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LAWYERS AS SOCIAL ENGINEERS: HOW LAWYERS SHOULD USE THEIR SOCIAL CAPITAL TO ACHIEVE ECONOMIC JUSTICE

"A lawyer's either a social engineer or he's a parasite on society." ¹

--Charles Hamilton Houston

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The persistent racial, economic, and social inequity Black people face in the United States, highlighted by the COVID-19 pandemic and police killings of George Floyd, Breonna Taylor, Rayshard Brooks, and numerous other Black people, underscore the need for lawyers to continue to use innovative strategies to fight for economic justice for Black Americans, including Black-owned small businesses and Black-led nonprofits and community organizations located in disinvested urban areas. ² *2 Not only are Black Americans dying of COVID-19 at disproportionately higher rates than most other Americans, ³ they face higher rates of unemployment than white people, ⁴ are more likely to face evictions and foreclosures, ⁵ are less likely to have access to technology to allow their children to engage in online school, ⁶ and face greater mental health challenges than other Americans due to the pandemic. ⁷ For centuries, African Americans have faced systemic racism and discriminatory government and private policies and practices in all aspects of their daily lives, including in employment, transportation, housing, education, voting, policing, and financing, which have led to the disparities we are witnessing today. ⁸

As Black people are facing disproportionately worse adverse circumstances caused by COVID-19 than most other Americans, so are the small businesses they own and the nonprofits and community organizations they lead. Since March 2020, Black-owned businesses closed at more than twice the rate of white-owned firms. ⁹ These businesses' cash balances declined nine times more than nonminority firms. ¹⁰ More Black-led nonprofits and community organizations have reported the loss of grants than non-Black organizations since the pandemic forced the economic *3 contraction beginning in March 2020. ¹¹ These nonprofits and community organizations faced these funding losses while handling an increased demand for their services to fill community members' dire needs for food, jobs, and housing, among other necessary resources, due to the global health crisis and to support the uprisings against anti-Black racism happening in their communities. ¹²

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There are a number of reasons why Black-owned businesses and Black-led nonprofits and community organizations have been hit harder by the global pandemic than most other businesses and organizations. One reason is that prior to the pandemic, many Black-owned businesses had lower revenues and were more likely to be in financial distress than other minority-owned and white-owned businesses.¹³ Businesses in financial distress were more likely to use their personal funds or close their businesses if they lost two months of revenue.¹⁴ In addition, many Black-owned businesses are in sectors that hire workers who operate close to other workers or customers and are more likely to be subject to state-mandated shutdowns or social-distancing measures.¹⁵ Finally, many Black-owned businesses were not able to access Paycheck Protection Program (PPP) loans, especially during the early days of the global pandemic, due to the structure of the program which required businesses to have relationships with traditional banks, among other issues.¹⁶ Black-led nonprofits and community-based organizations also face funding challenges. A recent study found that revenues of Black-led nonprofit groups are 24% smaller than revenues of white-led organizations.¹⁷ Additionally, Black-led groups' unrestricted assets are 76% less than those of white-led groups.¹⁸ Among the reasons why Black-led nonprofit organizations face funding challenges is that Black nonprofit leaders often lack access to social networks with connections to foundations and individuals with influence *4 in philanthropy.¹⁹ In addition, many grant makers are not people of color and may have implicit biases against Black nonprofit leaders which inhibit their ability to trust these leaders and fund their work.²⁰ These challenges Black-owned small businesses and Black-led nonprofits and community organizations face are rooted in systemic racism and discrimination against Black Americans.²¹

Charles Hamilton Houston, a titan of American law and a brilliant and innovative Black civil rights lawyer, scholar, law school administrator, and academic whose life spanned the first half of the twentieth century, experienced firsthand the virulent racism Black Americans faced in every aspect of their lives. Although he is not as widely known as his former student, the late Supreme Court Justice Thurgood Marshall, Houston left a powerful legacy that nurtured Black law students to become committed racial justice advocates and established civil rights legal advocacy that helped topple legalized segregation. Throughout his life, Houston contended with systemic racism and individual acts of discrimination. The racism he confronted when he served in the military and the race riots and the resulting mob violence exacted against Black people throughout the United States in the summer of 1919, were two circumstances, among others, that impelled Houston to attend law school to fight for the equal rights of Black Americans.²²

As a legal academic and law school administrator at Howard University Law School, he had a particular vision of the role Black lawyers should play to fight for the full human and legal rights for Black Americans. He was committed to the belief that Black lawyers should use their legal skills and knowledge to dismantle racist laws, fight white supremacy, and improve the lives of Black people in the United States.²³ Houston was the architect of the legal strategy he, Thurgood Marshall, and other civil rights lawyers used to dismantle the racist Jim Crow laws in the United States. It was his legal strategy that led to the seminal *Brown v. Board of Education* United States Supreme Court desegregation case.²⁴ He believed that Black lawyers should serve as social engineers to effectively fight for the right of Black Americans to enjoy full citizenship and equality in the United States.²⁵ One way he defined a social engineer was as:

**5 ... a highly skilled, perceptive, sensitive lawyer who understood the Constitution of the United States and knew how to explore its uses in the solving of "problems of ... local communities" and in "bettering conditions of the underprivileged citizens." ... The black social engineer further was called on not only to "use ... the law as an instrument available to [the] minority unable to adopt direct action to achieve its place in the community and nation," but also consistently and competently to interpret the race's rights, grievances, and aspirations.*²⁶

Houston's ultimate goal was to achieve freedom and justice for Black Americans.²⁷ One way that Charles Hamilton Houston envisioned that lawyers would fulfill their role as social engineers was by using the Constitution to eradicate discriminatory laws and fight white supremacy and racial inequality by litigating constitutional law cases. Houston did not contemplate the role of progressive transactional lawyers who work to establish and develop Black-owned small business and nonprofit clients

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in disenfranchised urban areas and who could also serve as social engineers. Yet, although Houston conceived of specific responsibilities of a social engineer lawyer, he ultimately viewed the social engineer lawyer as a fighter for justice, equal rights, and opportunity for Black people.²⁸ Accordingly, progressive transactional lawyers may also fulfill their role as social engineers, by working to create and sustain viable Black-owned small businesses and Black-led nonprofits and community organizations which could contribute to economic justice for African Americans.

