

4-1973

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### Recommended Citation

Flournoy A. Coles, Jr., *The Unique Problems of the Black Businessman*, 26 *Vanderbilt Law Review* 509 (1973)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol26/iss3/8>

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# The Unique Problems of the Black Businessman

*Flournoy A. Coles, Jr.\**

## I. BACKGROUND

Business enterprise is not a recent black phenomenon.<sup>1</sup> Long before they were forcibly uprooted from their African cultures and brought to the Americas, blacks prospered as merchants and traders in Africa and other societies offering them freedom of movement. For example, the powerful rulers of Ghana, Mali, and Songhay—the three great black kingdoms of West Africa that flourished during the Dark Ages in Europe—traded throughout North Africa as well as parts of Europe and Asia. During the 16th century, viable and prosperous business activities, based largely on specialized skills such as weaving, pottery making, woodworking, and metallurgy continued, despite the decline of the West African kingdoms and the subsequent resurgence of tribalism. The forced separation of blacks from their natural environment, the ruthless destruction of centuries-old black cultures, and the peculiar and degrading socioeconomic “arrangements” that characterized the black man’s beginnings in America combined to undermine the heritage of black entrepreneurship that the first American blacks brought with them to this continent. Moreover, severe limitations on black economic activity, which were consistent with the constitutionally imbedded concept<sup>2</sup> that

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1. This Article concentrates on problems of black businessmen rather than those of all minority businessmen for 3 reasons: first, there are more statistics on the business and other aspects of black economic life than on other nonwhite minorities; secondly, the available statistics suggest that black Americans rank lowest on the totem pole of business activity in this country—lower than any other nonwhite minority except perhaps for American Indians; thirdly, many of the solutions suggested for remedying the problems of black business enterprise would apply to the similar problems that other minority groups have encountered. For a general introduction to the problems of black business enterprise see *BLACK BUSINESS ENTERPRISE; HISTORICAL & CONTEMPORARY PERSPECTIVES* (R. Bailey ed. 1971); *BLACK ECONOMIC DEVELOPMENT* (W. Haddad & G. Pugh eds. 1969); T. CROSS, *BLACK CAPITALISM: STRATEGY FOR BUSINESS IN THE GHETTO* (1971); W. TABB, *THE POLITICAL ECONOMY OF THE BLACK GHETTO* (1970); *Symposium—Business in the Ghetto*, 25 *BUS. LAW.*, Sept. 1969, at 1 (Special Issue); *Symposium—Legal and Economic Problems in the Development of Black Capitalism*, 15 *HOW L.J.* 331 (1969).

2. “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term

blacks are something less than human beings and therefore not entitled to basic human rights, accompanied their transition from "merchants to merchandise."

Black business ventures prior to the Civil War were confined largely to small-scale, personal service enterprises operating within the framework of well-established and rigidly enforced patterns of prescribed behavior.<sup>3</sup> Because slavery was an integral part of each colony's economic system, and because *laissez-faire* England had empowered each colony to deal with the slave problem as it saw fit, each of the colonies enacted a slave code that effectively circumscribed the economic activity of black slaves. For example, in about 1700 the New York Colonial Council enacted a law providing that "no servant or slave shall give, sell or truck any commodity whatsoever during the term of his service," which was followed by a 1707 statute rendering all bargains or contracts with slaves null and void and preventing all trading with any slave without the owner's consent.<sup>4</sup> A New York City regulation of that time prohibited slaves and servants from selling large quantities of "boiled corn, peaches, pears, apples, and other kinds of fruit."<sup>5</sup>

In spite of their improved political status, black freedmen found their business activity circumscribed to nearly the same extent as black slaves.<sup>6</sup> Their activities in the South were limited to those which whites either did not want to engage in or did not want to perform for blacks. In the North, racial oppression, keen competition from white entrepreneurs, the successes of immigrants in displacing blacks, and a relatively sparse and greatly dispersed black population were the major limitations on the types and scales of black business operation. Successful black business enterprises consequently tended to be those that catered to the personal needs of black people behind the rigid wall of racial separation. Thus black enterprise was to a considerable extent associated with the birth, being, beautification, and burial of other blacks.

Examples of black businesses<sup>7</sup> that flourished despite the constraints imposed on blacks prior to the Civil War date at least to 1736, when a former slave, Emanuel Bernoon of Providence, Rhode Island, opened a catering service that became the first ale-and-oyster house in

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of Years, and excluding Indians not taxed, three fifths of all other Persons." U.S. CONST. art. I, § 2 (1788), as amended U.S. CONST. amend. XIV, § 2.

