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"Law and Economic Development in the United States"

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1 Introduction[1]

The concept of development has traditionally been associated with less developed countries ("developing countries").[2] However, the changing economic realities for developed countries, such as regional economic disparity within developed countries, increasing income gaps among their citizens ("economic polarization"), and stagnant economic growth, which led to dramatic political outcomes such as the United Kingdom's referendum outcome to exit the European Union and the unexpected upset in the 2016 United States presidential election, justify the application of the concept of development to address economic problems in developed countries, such as the United States.[3] This paper examines the economic problems in the United States and applies the law and development approaches.

The 2016 election of Donald Trump, a controversial businessman and political outsider, as the 45th president of the United States was an unexpected event marking the end of an era known for providing a degree of political and economic predictability and the beginning of an uncertain new age. The deteriorating economic conditions prevailing in many States[4] in the United States,[5] such as the decline of manufacturing industries, unemployment, and income losses, despite the overall wealth and economic prosperity of the United States, were a primary cause of this dramatic election

[1] This paper is adapted from the author's works, Yong-Shik Lee, Law and Development: Theory and Practice (2d. ed., Routledge, forthcoming 2022), Chapter 6. See also *Law and Economic Development in the United States: Toward a New Paradigm*, 68 Catholic University Law Review, no. 2 (2019), 229-290.
[2] Yong-Shik Lee, *Law and Development: Theory and Practice* (Routledge, 2019), at 16-18.
[3] *Ibid.*
[4] "State" with a capital "S" denotes a constituent "State" of the United States of America, as opposed to an independent sovereign state (with a lower case "s") such as the United States.
[5] The decline of the United States manufacturing industries in many regions of the country, signified by the term, "Rust Belt," and the resulting loss of employment, income, and population caused substantial social discontent in the United States. Yong-Shik Lee, *Trans-Pacific Partnership Agreement: A Commentary on Developing/Developed Country Divide and Social Considerations*, 9 Trade, Law and Development, no. 2 (2017), 21-53, at 33-34.

outcome,[6] signaling the necessity of new approaches to tackle these economic problems in the United States.

The economic policies of the Trump administration, based on confrontational trade protections[7] and tax cuts primarily benefitting the wealthy,[8] have not resolved the economic problems in the United States. For an alternative approach, reference can be made to successful economic development cases; the countries that have achieved economic development, such as South Korea (hereinafter "Korea"), adopted legal and institutional approaches to stimulate economic development and generate higher income for the majority of their populations to escape from poverty. The Korean government adopted a series of effective economic development policies, such as promoting coordination and cooperation between the public and private sectors. Additionally, the government granted subsidies and tax exemptions to the growing key industries that generated jobs and income for the Korean population and endeavored to spur economic growth, successfully, through enabling legislation and a range of institutions to support these policies.[9]

The present economic circumstances of the United States and those of Korea during its development period are vastly different, the former commanding the largest economic resources among all countries and the latter facing serious poverty and significant resource constraints. Despite these differences, the form of legal and institutional approach adopted by successful developing countries in the past could still be referenced and employed, with necessary

[6] Trip Gabriel, "How Erie Went Red: The Economy Sank, and Trump Rose," *The New York Times*, November 12, 2016.

[7] For a discussion of the controversial trade policies and the subsequent trade disputes, see Yong-Shik Lee, *Three Wrongs Do Not Make a Right: The Conundrum of the U.S. Steel and Aluminum Tariffs,* 18 World Trade Review, no. 3 (2019), 481–501.

[8] John Harwood, "Trump's Tax Cut Isn't Giving the US Economy the Boost It Needs," *CNBC*, August 16, 2019, available at: <https://www.cnbc.com/2019/08/16/trumps-tax-cut-isnt-giving-the-us-economy-the-boost-it-needs.html> [https://perma.cc/UYV4-D2S5].

[9] Lee (2019), *supra* note 2, Section 4.2.3. The Korean government set up effective institutions, such as the Economic Planning Board (EPB) and the Korea Trade Promotion Agency (KOTRA), with offices in a number of export markets around the world, to offer assistance with export activities of Korean companies by providing market information and trade networks. *Ibid.*

modifications, to provide focused support to industries and businesses that contribute to economic development and generate jobs and income for populations, particularly for those in economically disadvantaged regions and communities in the United States. The next section examines the economic problems in the United States and proposes legal and institutional approaches to address them.