Although Black Americans are not waging the same war against legalized segregation as they were during Houston's era, they continue to experience inequities in the labor market, housing, education, and financing, among other areas, due to systemic racism and implicit and explicit discriminatory individual actions.²⁹ Black-owned small businesses and Black-led nonprofits are also impacted by these inequities. Given the racial inequality Black-owned small businesses and Black-led nonprofits and community organizations continue to confront, progressive transactional lawyers should adopt Charles Houston's vision of a social engineer lawyer to support these businesses and organizations.³⁰

*6 Black-owned small businesses and Black-led nonprofits and community organizations provide essential employment, education, health care, economic, and many other resources to Americans.³¹ Yet to grow and sustain these organizations and accomplish broader goals of economic justice, Black Americans need lawyers who can assist their businesses and nonprofit organizations on various legal and non-legal business matters, including helping these organizations secure the financing they need to remain viable. One way that progressive transactional lawyers could fulfill their roles as social engineers is by using their social capital to connect Black-owned small businesses and Black-led nonprofits and community organizations to sources of financing and other resources necessary to sustain their businesses and organizations. I assert in this Essay that progressive lawyers should also use this tool to enhance the viability of Black-owned small businesses and Black-led nonprofits and community organizations.³²

This Essay will proceed as follows. Part I further explores Charles Hamilton Houston's concept of the lawyer as social engineer. It describes how he developed this belief in the role of the Black lawyer due to the dire economic, social, political, and legal conditions of Black Americans during that time. It also discusses how the current economic, social, and political conditions of Black Americans, particularly Black-owned small businesses and Black-led nonprofits and community organizations require transactional lawyers committed to ensuring their success. Part II describes my journey to becoming a social engineer lawyer. Part III examines the sociological concept of social capital and how progressive lawyers may use this concept to further support the growth and development of Black-owned small businesses and Black-led nonprofits and community organizations, especially during critical times such as the global pandemic.

PART I

Charles Hamilton Houston lived during the first half of the twentieth century, when African Americans were legally, socially, politically, and economically relegated to second-class status in the United States.³³ Though Black people had been emancipated from slavery decades earlier, beginning in the late 1870s (after the end of Reconstruction), white people *7 used legislative, executive, and judicial authority and policies as well as individual practices to erode the hard fought legal, social, political, and economic gains Black people made during the Reconstruction era.³⁴ Several United States Supreme Court cases--the *Civil Rights Cases* of 1883 and *Plessy v. Ferguson* of 1896--allowed the state and individual citizens to discriminate and segregate on the basis of race.³⁵ The white, racist power structure in the South disfranchised southern Black people, where an overwhelming number of Black people in the United States lived during that time, and provided white citizens with free reign to compel Black people into forced-labor arrangements, such as sharecropping and convict leasing, and to otherwise terrorize Black people in all areas of their lives.³⁶ The federal government refused to use its legal authority to prevent the discrimination of and violence enacted against Black people.³⁷ Black people could not escape the daily assaults of systemic and individual racism on their lives. The late William H. Hastie, Jr., the first Black American appointed as a federal judge, when discussing the systemic nature of racism against Black people in the early twentieth century, asserted: "The effective institutionalization of racism was the common experience of most Negroes [A]partheid seemed as irradicable and almost as pervasive a feature of the American legal order as it appears to be in South Africa."³⁸

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Charles Hamilton Houston came of age during this era of legalized discrimination and a United States federal government that failed to protect the constitutional rights of its Black citizens. Houston's experiences of racial inequity and oppression motivated him to become a lawyer who would battle these inequities and to become a legal academic who would cultivate a cadre of Black lawyers to take up this fight.³⁹ Houston believed that Black lawyers had a moral obligation to fight for the constitutional rights of Black Americans. As an administrator at Howard Law School, he pushed for Black students to be trained to be superior lawyers and to embrace their responsibilities as social engineers for other Black Americans.⁴⁰ He viewed social engineers as “the mouthpiece of the weak *8 and sentinel guarding against wrong” and as those who would not only “‘use ... the law as an instrument available to [the] minority unable to adopt direct action to achieve its place in the community and nation,’ but also consistently and competently to interpret the race's rights, grievances, and aspirations.”⁴¹

Houston and other lawyers fighting for Black civil and human rights during the early twentieth century devoted most of their energies to litigating constitutional law cases. Houston and other early pioneers of the modern civil rights movement used this strategy because they recognized that the executive and legislative branches of government were unlikely to fully enforce the rights of Black Americans.⁴² He recognized that there were significant challenges in bringing constitutional law cases before a biased judiciary. Yet, his goal was to strategically disassemble laws that were facially inequitable to Black people and compel the courts to acknowledge and confirm the constitutional right to equality under the law for Black American citizens.⁴³ Houston's strategy was successful in attaining major legal wins in many desegregation cases, including the *Brown v. Board of Education* school desegregation cases, and inspired the civil rights movement that began in the 1950s.

Though Houston's conception of a social engineer lawyer included an obligation to litigate strategically planned constitutional law cases to dismantle legal segregation and white supremacy, Houston also recognized the importance of using varied strategies and ideologies to achieve racial equality.⁴⁴ He could not have anticipated the work of progressive transactional lawyers representing low- and moderate-income urban entrepreneurs and nonprofits who are promoting racial, political, and social justice in their communities. But his vision of a social engineer was broad *9 enough to encompass progressive transactional lawyers who represent these clients to further racial justice goals.

