as well as stages and types of investment capital.

Chapters 3 and 4 discuss current CED and impact investing tools that utilize public-private partnerships. Chapter 3, *Opportunity Zones: The Promise and the Potential for Peril*, explores a specific, controversial community investment tool, “Opportunity Zones,” enacted into law in 2017 and designed to drive billions of dollars into low-income communities while providing tax breaks for the wealthy. This chapter explains how the tax incentive works, as well as the potential for a shared impact model embracing principles of community engagement, equity, transparency, measurement, and outcomes for community benefit alongside the challenges of the Opportunity Zone program.

Chapter 4, *Social Impact Bonds: Overview and Lessons Learned*, discusses the purpose and structure of Social Impact Bonds (SIBs), the parties to a SIB contract, the roles of the participants, and an analysis of various contract provisions. It provides examples of SIBs that address pressing social problems of mental health, employment of veterans, and homelessness for families with children. Chapter 5, *Green Capitalism: The Case of the Environmental Impact Bond*, contextualizes and situates Environmental Impact Bonds (EIBs) as a specialized SIB, which is likely to expand given the rise in environmental and climate disruptions.

Chapter 6, *State and Local Policies for Social Impact Investing*, highlights ways the policies of state and local governments support directing capital to meet the needs of underserved communities and offers possibilities for new investments.

Chapter 7, *Community Capital Raising Strategies*, addresses the importance of community driven financing tools, the role of individual investors in shaping strong local communities, and the U.S. Securities and Exchange Commission’s laws and regulations governing community capital raising.

Chapters 8 and 9 illuminate the importance of people-powered local interventions. Chapter 8, *Role of Philanthropy in “Place-based” Community Investment Strategies*, focuses on philanthropic investors using grantmaking and program-related investments that are guided by community participation. Chapter 9, *“Place-based” Cooperative Finance and Governance Models*, describes strategies for community ownership that shift governance and ownership to low-income communities and communities of color.

Through interviews with impact investing changemakers from eight individual or institutional investor organizations, chapter 10, *Beyond Impact: Shifting the Field of Impact Investment to Achieve Economic Justice and Racial Equity*, provides concrete recommendations to investors and their lawyers to accelerate transformative finance work.

The long-term disruptions caused by the COVID-19 pandemic and its lingering economic effects remain to be seen, but by many accounts, transformation is afoot. We hope those will be positive changes leading to a world and a nation that is just and equitable for all, and that this book can serve as an inspiration for that transformation.