2 Economic Problems in the United States

2.1 Regional Economic Disparity

Regional variance in economic performance and income level is by no means unusual and is readily observed in every country, but the variance becomes a regional economic disparity with the potential to divide a country when economic gaps are deep and persistent. In the United States, such regional economic disparity is obvious. In 2019, the median household income ranged from US$ 24,725 to US$ 151,806 among 3,142 counties with the national median of US$ 65,712[10] and unemployment rates ranging from 0.7 percent to 19.3 percent.[11] The map below illustrates the large income gaps existing among the various counties with the more affluent counties being located in the major population centers of the East and West coasts, pockets in the West, and in the State of Texas; while the poorer counties are in the rural South, Southeast, Southwest, and in the Midwest.

[10] See U.S. Census Bureau, *2019 Poverty and Median Household Income Estimates*, available at: <https://www2.census.gov/programs-surveys/saipe/datasets/2019/2019-state-and-county/est19all.xls> [https://perma.cc/GC4D-BAT6].

[11] U.S. Bureau of Labor Statistics, *Labor Force Data by County, 2019 Annual Averages*, available at: <https://www.bls.gov/lau/laucnty19.xlsx> [https://perma.cc/QEU3-5AXN].

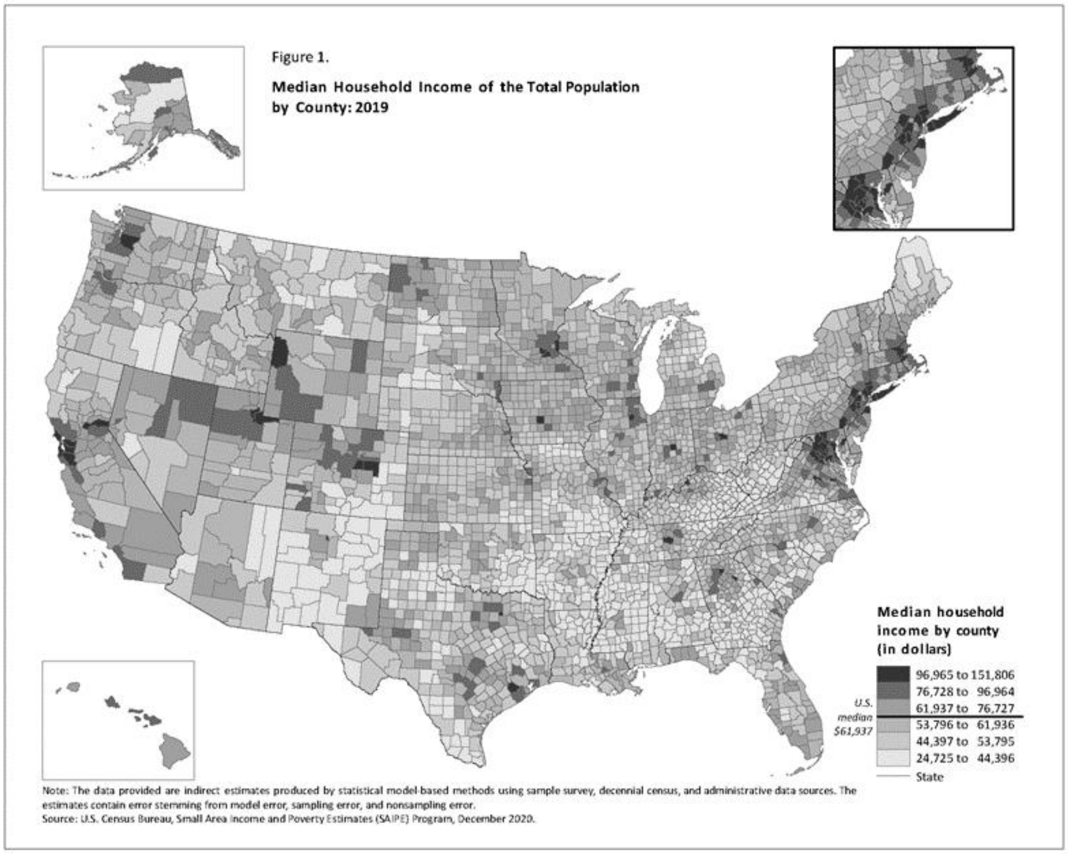

Figure 1: Median Household Income of the Total Population by County (2019) [12]

The regional economic disparity, as measured by the median household income, is significant; in the highest bracket, the median household income is over 240 percent of the national median and in the lowest they are below the poverty line.[13] According to a study by the United States Department of Agriculture (USDA), 11.2 percent of all counties (353 counties) in the United States are persistently poor. These counties have had 20 percent or more of their populations living in

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[12] U.S. Census Bureau, *Median Household Income of the Total Population by County: 2019*, available at: <https://www.census.gov/content/dam/Census/library/visualizations/2020/demo/p30-08/f1-mp-19.pdf> [https://perma.cc/F7CK-AWQW].