Although Houston's legal strategy and social engineering principle for Black lawyers helped eliminate legalized segregation and usher in legal, political, social, and economic advancement of African Americans, Black Americans continue to contend with racial injustice and systemic racism.⁴⁵ Black people in the United States confront disparities in almost all areas of life including education, employment, housing, incarceration, and wealth.⁴⁶ Black people earn fewer college degrees than white people;⁴⁷ Black people's overall income is and has historically been far lower than white people;⁴⁸ Black people are more likely to be denied home mortgages than white people; Black people own a lower share of their homes than other groups;⁴⁹ and Black prisoners represent a larger percentage of the U.S. prison population compared to their share of the U.S. population.⁵⁰ Wealth consists of the wages people earn as well as homes, investments, and other assets people own.⁵¹ Wealth contributes to a more secure quality of life and may be passed on to future generations. Black wealth has remained stagnant since the 1960s while white wealth has dramatically increased.⁵² A typical white family's net worth is nearly ten times greater than that of a Black family.⁵³

*10 Black-owned businesses that already tend to be undercapitalized and Black-led nonprofits and community-based organizations that tend to be underfunded are also impacted by continuing systemic racism. Financial institutions' lending practices continue to discriminate against Black small business owners, making it even more challenging for them to have enough cash on hand to withstand the normal ups and downs of business.⁵⁴ Studies show that many Black small business owners do not attempt to apply for loans because they believe they will be turned down for these loans.⁵⁵ These lending challenges, combined with lower levels of wealth and less access to capital to invest in their businesses, cause Black-owned businesses to be more susceptible to financial distress than their white counterparts and less likely to survive not only the typical challenges facing small businesses but also the extraordinarily difficult circumstances of the global pandemic.

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Black-led nonprofit organizations tend to receive less funding, have lower revenues and unrestricted net assets,⁵⁶ and have smaller budgets than white-led groups for a number of reasons. One reason is that a larger percentage of Black-led nonprofits lack the resources to cultivate relationships with funders compared to their white counterparts.⁵⁷ Additionally, funders often do not use racial equity metrics when determining their funding priorities.⁵⁸ Furthermore, many funders often have implicit biases and rely on white-centric cultural approaches when evaluating the effectiveness of programs and leaders. Due to these biases, funders may discount the ability of Black-led organizations to successfully execute their programs and decide not to fund these organizations.⁵⁹ Given that both Black-owned small businesses and Black-led nonprofits and community organizations often lack networks with funding sources that impact the viability and success of their organizations, progressive transactional lawyers could employ a social engineering role to connect them with these networks.

***11 PART II**

My parents moved from New York City to Detroit in 1969 so that my father could pursue his dream to work for the wildly successful Black-owned Motown Records as a staff songwriter, arranger, and producer. They moved to Detroit two years after the Rebellion of 1967 engulfed the city for five days and became the “largest civil disturbance of the twentieth century.”⁶⁰ Years of police violence and discrimination against Black Detroiters were key reasons for the tensions that lead to the Rebellion.⁶¹ For decades, Black Detroiters faced discrimination in numerous facets of life, including education, jobs, and housing, and they faced police brutality by a mostly white and anti-Black racist police force.⁶² The particular incident that sparked the Rebellion was a police raid on a Black after-hours place in Detroit. The smoldering rage of Black Detroiters caused by years of police brutality and racial injustice erupted into five days of civil unrest. Although white Detroiters had been steadily moving out of Detroit to the Detroit suburbs and other areas since the 1950s, the Rebellion hastened their move out of the city. It is against this backdrop that my parents moved to Detroit, had me and my brother, and several years later settled into a predominately white, working class neighborhood in a northeast suburb of Detroit.

My parents moved to Clinton Township, a small township in Macomb County, in the mid-1970s, where we were only one of a handful of Black families in the neighborhood and where many white families were still resistant to integrated neighborhoods and schools. The first memory I have of my childhood neighborhood is of my brother and I walking down the street getting acquainted with our block and neighborhood kids confronting us, calling us the N word, telling us to go back to Africa, and calling us Kunte Kinte and Kizzy (these were two prominent characters in the mini-series *Roots* which was popular at the time). This was the first of many incidences in our neighborhood, school, and community, when we faced racial discrimination from white neighbors *12 and community members. At the time, I did not understand the reason for their prejudice, but I knew it was misguided and destructive.⁶³

During the time we were growing up in a racially hostile environment in Michigan, my parents, brother, and I would travel to New York City during holidays and vacations to visit our grandparents, aunts, uncles, cousins, and other members of our extended family. I vividly remember the adults in my family discussing the racial discrimination they and other Black people experienced, how it affected the Black community, and ways in which the Black community could advance. These early incidences and discussions in my childhood planted in me a seed to reject the inequities of the racial discrimination I encountered and to pursue a profession that allowed me to fight racial oppression and build power in the Black community. By high school, I decided I wanted to attend law school because I believed the law could be a powerful instrument to build economic and political power in Black communities like Detroit. At the time, I didn't think I wanted to become a civil rights litigator, but I wanted to attend law school to use my skills to help Black people in urban areas like Detroit build their own businesses. Both my father and mother were operating small businesses when I was in high school. I witnessed how my father's small business in Detroit enhanced the neighborhood in which it was located by employing young people in the area, providing music, jewelry, sportswear, and other goods and services not otherwise available in the area, and by maintaining a stable presence in a slowly deteriorating part of the community.

As a law student, I continued to be motivated to use my legal skills to positively impact urban communities. Although there were not many courses focused on these issues, I decided to take more business-oriented courses such as Corporations, Secured Transactions, and Real Estate Development as well as courses on Race and the Law and Poverty and the Law that I thought

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would be relevant for the Black-owned small business clients I wanted to eventually serve. While I wanted to work in urban communities when I graduated from law school, I did not find many promising prospects to work in the field in a legal capacity as a new law graduate. However, there were a plethora of law firm jobs during my time in law school, so when I graduated from law school, I decided to work at a large firm that provided its attorneys various pro bono opportunities, including those available to transactional lawyers.