3. See B. BURRELL & J. SEDER, *GETTING IT TOGETHER: BLACK BUSINESSMEN IN AMERICA* 10-15 (1971) [hereinafter cited as BURRELL & SEDER].

4. *Id.* at 7-8.

5. *Id.* at 8.

6. *Id.* at 10-11.

7. *Id.* at 10-20.

that city. Perhaps the most outstanding pre-Civil War black business owner was Paul Cuffe who, in 1780 at the age of 21, began his own shipbuilding and sailmaking operation. By 1806 the Bostonian had a fleet of one large ship, two brigs, and several small vessels, and had begun financing several "Back-to-Africa" expeditions. Two notably successful black entrepreneurs during the period were Richard Allen and James Forten. Allen manufactured boots and shoes, founded the African Methodist Episcopal Church, and together with Absalom Jones, co-founded the Free African Society of Philadelphia, which operated a mutual aid society that was the first black insurance organization in this country. Forten, also of Philadelphia, was a sail manufacturer. In addition, Henry Boyd, a manufacturer of bedsteads and other furniture in Cincinnati, William Alexander Leidesdorff, a California shipping tycoon, and Barney Ford of Denver, a hotel and restaurant owner, were prominent businessmen before the Civil War.

In the years following Reconstruction, economic activity was stressed as a means for solving the "race problem." Although the Emancipation Proclamation, coupled with this emphasis on entrepreneurship, improved the environment for black ownership and operation of business enterprises, the number of black businesses did not increase appreciably until 1895. Two factors coincided with this increase: first, blacks began moving in increasingly larger numbers to the cities; secondly, the black community became increasingly dependent on black business as white support for the black community dwindled. Thus, while the year 1890 found 31,000 blacks engaged in business, the number in 1900 had increased by 30 percent to 40,000.<sup>8</sup> Most of these enterprises, however, were concentrated in areas related to skills developed during slavery—for example, barbering, restaurant keeping, catering, gardening, retail food marketing, milling, brickmasonry, painting, blacksmithing, and building. Moreover, they tended to be very small. An 1899 study by Dr. W.E.B. Du Bois of black businesses with at least 500 dollars of capitalization consequently examined only 1,906 enterprises.<sup>9</sup> The period nevertheless witnessed the creation—for 350,000 dollars—of the Coleman cotton and woolen mills in Concord, North Carolina, the Mount Alto Mining and Land Company of Virginia, Wormley's Hotel of Washington, D.C., and a substantial truck gardening firm in Charleston, South Carolina. Other businesses created at that time matured into

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8. The author transcribed these figures from official census reports of 1890 and 1900 located at the U.S. Bureau of Census in Washington, D.C.

9. Du Bois, *The Negro in Business*, in 1 ATLANTA UNIVERSITY PUBLICATIONS (reprinted 1968).

businesses we know today—for example, the North Carolina Mutual Life Insurance Company, the Atlanta Life Insurance Company, Overton Hygienic Products Company, Madame Walker's Cosmetics Company, the National Baptist Publishing Board, and the Baltimore Afro-American Newspaper.<sup>10</sup>

The golden era of black business development occurred during the 1920's, which spawned more black-owned enterprises than any other decade before or since, raising the total estimated number of black-owned business enterprises to 80,000 by the time of the 1929 stock market crash.<sup>11</sup> The unprecedented growth of black businesses during the twenties stemmed mainly from the expansion and assistance of black-owned banks, which made loans available on terms unobtainable either from the white banking community or from other capital markets. The stock market crash and the ensuing depression unfortunately closed not only the doors of many black businesses, but also those of thirteen black banks that had provided much of the financial backing for the business expansion of the 1920's. Spurred by "buy black" and "support your own" campaigns, black business revived during the early and middle years of the 1930's, and the number of black-owned businesses increased to an estimated 103,870.<sup>12</sup> During the latter half of the decade, however, their number declined to 87,475,<sup>13</sup> a development that underscored the inability of parochial advertising campaigns to sustain the operations of marginal black enterprises. Although the World War II economy, the federal government's policy of extending equal opportunity by granting subcontracts to black enterprises, and governmental assistance to veterans in establishing business enterprises combined to generate renewed prosperity for black business in the 1940's, black enterprise increasingly experienced unforeseen but logically predictable difficulties during the two succeeding decades. Many black enterprises had prospered in a limited black economy behind the protective walls of segregation, but civil rights successes in desegregating public accommodations prompted the demise of many black-owned service and entertainment oriented enterprises that were unable to compete with better established, white-owned enterprises.<sup>14</sup>

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10. BURRELL & SEDER, *supra* note 3, at 21-24.