[13] U.S. Census Bureau, *supra* note 10. The "poverty thresholds" identified by the U.S. Census were $20.335 for a family of three and $26,172 for a family of four in 2019. U.S. Census Bureau, *Poverty Thresholds*, available at: <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html> [https://perma.cc/7NCE-X972]. *See id.*

poverty over the last thirty years.[14] Poverty in the United States is regionally concentrated. The USDA study notes that "people living in poverty tend to be clustered in certain regions, counties, and neighborhoods rather than being spread evenly across the [n]ation."[15]

The geographical location of the respective wealthier and poorer counties and regions has not significantly changed over the years. A study concluded that counties consistently underperforming economically are primarily found in seven regions: the Northern Rockies, the Great Plains, the Rio Grande Valley, the Mississippi Delta, the Great Lakes, the Appalachian Mountains, and the Deep South.[16] Many of the counties marked as exhibiting lower household incomes, on the above 2019 map, are also located in the aforementioned regions and on the following 2002 map illustrating the median household income by county in the beginning of the century. The substantial similarity in the location of the wealthier and poorer counties between these two maps demonstrates that persistent regional economic gaps, accompanying unemployment and poverty, exist in the United States.

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[14] USDA Economic Research Service, *Geography of Poverty*, available at: <https://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/geography-of-poverty.aspx> [https://perma.cc/N847-9UVR].

[15] *Ibid.*

[16] The study examined population change from 1970 to 2006, employment change from 1970 to 2006, wage change from 1970 to 2006, and average wages in 2006. If a county ranked in the bottom third in three out of the four categories, the county was identified as underperforming. Yoav Hagler, "Introduction: Identifying Underperforming Regions," *in* Petra Todorovich and Yoav Hagler (eds.), *America 2050: New Strategies for Regional Economic Development* (2009), at 7, text available at: <http://www.america2050.org/pdf/2050_Report_Regional_Economic_Development_2009.pdf> [https://perma.cc/85SV-WGAJ].

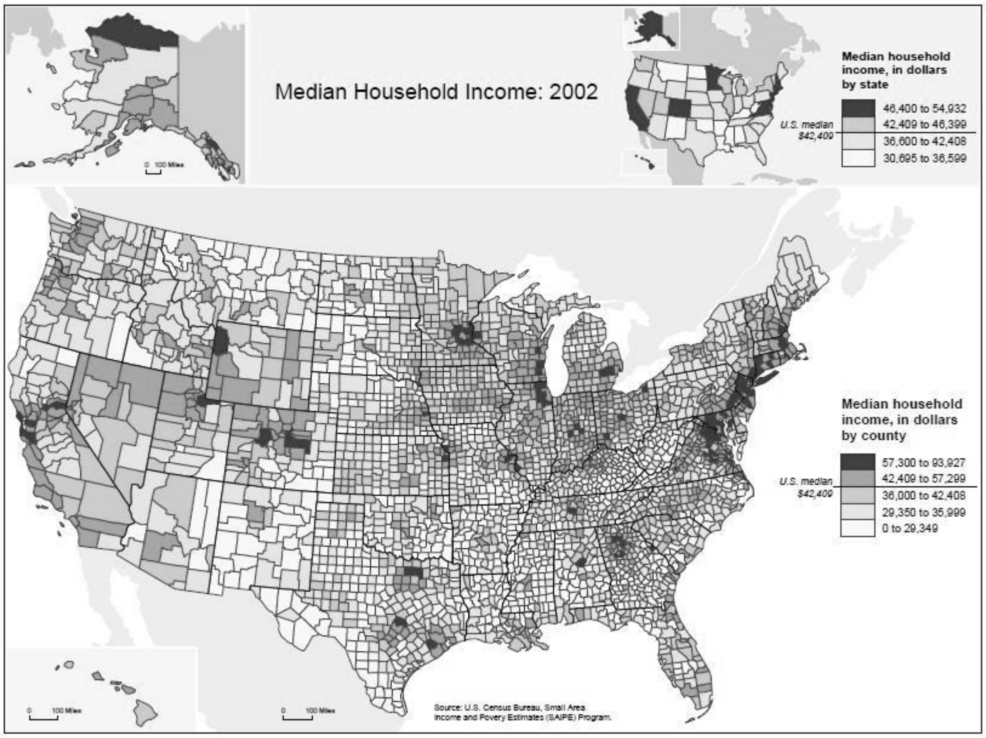

Figure 2: Median Household Income of the United States by County (2002)[17]