***13** During my time at the law firm, I practiced in the commercial real estate practice group. I was able to use the skills and knowledge I developed in this practice to assist pro bono clients. These clients included affordable housing developers who needed assistance drafting their financing documents and a low-income entrepreneur who needed assistance negotiating a lease. These pro bono projects introduced me to the tangible work of community development lawyers and I began to learn more about career opportunities for community development attorneys.

After working a number of years at a large law firm, then a medium-sized law firm, and finally a large land conservation nonprofit organization, I decided to explore opportunities to return to Detroit and work as a community economic development lawyer. I learned about a visiting teaching position in the University of Michigan Law School's community economic development clinic. Although prior to this position, I never considered teaching as a potential career path, I decided to pursue this opportunity because it allowed me to work in Detroit primarily representing Black-owned small businesses and nonprofit affordable housing developers.

My first year as a clinical professor was challenging because not only was I learning how to teach and supervise law students, but I also had to learn some new areas of the law and the legal practice in a different state than where I began practicing law. However, I felt gratified that I was representing many Black-owned small businesses and Black-led nonprofit organizations that were established in Detroit and engaged in work that uplifted the neighborhoods in Detroit in which they operated. I also enjoyed teaching students about how to effectively represent these clients by learning not only about their clients' legal needs, goals, and businesses or organizations but also examining the broader political, racial, economic, and social conditions that impacted Detroit and other urban communities. In my role as a clinical professor teaching in a community economic development clinic, I feel as though I am operating as a social engineer and I am introducing my students to this social justice aspect of lawyering.

PART III

Given the enduring anti-Black racism in the United States and its impact on Black-owned businesses and Black-led nonprofits and community organizations, especially those in underserved urban areas, Charles Hamilton Houston's belief that lawyers should act as social engineers to best serve their Black clients, remains relevant today. One tool that progressive transactional lawyers should use to resist systemic inequality is social capital. They should use their social capital to connect Black-owned small businesses and Black-led nonprofits and community organizations ***14** in disinvested urban areas to funding sources and information about funding, especially in desperate times such as the global pandemic.

Although the concept of social capital has existed for quite a while,⁶⁴ modern day scholars such as Robert Putnam have used this theory to both explain the cause of certain problems in society, such as the decline in civic and social life, and to propose solutions to these problems.⁶⁵ Social capital is a sociological theory that recognizes the value of social networks.⁶⁶ Social capital refers to the networks or relationships individuals and groups have with each other, and how individuals and groups benefit from the trust and reciprocity that develops from these relationships.⁶⁷ Social capital is distinct from physical capital which refers to physical objects (such as a hammer) and human capital which refers to skills and training individuals may use (such as a college education) which are both used to increase the economic productivity of individuals and groups.⁶⁸ Putnam describes the significance of social capital as follows:

No doubt the mechanisms through which civic engagement and social connectedness produce such results--better schools, faster economic development, lower crime, and more effective government--are multiple and complex. While these briefly recounted findings require further confirmation and perhaps qualification, the parallels across hundreds of empirical studies in a dozen disparate disciplines and subfields are striking. Social scientists in several fields have recently suggested a common framework for understanding these phenomena, a framework that rests

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on the concept of social capital. By analogy with notions of physical capital and human capital--tools and training that enhance individual productivity--"social capital" refers to features of social organization such as networks, *15 norms, and social trust that facilitate coordination and cooperation for mutual benefit.⁶⁹

Social capital may be used by both individuals and groups to accomplish their goals.⁷⁰ An individual entrepreneur who joins a business development program that connects the entrepreneur to more experienced entrepreneurs, who can teach her how to generally operate more successfully, is an example of how an individual may use the relationship or the social capital she has with more experienced entrepreneurs to benefit her individual business. Using this same example, groups of entrepreneurs benefit from the business development program by being connected with each other and more successful entrepreneurs, which in turn will benefit the community as a whole by creating more viable companies which may create jobs, needed products and services, and funding to the local municipality.

Reciprocity and trust are integral aspects of social capital.⁷¹ The social connections that result from social capital may have specific or general benefit.⁷² A connection has a specific benefit if there is a quid pro quo, when the person does something for someone expecting something else in return. A general benefit is when a person does something for someone without expecting something from the person she helped but with the expectation that someone else will do something for her at some point in the future.⁷³ This reciprocity leads to trust that an individual's positive action for another will eventually benefit that individual.⁷⁴ The general benefit of social connections is considered more valuable than specific benefit because it is more efficient as they don't immediately have to receive a benefit in exchange for what they have given.⁷⁵

Different forms of social capital include bonding, bridging, and linking social capital. Bonding, also known as exclusive social capital, is the connections that individuals within a group or that groups have with each other.⁷⁶ It is the "cohesion and trust resulting from relationships within a relatively homogenous group that enable the group to achieve a certain amount, but only within a limited sphere of action."⁷⁷ For example, *16 a Black-led community group that provides fresh fruits and vegetables from its community garden to other members in its community is a form of bonding social capital. Bridging or inclusive social capital brings together different individuals or groups with each other or other resources to which the individuals or groups would not normally have access.⁷⁸ A lawyer representing the Black-led community group mentioned above in various transactional matters who introduces the group to another community group engaged in complementary work so they may partner on community projects illustrates how bridging social capital functions.