11. B. Burrell, Black Business—Golden Twenties, Fabulous Forties & Fifties, Sizzling Sixties, Soaring Seventies, at 2, June 24, 1970 (unpublished remarks at Atlanta University's Second Annual Summer Institute for Teachers of Economics) [hereinafter cited as Black Business]. See generally BURRELL & SEDER, *supra* note 3, at 25-30.

12. Black Business, *supra* note 11, at 3.

13. *Id.* at 4.

14. BURRELL & SEDER, *supra* note 3, at 211-13.

## II. THE CURRENT STATUS OF BLACK BUSINESS

The exact number of black-owned business enterprises is a matter of conjecture. In 1969, the Bureau of the Census estimated their number at approximately 163,000,<sup>15</sup> but a former official of the Small Business Administration estimated the number at below 150,000.<sup>16</sup> Depending upon whose estimate is accepted, the number of black-owned enterprises is between two and three percent of the total number of business enterprises in the country, and between 387,000 and 437,000 less than the 550,000 enterprises that blacks would own if their ownership equaled the officially estimated proportion of blacks in the population.<sup>17</sup>

Regardless of their number, black businesses tend to be concentrated in the personal services and retail trade areas. According to 1969 Small Business Administration (SBA) estimates,<sup>18</sup> 20.8 percent of all black enterprises were personal service oriented, and another 27.7 percent were engaged in retail trade. The SBA, on the other hand, found only 5.5 percent of white-owned businesses engaged in personal service work, although 27.2 percent of all white businesses were in retail trade. Only 13.6 percent of all black-owned businesses provided nonpersonal services, compared with 18.5 percent for white-owned business. In addition, 10 percent of all black enterprises were in the construction industry, 1.8 percent were in manufacturing, and 26.1 percent in other miscellaneous types of business. The comparable figures for white business were 11.5, 5.5, and 31.8 percent. Even though personal services and retail trade enterprises predominate black entrepreneurship, blacks are underrepresented in even those businesses. For example, black ownership accounted for only 8.2 percent of all personal service enterprises, and for only 2.2 percent of all retail trade outlets. For other types of business, black-owned enterprises accounted for 1.9 percent of all construction firms, 1.6 percent of all nonpersonal services firms, 0.8 percent of all manufacturing facilities, and 1.8 percent of all other types of enterprises. In view of the estimated 47,000,000,000 dollars spent by blacks in the United States during 1970, the incongruity of these statistics is particularly glaring. Moreover, as important as black businesses may be to the economic, social, and psychological well-being of their

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15. U.S. BUREAU OF CENSUS, DEP'T OF COMMERCE, *MINORITY-OWNED BUSINESS: 1969*, at 1.

16. Samuels, *Compensatory Capitalism*, in *BLACK ECONOMIC DEVELOPMENT* 63 (W. Haddad & G. Pugh eds. 1969).

17. *Id.* See generally *SMALL BUSINESS ADMINISTRATION, SBA ECONOMIC REVIEW* 81-98 (1972) [hereinafter cited as *SBA ECONOMIC REVIEW*].

18. *SBA ECONOMIC REVIEW*, *supra* note 17, at 84-85.

black owners, their importance to the total black economy is only slightly more than negligible. According to a 1969 study conducted by the Bureau of the Census, black-owned businesses had total receipts of 4,500,000,000 dollars<sup>19</sup>—roughly ten percent of the total gross sales to blacks.<sup>20</sup>

My own analysis of black entrepreneurship in seven urban areas<sup>21</sup>—Atlanta, Cleveland, Durham, Jackson, Los Angeles, Norfolk, and Richmond—revealed characteristics that may be considered representative of black enterprise in general. The average annual gross income of the enterprises that I studied was 29,895 dollars; their average net profit was 6,454 dollars; and full- and part-time employment averaged 3.75 persons per enterprise. My analysis confirmed the findings of other studies.<sup>22</sup> That is, black businesses are concentrated in the retail and personal service areas, the majority are sole proprietorships, many owners have full- or part-time jobs outside the enterprise, and a majority of the owners have less than a high school education and are over 40 years old.

There are, of course, exceptions to this dismal picture of black entrepreneurship. In recent years, a “new” black entrepreneur, who is new both in the sense of recent establishment and in the sense of introducing modern management techniques, has emerged. Rather than establishing their enterprises with the idea of providing needed goods and services only to the black community, the new black entrepreneurs seek business from the total public. They understand, more than “older” black entrepreneurs, that there is not one set of principles and prerequisites for white-owned enterprises and another for those owned by blacks. Thus they are aware of such considerations as capital requirements, market potential, labor availability, and the technological state of the arts. More importantly, they are succeeding in business. Although they currently account for only a fraction of the total number of black busi-

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19. A. VENABLE, *BUILDING BLACK BUSINESS: AN ANALYSIS & A PLAN* 8-9 (1972).