These forms of social capital may operate positively and negatively. Bonding social capital can help to foster individual ties and support within a community. However, it may not allow these community members to connect with necessary funding and other resources outside of their community that they need. Bridging social capital can link individuals and groups with resources to which they would not have otherwise had access. Yet, individuals and groups with access to these resources may exclude certain individuals and groups and prevent them from having access to these resources. An example of the negative use of social capital is the state and market policies that created networks to support white mobility in the United States that were also used to segregate and discriminate against Black people. These policies were "linked to racial containment practices and the maintenance of racial order that concentrated wealth and white people in suburbs and poverty and minorities in cities."⁷⁹ These practices separated lower income people of color from housing, jobs, educational opportunities, and other resources available to white people and weakened the social capital among individuals in these urban areas.⁸⁰ This negative use of social capital has had a directly adverse impact on urban Black communities and Black-owned small businesses and Black-led nonprofits and community organizations that continues to the present day.⁸¹

*17 Another concept in social capital theory that addresses the deficiencies of bonding and bridging social capital is a third form of social capital called linking social capital.⁸² Linking social capital unites community-based organizations with "sources of real power," which include local, state, and federal governments, major commercial lenders, and foundations.⁸³ This form of capital is described as "vertical" as opposed to bonding and bridging social capital which are described as "horizontal."⁸⁴

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Linking social capital is distinguished from bridging social capital: bridging social capital is typically established between people who are strangers but are of a similar standing “in terms of race, class and political clout”;⁸⁵ whereas, linking social capital brings new opportunities to individuals and groups who would not otherwise have access to individuals, groups, and resources in a different social group.

Silicon Valley attorneys and other startup lawyers who represent high growth startup business ventures offer an example of how lawyers may use their linking social capital to help their clients obtain financing for their ventures. Startup lawyers represent startup ventures in a variety of legal matters including entity formation, founder governance matters, intellectual property protection, employment, and financing matters. In addition to representing their startup clients on legal matters, they act as “reputational brokers” for their startup clients.⁸⁶ As reputational brokers, startup lawyers are aware of the financing sources available and they introduce the startups they consider to have great potential to the appropriate financing sources.⁸⁷ Since the startup attorneys represent the startups at the earliest stages of their existence or work closely with the startups, they are able to assess their clients' behavior and reliability.⁸⁸ These lawyers also represent institutional investors and have relationships with these investors as clients or through other deals the lawyers have handled. Since startup lawyers know their startup venture clients well, they are able to introduce them to investors they have established relationships with and assure the investors that the startups are worthy of consideration for investment. *18⁸⁹ Startup lawyers are staking their reputation when introducing startup ventures to investors which helps to assure the investors that the lawyers are recommending sound startups and gives weight to the introduction.⁹⁰ Startup lawyers acting in their role as reputational brokers for their startup venture clients are using their linking social capital in a positive way to represent their clients. However, the overwhelming majority of the startup ventures that receive venture capital funds are white-led⁹¹ suggesting that Black startup ventures are excluded from this form of social capital from startup lawyers.

Although Black startups receive disproportionately fewer venture capital dollars than their white counterparts, the reality is that most small businesses, regardless of the ethnicity of the owners, are not likely to qualify for venture capital funding. The reason is that venture capital financing is typically only available to companies with long-term growth potential and many small businesses do not have this long-term growth potential.⁹² Notwithstanding the foregoing, many Black-owned small businesses and Black-led nonprofits and community organizations still lack ties to most investors, lenders, grant funders, and other sources of capital, resulting in adverse impact on their growth and viability, especially during the pandemic.⁹³

Community economic development scholars and practitioners recognize that social capital, along with other assets including “[f]inancial capital, a skilled workforce, a physical infrastructure, organizational capacity, and supportive public institutions and policies[,]” can contribute to the positive development of low-income, urban communities.⁹⁴ They assert that low-income communities often lack many of the foregoing assets but that they may produce social capital through community organizing, which allows these communities to engage in strategic planning, identify community assets and liabilities, come together in different *19 groups to determine their goals and needs, and provide bridges to federal and state programs for low-income communities.⁹⁵

Community economic development and progressive transactional legal scholars also assert that social capital should be included in strategies to build the capacity of minority-owned small businesses or nonprofits in disenfranchised urban areas.⁹⁶ Professor Susan Jones contends that all entrepreneurs need access to “capital, access to credit, sound legal advice, and help with accounting, business planning, and marketing” but that urban entrepreneurs also need access to “entrepreneurial networks” and social capital.⁹⁷ Professor Lynnise Pantin emphasizes that many entrepreneurs of color do not have the social networks that could introduce them to venture capital investors but offers specific recommendations to cultivate this social capital.⁹⁸ Professor Susan Bennett discusses how transactional community lawyers nurture bonding social capital when they create groups as legal entities and counsel them on how to work together as groups.⁹⁹ She also considers how these lawyers enhance bridging social capital by advising separate community groups on how to enter into productive short-term and long-term relationships with each other and by drafting contracts documenting these relationships.¹⁰⁰ Finally, she examines how community lawyers use linking social capital to assist individual or “bridged” clients.¹⁰¹ Professor Bennett writes:

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Lawyers may also help their individual or their “bridged” clients “link” to sources of influence beyond their usual frame of dealing: when they help them apply for major public or foundation grants or commercial loans, assist them in forming coalitions, or work with them to present legislative testimony. It is in this last activity that lawyers come the closest to placing *20 their clients more permanently in contact with unfamiliar actors by creating networks.¹⁰²

Professor Bennett offers a particularly relevant example of how progressive transactional lawyers may use their linking social capital to help Black-owned small businesses and Black-led nonprofits and community-based organizations obtain financing.

As with startup lawyers, progressive transactional lawyers often have relationships with investors, lenders, grant funders, and other sources of capital because they encounter them in their practice while working on various types of transactions. These progressive transactional lawyers should be mindful of the particular challenges that these businesses and organizations face, should consult with them about their funding needs, and link them with these funders. If these lawyers do not have relationships with certain funders or are not familiar with funding programs such as the PPP program, they should establish relationships with law firms and other legal practitioners who have these connections or are familiar with these programs and would like to work with progressive transactional lawyers and their clients on a pro bono basis. Law school community economic development clinics and other socially oriented transactional clinics offer an ideal structure to cultivate relationships with outside law firms who may be more likely to work with the clinics and their student attorneys, on these types of issues. It is not just experienced transactional attorneys who may use their social capital to assist these entities. Student attorneys in law school clinics may act as social engineers and use the social capital of the law school clinic in which they are enrolled to connect these entities with necessary financing resources. Furthermore, attorneys new to law practice or who have been practicing for a short period of time may develop their own networks with various funders or may affiliate with progressive transactional lawyers involved in pro bono programs, with law school clinics, or who are generally interested in working with Black-owned small businesses and Black-led nonprofits and community organizations to obtain social capital to benefit these entities.