20. The relative insignificance of black business enterprise has led to—in my opinion—some erroneously pessimistic conclusions about the role that black business development can play in overall economic development. *See, e.g.*, Brimmer, *Small Business & Economic Development in the Negro Community*, in *BLACK AMERICANS & WHITE BUSINESS* 265, 271 (E. Epstein & D. Hampton eds. 1971). The current insignificance of black business enterprise, however, largely results from a number of obstacles within the black businessman's external environment. The removal of these obstacles should lead to a viable and vibrant black business community.

21. F. Coles, *An Analysis of Black Entrepreneurship in Seven Urban Areas*, November 1969 (unpublished study for The National Business League under sponsorship of The Booker T. Washington Foundation).

22. *See, e.g.*, *BLACK ECONOMIC DEVELOPMENT* (W. Haddad & G. Pugh eds. 1969); BURRELL & SEDER, note 3 *supra*; A. VENABLE, *supra* note 19.

nesses, they increasingly own and operate a large and varied number of business enterprises.<sup>23</sup>

#### A. *Problems Unique to Black Businesses*

*Dun and Bradstreet* has recorded and analyzed commercial and industrial business failures in the United States for more than 100 years. In an analysis of 13,514 reported business failures in 1965,<sup>24</sup> *Dun and Bradstreet* found that inadequate experience and general incompetence accounted for 92.5 percent of all manufacturing failures, 89.3 percent of all wholesaling failures, 91.3 percent of all retailing failures, 92.9 percent of all construction enterprise failures, 91.6 percent of all failures among commercial service firms, and 92.4 percent of the combined total of all business failures. According to *Dun and Bradstreet's* figures for 1965, the business failures caused by inadequate experience and general incompetence are attributable in varying degrees to the following factors: inadequate sales (40.7 percent); competitive weakness (21.0 percent); heavy operating expenses (13.3 percent); receivables difficulties (9.0 percent); inventory difficulties (5.1 percent); excessive fixed assets (4.1 percent); poor location (3.6 percent); and miscellaneous (3.2 percent).

Although *Dun and Bradstreet's* figures do not specifically include a record of black business failures, black businessmen often make the same mistakes as their white counterparts.<sup>25</sup> They are, however, plagued by an additional set of unique problems, which are visited upon them solely because they are black. For example, Eugene Foley, a former SBA administrator and Director of the Economic Development Administration, includes the following in a list of factors restraining black business development:<sup>26</sup> dependence upon a predominantly black trade; natural racial antipathies exacerbated by socioeconomic conflicts; a lack of both business success symbols and a business tradition, which stems largely from inequalities of past opportunities; the paucity and weakness of black ethnic institutions—except perhaps for the black church—with a resulting lack of political strength and unity; and white racism, as manifested by segregation and the economic relationships between the black ghetto and white society.

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23. F. Coles, *supra* note 21, at 75-78.

24. DUN & BRADSTREET, INC., PATTERNS FOR SUCCESS IN MANAGING A BUSINESS — (Dun & Bradstreet Series No. 2, Business Education Division, 1967).

25. See generally Strang, *Minority Economic Development: The Problem of Business Failures*, 36 LAW & CONTEMP. PROB. 119 (1971).

26. Foley, *The Negro Businessman: In Search of a Tradition*, in THE NEGRO AMERICAN 555 (K. Clark & T. Parsons eds. 1966).



My analysis<sup>27</sup> of black entrepreneurship revealed similar major problems. Black businessmen in the seven cities that I studied were often undercapitalized because of difficulties in obtaining funds. Indeed, one entrepreneur remarked that "it is easier for a black man to borrow money from a bank to purchase a Cadillac than to finance a business." There were often implicit and explicit prohibitions against locating black enterprises in other than black neighborhoods, with consequent dependence on predominantly black and often low-income markets. Black entrepreneurs frequently suffered from a lack of managerial experience and know-how, which is often the result of past and present discrimination in education and employment. The barring of blacks from trade associations and other sources of important business information likewise prevented them from making the informal contacts that are often vital to a successful business. Finally, suppliers were typically unwilling to supply black entrepreneurs with goods on the same credit and other terms as to white entrepreneurs.