Progressive transactional lawyers should not only assist their clients but should also provide information more broadly to Black-owned small businesses and Black-led nonprofits and community organizations about how they may improve their likelihood to obtain funding and about the mechanics of particular funding programs such as the PPP program and other state, local and private funding programs. Progressive transactional lawyers should avoid acting as gatekeepers when they are engaged in this work. Their goal should be to provide this information as widely as possible to benefit these businesses and organizations. Finally, progressive *21 transactional lawyers should work with community organizations and others to advocate for changes to federal, state, and local policies to direct more lending, investing, and grant-making into Black-owned or led entities.

CONCLUSION

This article argues that progressive transactional lawyers should employ Charles Hamilton Houston's social engineer approach to representing Black-owned small businesses and Black-led nonprofits and community-based organizations. One way that they should fulfill this role is by using their social capital to link these entities to funding sources and information which they desperately need. This must be one strategy among a comprehensive plan to support, develop, and grow these entities that are necessary for the advancement of Black people in the United States.

Footnotes

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- 1 GENNA RAE MCNEIL, GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS 84 (1984) (quoting Charles Hamilton Houston).
- 2 This Article addresses the concerns of Black-owned small businesses and Black-led nonprofits and community organizations, recognizing that all of these entities play an important role in furthering economic justice in Black communities. The author recognizes that Black-owned small businesses face different funding challenges than Black-led nonprofits and community organizations but the common issue these entities face is that they are often excluded from social networks that are necessary to obtain financing for their entities.
- 3 NAT'L URB. LEAGUE, STATE OF BLACK AMERICA UNMASKED: 2020 EXECUTIVE SUMMARY 3 (2020) (reporting that Black people are three times as likely to contract COVID-19 than white people, are two times as likely to die from COVID-19, and are facing disproportionately higher levels of unemployment).
- 4 See ELISE GOULD & VALERIE WILSON, ECON. POL'Y INST., BLACK WORKERS FACE TWO OF THE MOST LETHAL PREEXISTING CONDITIONS FOR CORONAVIRUS--RACISM AND ECONOMIC INEQUALITY 2 (2020).
- 5 See Tim Robustelli et al., *Displaced in America: Mapping Housing Loss Across the United States*, NEW AMERICA, (last updated Sept. 9, 2020), <https://www.newamerica.org/future-property-rights/reports/displaced-america/>.
- 6 See GOULD & WILSON, *supra* note 4, at 10.
- 7 Sahra Ibrahimi et al., *COVID-19 Devastation of African American Families: Impact on Mental Health and the Consequence of Systemic Racism*, INT'L J. MATERNAL & CHILD HEALTH & AIDS 390, 390-91 (2020).
- 8 See Nikole Hannah-Jones, *What is Owed*, N.Y. TIMES (June 30, 2020), <https://www.nytimes.com/interactive/2020/06/24/magazine/reparations-slavery.html>; See Olugbenga Ajilore, *The Persistent Black-White Unemployment Gap is Built Into the Labor Market*, CTR. FOR AM. PROGRESS (Sept. 28, 2020), <https://www.americanprogress.org/issues/economy/news/2020/09/28/490702/persistent-black-white-unemployment-gap-built-labor-market/>.
- 9 Lucas Misera, *An Uphill Battle: COVID-19's Outsized Toll on Minority-Owned Firms*, FED. RESRV. BANK OF CLEVELAND, at 1 (Oct. 8, 2020), <https://doi.org/10.26509/frbc-cd-20201008>.
- 10 *Id.*
- 11 See JEN DOUGLAS & DEEPA IYER, BLDG. MOVEMENT PROJECT, ON THE FRONTLINES: NONPROFITS LED BY PEOPLE OF COLOR CONFRONT COVID-19 AND STRUCTURAL RACISM 13 (Gerry Pearlberg ed., 2020).
- 12 See *id.* at 8, 11.
- 13 Misera, *supra* note 9, at 2.
- 14 *Id.* at 3.
- 15 *Id.* at 3 (discussing the fact that four of the six industries hardest hit by state mandated shutdowns had above-average minority representation, with the four industries being: 1) transportation and warehousing, 2) accommodation and food services, 3) employment services, and 4) travel arrangement and reservation services).
- 16 *Id.* at 5.
- 17 Cheryl Dorsey et al., *The Racial Funding Gap Can't Continue in the Pandemic*, THE CHRON. OF PHILANTHROPY (June 2, 2020), <https://www.philanthropy.com/article/Philanthropy-s-Racial/248862>.