Some whites often cite the success in business of other ethnic minorities, especially European immigrants, as justifying their beliefs that black businessmen have no special handicaps, and that blacks could become successful entrepreneurs if they were only willing to make sacrifices or do whatever else is required for success. Comparing blacks and European immigrants, however, is not only unfair, but also nonsensical. Economist William Tabb argues convincingly<sup>28</sup> that the clannishness of European immigrants produced group solidarity, thus providing their business and professional men with pools of readily available funds. Blacks, however, only recently have developed a sense of identity and group pride, as a result of the "Black Revolution" that occurred after World War II. Thus black businessmen were forced to seek capital from conventional, white-controlled sources. Tabb also points out that a legacy of slavery characterized by generations of cultural and economic deprivation, white malice and hatred toward blacks, combined with—until recently—the engrained tendency of blacks to view themselves through the eyes of white America, thus finding themselves inferior and their blackness a cause for shame, makes a comparison between European immigrants and blacks unfair. Furthermore, Tabb argues, blacks have suffered from the absence or inadequacy of an economic base in those areas of economic activity in which they otherwise have a special advantage.

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27. See note 21 *supra* and accompanying text.

28. See W. TABB, note 1 *supra*.

### B. Black Business Assistance Programs

The thrust of programs designed to bring black entrepreneurs into the mainstream of this country's free enterprise system must be directed toward overcoming the unique problems that the black businessman faces. A multiplicity of programs ostensibly directed toward this objective exists within both the public and private sectors. Several departments and agencies at the federal level<sup>29</sup> have organized programs specifically designed to encourage and assist black and other minority business development.<sup>30</sup> The more important of these programs include: the Technical Assistance and other programs of the Economic Development Administration,<sup>31</sup> and the various programs of the Office of Minority Business Enterprise—all administered by the Department of Commerce;<sup>32</sup> the Manpower Development and Training Program—Institutional, administered by the Department of Health, Education and

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29. For an original treatment of the federal government's role in minority business development see Hetzel, *Games the Government Plays: Federal Funding of Minority Economic Development*, 36 LAW & CONTEMP. PROB. 68 (1971).

30. For a detailed listing of federal government programs assisting minority business development see OFFICE OF MINORITY BUSINESS ENTERPRISE, U.S. DEP'T OF COMMERCE, SPECIAL CATALOG OF FEDERAL PROGRAMS ASSISTING MINORITY ENTERPRISE (1971) [hereinafter cited as SPECIAL CATALOG]; PRESIDENT'S ADVISORY COUNCIL ON MINORITY BUSINESS ENTERPRISE, MINORITY ENTERPRISE AND EXPANDED OWNERSHIP: BLUEPRINT FOR THE 70's, Appendix F (1971) [hereinafter cited as PRESIDENT'S ADVISORY COUNCIL]; U.S. DEP'T OF COMMERCE, PROGRESS OF THE MINORITY BUSINESS ENTERPRISE PROGRAM 29-68 (1972) [hereinafter cited as U.S. DEP'T OF COMMERCE].

31. Under the Public Works and Economic Development Act of 1965, 42 U.S.C. §§ 3151-52 (1970), the Economic Development Administration (EDA) provides technical assistance to business enterprises in economically disadvantaged areas. This same legislation authorizes the EDA to make long-term, low-interest loans to qualifying industrial companies for the purchase and development of land and facilities, including machinery and equipment. *Id.* § 3142(a)(1); see Note, *Community Development Corporations: Operations and Financing*, 83 HARV. L. REV. 1558, 1643-46 (1970).

32. In Exec. Order No. 11458, 3 C.F.R. 109 (1969), President Nixon gave the Secretary of Commerce a broad mandate to coordinate the various federal agencies and programs dealing with the problems of minority entrepreneurs toward a national program for minority business enterprise. The newly created Office of Minority Business Enterprise (OMBE) concentrated its program efforts in 4 basic areas: coordinating federal activities, mobilizing the private sector, stimulating the minority community, and serving as an information center. U.S. DEP'T OF COMMERCE, *supra* note 30, at 24. Exec. Order No. 11625, 3 C.F.R. 213 (1971), superseding Exec. Order No. 11458, expanded the minority enterprise program by clarifying and increasing the Secretary's authority. Finally, in Exec. Order No. 11518, 3 C.F.R. 109 (1970), the President, pursuant to the Small Business Act, 15 U.S.C. § 631 (1970), provided for increased representation of the interests of small businesses before federal government agencies and directed that the Small Business Administration "particularly consider the needs and interests of minority-owned small business concerns and of members of minority groups seeking entry into the business community." For a discussion of the political events leading to the establishment of OMBE see McClaughry, *Black Ownership and National Politics*, in BLACK ECONOMIC DEVELOPMENT (W. Haddad & G. Pugh eds. 1969).