- 18 *Id.*
- 19 *Id.*
- 20 *Id.*
- 21 *See generally* Hannah-Jones, *supra* note 8.
- 22 MCNEIL, *supra* note 1, at 47-49.
- 23 *See id.* at 84-85.
- 24 *Id.* at 218.
- 25 *Id.* at 84-85.
- 26 *Id.*
- 27 *Id.* at 222.
- 28 MCNEIL, *supra* note 1, at 222.
- 29 Hedwig Lee et al., *The Demographics of Racial Inequality in the United States*, BROOKINGS INST.: UP FRONT BLOG (July 27, 2020), <https://www.brookings.edu/blog/up-front/2020/07/27/the-demographics-of-racial-inequality-in-the-united-states/>.
- 30 *See* Angela J. Scott, *Human Rights Hero: The African American Social Engineer*, HUMAN RIGHTS MAG., Dec. 2019, at 25-26 (encouraging African American lawyers to act as social engineers by fighting in large and small ways for equality in America).
- 31 *See* Misera, *supra* note 9, at 3, 6.
- 32 Social capital is a sociological concept that recognizes the power and value in networks and relationships and is a tool that startup lawyers and traditional corporate lawyers use to bring value to their corporate clients. *See* Abraham J.B. Cable, *Startup Lawyers at the Outskirts*, 50 WILLAMETTE L. REV. 163, 170 (2014).
- 33 MCNEIL, *supra* note 1, at 5. Charles Hamilton Houston was born in 1895 and died in 1950. *Id.* at 4.
- 34 *See id.* at 5-6 (discussing how “the ‘gains made by blacks-- political, legal and social--[had been] erased’” by court decisions and other institutional efforts to discriminate and segregate the black community).
- 35 *Id.* at 5.
- 36 *See* Nikole Hannah-Jones, *What is Owed*, N.Y. TIMES (June 30, 2020), <https://www.nytimes.com/interactive/2020/06/24/magazine/reparations-slavery.html>.
- 37 *See* MCNEIL, *supra* note 1, at 5-6 (“[T]he federal government failed to invoke its considerable legal powers to prevent violation of black people or their rights.”).
- 38 *Id.* at 6 (citation omitted).
- 39 *See id.* at 4, 49, 63, 65.
- 40 *See id.* at 83-84.
- 41 *Id.* at 217 (asserting that Black lawyers have five obligations as social engineers: “(1) to be ‘prepared to anticipate, guide, and interpret group advancement’; (2) to be the ‘mouthpiece of the weak and a sentinel guarding against wrong’;

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(3) to ensure that ‘the course of change is ... orderly with a minimum of human loss and suffering,’ when possible ‘guid[ing] ... antagonistic and group forces into channels where they w[ould] not clash’; (4) to recognize that the written constitution and inertia against its amendment give lawyers room for social experimentation and therefore, to ‘use ... the law as an instrument available to [the] minority unable to adopt direct action to achieve its place in the community and nation’; 5) to engage in ‘a carefully planned [program] to secure decisions, rulings, and public opinion on ... broad principle[s]’ while ‘arousing and strengthening the local will to struggle’”). Houston taught that the second and third principles should apply to all lawyers, not just Black lawyers. *Id.*

42 *See id.* at 7 (discussing how “[t]he elective branches of the government were ill-disposed toward taking responsibility for full enforcement of the rights of Americans of African descent[,]” which “necessitated fighting many battles in the U.S. Supreme Court, where all questions about the constitutionality of laws were ultimately resolved”).

43 *See id.* at 219.

44 *See id.* at 222.

45 Sergio Peçanha, *These numbers show that black and white people live in two different Americas*, WASH. POST (June 23, 2020), <https://www.washingtonpost.com/opinions/2020/06/22/what-numbers-say-whites-blacks-live-two-different-americas/?arc404=true>.

46 Shyanne Gal et al., *26 Simple Charts to Show Friends and Family Who Aren't Convinced Racism Is Still a Problem in America*, BUS. INSIDER (July 8, 2020, 1:04 PM), <https://www.businessinsider.com/us-systemic-racism-in-charts-graphs-data-2020-6#the-employment-population-ratio-measures-the-share-of-a-demographic-group-that-has-a-job-and-its-been-lower-for-black-people-for-years-1>.

47 *Id.*

48 *Id.*

49 According to the Census Bureau, in the third quarter of 2020, 46.4% of Black families owned their homes compared with 75.8% of white families. *Housing Vacancies and Homeownership (CPS/HVS) Historical Tables: Table 16. Quarterly Homeownership Rates by Race and Ethnicity of Householder: 1994 to Present*, U.S. CENSUS BUREAU (2020), <https://www.census.gov/housing/hvs/data/histtabs.html>.

50 Gal et al., *supra* note 46.

51 *See* Heather Long & Andrew Van Dam, *The Black-White Economic Divide is as Wide as It Was in 1968*, WASH. POST (June 4, 2020, 9:19 AM), <https://www.washingtonpost.com/business/2020/06/04/economic-divide-black-households/>.

52 *See id.*

53 Kriston McIntosh et al., *Examining the Black-White Wealth Gap*, BROOKINGS INST.: UP FRONT BLOG (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/> (comparing the average net worth of a typical Black family at \$17,150 and that of a typical white family at \$171,000 in 2016).

54 *See* Elizabeth Asiedu et al., *Access to Credit by Small Businesses: How Relevant are Race, Ethnicity, and Gender?*, 102 AM. ECON. REV. 532 (2012).

55 Robert Fairlie et al., *Black and White: Access to Capital among Minority-Owned Startups* 1-3 (Stanford Inst. Econ. Pol'y Rsch. Discussion Paper No. 17-03, 2016).

56 Cheryl Dorsey et al., *Overcoming the Racial Bias in Philanthropic Funding*, STAN. SOC. INNOVATION REV. (May 4, 2020), https://ssir.org/articles/entry/overcoming_the_racial_bias_in_philanthropic_funding (discussing the racial bias in philanthropic funding and how the unrestricted net assets of Black-led organizations are 76% smaller than their white-led counterparts).