Welfare;<sup>33</sup> the Model Cities programs,<sup>34</sup> relocation payments to displaced businesses,<sup>35</sup> urban renewal demonstration programs, Federal Housing Administration three percent insured loans for the construction and rehabilitation of housing for low- and moderate-income families, the grant program for small public facilities related to the community action programs of the Office of Economic Opportunity,<sup>36</sup> and the construction and leasing program of public housing units—administered by the Department of Housing and Urban Development;<sup>37</sup> the construction contracting services,<sup>38</sup> contracting to provide personal property and services, and the surplus property programs;<sup>39</sup> the legal services,<sup>40</sup> community action,<sup>41</sup> the Research and Demonstration,<sup>42</sup> and the Special Impact programs of the Office of Economic Opportunity.<sup>43</sup>

33. See Manpower Development and Training Act of 1962, 42 U.S.C. §§ 2572(6), 2601 (1970); 45 C.F.R. §§ 160.1 to -22 (1972).

34. The Model Cities program, begun under the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. §§ 3301-13 (1970), establishes city demonstration agencies that receive HUD grants to concentrate governmental and private efforts in designated Model Cities areas. Development of businesses in the target area figures significantly in the program. See Note, *supra* note 31, at 1605-07. See generally Olken, *Economic Development in the Model Cities Program*, 36 LAW & CONTEMP. PROB. 205 (1971). See also *Special Project: Nashville Model Cities*, 25 VAND. L. REV. 727 (1972).

35. See Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601-55 (Supp. 1973).

36. See SPECIAL CATALOG, *supra* note 30, at 15-16.

37. Cf. Garrity, *Community Economic Development and Low-Income Housing Development*, 36 LAW & CONTEMP. PROB. 191 (1971).

38. See SPECIAL CATALOG, *supra* note 30, at 26-27.

39. See *id.* at 27.

40. See 42 U.S.C. § 2809(a)(3) (1970).

41. Community action programs, established under Title II of the Economic Opportunity Act of 1964, 42 U.S.C. §§ 2781-837 (1970), are designed to help low-income persons "to attain the skills, knowledge, and motivations and secure the opportunities needed for them to become fully self-sufficient." *Id.* § 2781(a). Under the programs, community action agencies with broad powers are established. One possible activity of the agency is economic development toward stimulating new jobs in the community. See Note, *supra* note 31, at 1600-04.

42. Authorized by 42 U.S.C. § 2825 (1970), the research and demonstration projects program (R & D) develops new approaches in methods that will aid the expansion of economic opportunity. The R & D program can be a source of funds for business development.

43. Title I-D of the Economic Opportunity Act of 1964, 42 U.S.C. §§ 2763-68 (1970), provides for the creation of "Special Impact" programs to solve problems of "dependency, chronic unemployment, and rising community tensions" in areas with large concentrations of low-income persons. *Id.* § 2763. The statute specifically states that the programs should, "where feasible, promote the development of entrepreneurial and management skills and the ownership or participation in ownership of assisted businesses by residents of the area served." *Id.* § 2765(a)(2). Under "Special Impact," OEO has given a number of grants for equity capital and administrative expenses to community development corporations (CDC's) to establish their own businesses. (Generally, CDC's may be described as "community-based organizations that conduct revenue-generating business with the primary purpose of economic and social development of their community." Note,

Finally, there are SCORE,<sup>44</sup> MAME, the "6 x 6" Pilot Loan and Management Program, government-backed franchising, the guarantee-leasing program,<sup>45</sup> the local Development Company Program,<sup>46</sup> the SBIC and MESBIC programs,<sup>47</sup> Operation Business Mainstream,<sup>48</sup> the "8(a) set-aside" program, other procurement and management assistance to small businesses,<sup>49</sup> Financial Assistance-Displaced Business

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*supra* note 31, at 1159-60.) "Special Impact" grants have also gone to venture capital pools, administered by community organizations, for business development in the target area. *See id.* at 1595-1600.

44. The Service Corps of Retired Executives (SCORE), established in 1964, provides management assistance to small businesses administered by the Small Business Administration (SBA). Its emphasis is on strengthening management ability, and special attention is placed on encouraging small business entrepreneurship among minority groups. U.S. GOV'T ORGANIZATION MANUAL 375 (1972).

45. Through the lease-guarantee program, the SBA guarantees the lease payments of a small business for commercial and industrial space. *See* 15 U.S.C. § 692 (1970) and regulations promulgated thereunder, 13 C.F.R. §§ 106.1-.17 (1972).

46. Often called the "section 502" program, this program provides long-term loans to local development companies, which are private entities that receive SBA-leveraged funds to assist small businesses. These section 502 loans can be used only for the acquisition of land, construction, conversion, or expansion of buildings and for the purchase of machinery and equipment for small businesses. *See* 15 U.S.C. §§ 695-96 (1970) and regulations promulgated thereunder, 13 C.F.R. §§ 108.1-.502-1 (1972); Note, *supra* note 31, at 1640-43.