- 57 Sean Thomas-Breitfeld et al., *Nonprofit Executives and the Racial Leadership Gap: A Race to Lead Brief*, BUILDING MOVEMENT PROJECT (2019), https://www.buildingmovement.org/wp-content/uploads/2019/07/ED.CEO_Race_to_Lead_Brief_.pdf.
- 58 Dorsey et al., *supra* note 56.
- 59 *Id.*
- 60 *Encyclopedia of Detroit: Uprising of 1967*, DETROIT HIST. SOC'Y, <https://detroithistorical.org/learn/encyclopedia-of-detroit/uprising-1967>.
- 61 Lorraine Boissoneault, *Understanding Detroit's 1967 Upheaval 50 Years Later*, SMITHSONIAN MAG. (July 26, 2017), <https://www.smithsonianmag.com/history/understanding-detroits-1967-upheaval-50-years-later-180964212/>.
- 62 *See id.* (When discussing the cause for Black Detroiters anger against the police, historian Sidney Fine wrote that “a field survey from before the riot found that 45 percent of Detroit police officers working in black neighborhoods were ‘extremely anti-Negro’ and an additional 34 percent were ‘prejudiced’--more than three-fourths of officers had antagonistic attitudes toward the people they were meant to protect.”)
- 63 *See* DAVID M. P. FREUND, COLORED PROPERTY: STATE POLICY & WHITE RACIAL POLITICS IN SUBURBAN AMERICA 9, 17 (Timothy J. Gilfoyle, et al. eds., 2007) (asserting that white people's rationale for excluding Black people from their neighborhoods in the post-World War II era was that they were protecting their property values and their rights as homeowners to choose their own neighbors; claiming that if Black people moved into their neighborhoods, their property values would be lowered).
- 64 ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 19 (2001) (describing state supervisor of rural schools in West Virginia L.J. Hanifan's use of the term social capital in 1916 to assert the need for the community to be involved in their schools for the schools to be successful).
- 65 *Id.* at 18; *see also* Michael Woolcock, *Social Capital and Economic Development: Toward a Theoretical Synthesis and Policy Framework*, 27 THEORY & SOC. 151, 155 (1998) (discussing other scholars who identified the contemporary usage of social capital and acknowledging that Jane Jacobs, Pierre Bourdieu and Jean-Claude Passeron initially developed a contemporary understanding of social capital which has been more extensively developed by James Coleman, Ronald Burt, Robert Putnam, and Alejandro Portes).
- 66 *Id.* at 19.
- 67 *Id.*
- 68 *Id.*
- 69 Robert D. Putnam, *Bowling Alone: America's Declining Social Capital*, 6 J. OF DEMOCRACY. 65, 66-67 (1995).
- 70 PUTNAM, *supra* note 64, at 20.
- 71 *Id.*
- 72 *Id.* at 20-21.
- 73 *Id.* at 21.
- 74 *Id.*
- 75 *Id.* at 21-22.
- 76 *Id.* at 22.

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- 77 Susan D. Bennett, *Creating a Client Consortium: Building Social Capital, Bridging Structural Holes*, 13 CLINICAL L. REV. 67, 98 (2006).
- 78 PUTNAM, *supra* note 64, at 22.
- 79 M. Lisette Lopez & Carol B. Stack, *Social Capital and the Culture of Power: Lessons from the Field*, in SOCIAL CAPITAL AND POOR COMMUNITIES 31, 37 (Susan Saegert, J. Phillip Thompson & Mark R. Warren eds., 2001).
- 80 *Id.* (“Studies of urban change also make it clear that the social capital that works through states and markets is not race-neutral. Enforcement procedures that maintain the color line and locate power in segregated suburbs sever almost all paths of positive association between minorities and whites, between poor and middle-class. People of color who live in the central cities now have less access than ever before to sources of economic and social power Economically abandoned, politically hand-tied, and institutionally degraded, they have been prevented from using their social assets.”).
- 81 *See id.* at 34-37 (discussing generally how government policies were racially discriminatory, separated Black people from opportunities available to white people in segregated neighborhoods, and undermined the social capital that could benefit poor, urban communities).
- 82 Bennett, *supra* note 77, at 100.
- 83 *Id.*
- 84 *Id.*
- 85 *Id.*
- 86 Cable, *supra* note 32, at 168 (In addition to being a startup's lawyer and reputational broker, startup lawyers engage in a broad array of activities to nurture the entrepreneurial ecosystem. Some of these activities include advocating to reform regulations to help entrepreneurs and venture capital managers as well as promoting standard contract terms for venture capital financings.).
- 87 *Id.* at 169.
- 88 *Id.*
- 89 *Id.*
- 90 *Id.*
- 91 *See* DIVERSITY VC, RATEMYINVESTOR, DIVERSITY IN U.S. STARTUPS (2018), https://ratemyinvestor.com/DiversityVCReport_Final.pdf (date showing that from 2013 to 2017, approximately 1% of venture-backed founders were Black); *see also* Jonathan Sherry, *A Data-Driven Look at Diversity in Venture Capital and Startups*, CBINSIGHTS (June 15, 2015), <https://www.cbinsights.com/research/team-blog/venture-capital-diversity-data/> (discussing, as a key takeaway of the report, that “[o]nly 1% of funded startup founders were Black, while they make up 11% of the overall US population”).
- 92 *See* Lynnise E. Phillips Pantin, *The Wealth Gap and the Racial Disparities in the Startup Ecosystem*, 62 ST. LOUIS U. L. J. 419, 441-55 (2018).
- 93 *See id.* at 443; Dorsey et al., *supra* note 16.
- 94 Ross Gittell & J. Phillip Thompson, *Making Social Capital Work: Social Capital and Community Economic Development*, in SOCIAL CAPITAL AND POOR COMMUNITIES 115, 120 (Susan Saegert, J. Phillip Thompson & Mark R. Warren eds., 2001).
- 95 *Id.* at 121-22.

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- 96 See, e.g., Susan R. Jones, *Supporting Urban Entrepreneurs: Law, Policy, and the Role of Lawyers in Small Business Development*, 30 W. NEW ENG. L. REV. 71, 73 (2007); Phillips Pantin, *supra* note 92, at 454-55 (2018) (describing a Center for Global Policy Solutions recommendation to create tax incentives for venture capitalists to invest in certain neighborhood businesses, the Venture Capital Access Program that provides women and entrepreneurs of color access to angel investors and venture capital investors, and the need to promote and support community venture capital); Bennett, *supra* note 77, at 105-07.
- 97 Jones, *supra* note 96, at 73.
- 98 See Phillips Pantin, *supra* note 92, at 441, 455.
- 99 See Bennett, *supra* note 77, at 105.
- 100 See *id.* at 106-07.
- 101 *Id.* at 107.
- 102 *Id.* at 107.

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