47. In addition to its loans to individual businesses, the SBA makes long-term loans to Small Business Investment Companies (SBIC's), which are privately owned, for-profit operations that make long-term equity or debt investments in small business concerns. *See* Small Business Investment Act, 15 U.S.C. §§ 681-88 (1970) and regulations promulgated thereunder, 13 C.F.R. §§ 107.1-.1411 (1972). Although several provisions facilitate SBIC financing of businesses in low-income areas, none provides a significant incentive. Note, *supra* note 31, at 1638. A proposed regulation that would have permitted the SBA to guarantee 90% of SBIC loans made to disadvantaged owners' businesses was rejected. *See* Proposed Amendment to 13 C.F.R., §§ 107.1501-04, 34 Fed. Reg. 1180-81 (1969). As an alternative, the Office of Minority Business Enterprise has sought to recruit private sources of capital to form minority enterprise SBIC's (MESBIC's), which would aid minority-owned businesses without special incentives. *See* 13 C.F.R. § 107.3 (1972) (definition of MESBIC). MESBIC's represent the principal innovation by the Nixon Administration to encourage minority business development. There were 43 licensed MESBIC's at the end of fiscal year 1971. *See generally* OFFICE OF MINORITY BUSINESS ENTERPRISE, U.S. DEP'T OF COMMERCE, MESBIC'S AND MINORITY ENTERPRISE (1971); Nadau, *Effective MESBIC Organization*, 27 BUS. LAW. 665 (1972); Rosenbloom & Shank, *Let's Write Off MESBIC's*, 48 HARV. BUS. REV. 90 (Sept.-Oct. 1970).

48. "Operation Business Mainstream," created in late 1969, is a package program that coordinates the efforts of SBA for maximum results in delivering dollars and services to disadvantaged businesses. *See* PRESIDENT'S ADVISORY COUNCIL, *supra* note 30, at F-9.

49. The SBA provides a form of sheltered government market through its § 8(a) subcontracting program under the Small Business Act of 1958, 15 U.S.C. § 637(a) (1970). Since 1968, the SBA has used this § 8(a) program to assist businesses in low-income areas, even when their bids are noncompetitive. Statutory authority for the program is found in 42 U.S.C. § 290(c) (1970). *See* 13 C.F.R. § 124.8-1(c) (1972) (emphasis added): "To be eligible for an 8(a) subcontract, a concern must be owned or destined to be owned by socially or economically disadvantaged persons. This category often includes, but is not restricted to, Black Americans, American Indians, Spanish

Loans,<sup>50</sup> regular business loans,<sup>51</sup> and economic opportunity loans<sup>52</sup>—all under the auspices of the Small Business Administration.<sup>53</sup>

Two major problems exist with respect to each of these and every other federal government program as well. First, blacks are often unaware that such programs exist. Secondly, local and state officials of the federal departments and agencies administering the programs often exhibit negative attitudes toward blacks who seek assistance. The two criticisms apply as well to the myriad state and local government programs, many of which promise to conform to federal equal opportunity guidelines in order to obtain federal funds but later ignore their promises and the federal guidelines once funds are obtained.

Coincident with the violent urban eruptions involving over 200,000 persons, and causing nearly 8,000 injuries and 191 deaths between 1964 and 1970, was a "commitment" by the private sector to seek solutions to the problem of underrepresentation of blacks and other ethnic minorities in business ownership and control. The "awakening" of the private sector was not, however, limited to minority entrepreneurship. It purported to encompass employment, housing, welfare, education, and the general voicelessness and powerlessness of blacks and other minorities as well as business. Within the context of this Article, an illustrative list of programs would include those of: the Interracial Council for Business Opportunity; the Cleveland-based Black Economic Union, formerly the Negro Industrial and Economic Union; the Opportunity Funding Corporation; the Minority Contractors' Assistance Program; the National

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*Americans, Oriental Americans, Eskimos and Aleuts.*" Recent federal cases have upheld the § 8(a) program against attacks on its legality. See *Ray Baillie Trash Hauling, Inc. v. Kleppe*, 41 U.S.L.W. 2373 (5th Cir., Jan. 5, 1973), *rev'g* 334 F. Supp. 194, 202 (S.D. Fla. 1971); *Fortec Constructors v. Kleppe*, 350 F. Supp. 171, 173 (D.D.C. 1972). For a discussion of the constitutionality of "compensatory" or "preferential" treatment of minorities see Elden, "Forty Acres and a Mule," with Interest: *The Constitutionality of Black Capitalism, Benign School Quotas, and Other Statutory Racial Classifications*, 47 J. URBAN L. 591 (1969). In addition to the § 8(a) subcontracting program, management and procurement assistance is authorized by 15 U.S.C. § 637(b)(1) (1970) and regulations promulgated thereunder, 13 C.F.R. §§ 124.8-3 to -9 (1972); see 42 U.S.C. § 2906(b) (1970). See also 15 U.S.C. § 638 (1970) (research and development assistance).

50. See 15 U.S.C. § 636(b)(3) (1970), providing loans to small businesses suffering economic injury as a result of displacement by a federal project.

51. Until recently, the SBA sought to assist all enterprises coming within the broad definition of "small businesses" through its regular § 7(a) business loans. Small Business Act of 1958, § 7(a), 15 U.S.C. § 636(a) (1970). Generally, conservative investment policy became the principal rule for allocating § 7(a) funds, with the result that the low-income borrower suffered a disadvantage. See Note, *supra* note 31, at 1633-34.

52. Subchapter IV of the Economic Opportunity Act, 42 U.S.C. §§ 2901-07 (1970), authorizes "economic opportunity loans" to offer businesses in low-income areas more lenient terms than the regular § 7(a) loans. See 13 C.F.R. §§ 119.1 to -.91 (1972).

53. See generally Knebel, *Legal Basis for SBA's Minority Enterprise Program*, 30 FED. B.J. 271 (1971).

Alliance of Businessmen; the American Institute of Certified Public Accountants; the Progress Association for Economic Development; the International Council of Shopping Centers; the Ford Foundation; the Menswear Retailers of America; and various essentially local programs in urban areas across the country.

Assistance for black business development began in 1900, when Booker T. Washington and a group of concerned black and white citizens formed the National Negro Business League, now known as the National Business League (NBL), in Boston. The NBL today has local chapters in more than 70 urban areas throughout the country, and its membership is a highly diversified segment of the black business community. Using funds obtained from the Office of Economic Opportunity, the Economic Development Administration, the Small Business Administration, and the Office of Minority Business Enterprise, the NBL during the past six years has provided a comprehensive package of financial and technical services to black enterprises in Atlanta, Atlantic City, Chicago, Cleveland, Columbus, Durham, Houston, Indianapolis, Jackson, Jersey City, Memphis, Milwaukee, Norfolk, Oakland, Richmond, Seattle, and other cities.

During its seventy-second Annual Convention in Dallas, October 3-6, 1972, the NBL membership agreed upon a redirection of effort that may prove to be of major significance for black and other minority business development. The "New Thrust," as the redirection is called, essentially seeks to accommodate the aspirations of all groups organized either to promote the business lives of their geographic areas or to eliminate the economic isolation of their constituents. Thus the NBL's new direction is toward becoming a federation of minority business and trade associations. Pursuant to its "New Thrust," the NBL has undertaken a reorganization that will make an expanded package of services available to its individual and associational membership. The new services will include training and education research, and assistance in dealing with government agencies. If the New Thrust is successful, the NBL will have come full circle, because it was out of the NBL that the numerous other black business and trade associations were originally formed.

### III. NEXT STEPS

Much has been and is being done to assist black and other minority economic development. Much more will be necessary, however, to propel any significant number of blacks and other minorities into the free-enterprise mainstream of our economy, and the federal government

must provide the leadership for the greater effort. Executive Order 11458<sup>54</sup> created the Office of Minority Business Enterprise (OMBE) within the Department of Commerce on March 5, 1969. One of the major responsibilities of OMBE, in addition to the development and implementation of its own programs, is to coordinate the federal government's other minority business assistance programs. The federal government's greater leadership role should, therefore, be implemented through OMBE. Two changes are necessary for OMBE to discharge its responsibility. First, the office must have an enhanced stature in order to command the cooperation of other federal agencies. Elevating the Director of OMBE to an Assistant Secretary of Commerce should accomplish that result. Secondly, OMBE must have the assurance of a constant and increased budget. A minimum of 100,000,000 dollars per year, for the next several years, seems necessary for the job to be done.<sup>55</sup>

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54. See note 32 *supra*.

55. Other sources utilized in preparing this Article include P. GIBSON, *THE \$30 BILLION NEGRO* (1969); J. HARMON, JR., A. LINDSAY & C. WOODSON, *THE NEGRO AS A BUSINESSMAN* (1929); A. HARRIS, *THE NEGRO AS CAPITALIST* (1936); C. IFELSA & G. STRIDE, *PEOPLES AND EMPIRES OF WEST AFRICA IN HISTORY, 1000-1800* (1971).