The causes of this persistent regional economic disparity include geographical elements such as location (*e.g.*, access to ports and transportation links),[18] infrastructure,[19] the availability of human capital through educational attainment,[20] and natural amenities.[21] These elements have influenced the location of new industries generating employment and income, such as IT (information

[17] See U.S. Census Bureau, *Small Area Income and Poverty Estimates*, available at: <https://www.census.gov/content/dam/Census/library/visualizations/2004/demo/2002-state-county-maps/med-hh-inc2002.pdf > [https://perma.cc/JA69-7EV4].

[18] A study identified geographical isolation as the primary cause of economic disparity within the United States. Junjie Wu and Munisamy Gopinath, *What Causes Spatial Variations in Economic Development in the United States?*, 90 American Journal of Agricultural Economics, no. 2 (2008), 392-408, at 407. The study observed that areas that were further away from metropolitan areas showed significantly lower labor demands, wages, housing prices, and demand for land development. *Ibid.*, at 404.

[19] *Ibid.*, at 402.

[20] Hagler (2009), *supra* note 16, at 14. The age composition of the population is also relevant. *Ibid.*, at 7.

[21] Wu and Gopinath (2008), *supra* note 18, at 404.

technology), biotechnology, and financial industries.[22] Uneven industrial development and subsequent regional adaptation have also played a role in creating this disparity; once-powerful traditional manufacturing industries in the United States, such as the iron and steel industries, failed to adapt to the changing global economic environment, causing the sites of these industries to decline, as signified by the term "Rust Belt."[23]

The regional economic disparity creates a range of socioeconomic issues, including gaps in education, healthcare, and public safety; the loss of population in poorer regions; and social discontent leading to political unrest.[24] Perhaps the most dramatic demonstration of such social discontent was the unexpected outcome of the 2016 U.S. presidential election. Donald Trump, who had been largely considered a political outsider, won the election against U.S. Senator for the State of New York, Hillary Clinton, despite the overwhelming forecasts predicting a Clinton Presidency.[25] The Trump victory was owed, in no small part, to the economic discontent and growing public mistrust in the political establishment,[26] concentrated in the regions facing economic deprivation. Trump lost the 2020 presidential election to Joe Biden, but he still received

[22] Thus, these industries are concentrated in the regions with the cited advantages, such as the East and West coasts. Isolated rural areas in the Midwest and in the South have suffered from lack of economic opportunities. See Hagler (2009), *supra* note 16. The poverty rate in the rural South (non-metro counties) reached 21.7 percent during 2011-2015. USDA Economic Research Service, *supra* note 14.

[23] "The Rust Belt" refers to the large area from the Great Lakes to the upper Midwest States, including western New York, Pennsylvania, West Virginia, Ohio, Indiana, parts of Michigan, northern Illinois, eastern Iowa, and southeastern Wisconsin. The term signifies the economic decline, deindustrialization, population loss, and urban decay caused by the decline of its once-prospered manufacturing sector. This region lost more than 1.2 million manufacturing jobs since 1990 and 2.2 million since 1970. Hagler (2009), *supra* note 16, at 9. However, not all of the traditional manufacturing sites have declined; for example, Chicago, New York, and Los Angeles also lost large numbers of traditional manufacturing jobs (548,185, 376,838, 330,944, respectively), but these places were able to adapt and replace the declining industries with new ones that generated employment. *Ibid.*

[24] According to the USDA research, "the poor living in areas where poverty is prevalent face impediments beyond those of their individual circumstances. Concentrated poverty contributes to poor housing and health conditions, higher crime and school dropout rates, as well as employment dislocations. As a result, economic conditions in very poor areas can create limited opportunities for poor residents that become self-perpetuating." USDA Economic Research Service, *supra* note 14.

[25] See John Slides, "A Comprehensive Average of Election Forecasts Points to a Decisive Clinton Victory," *Washington Post*, November 8, 2016.

[26] See Gabriel (2016), *supra* note 6.

the second largest popular vote in the history of U.S. presidential elections, second only to Biden. There is a significant correlation between the counties where Donald Trump won and their household median income pattern observed above, as depicted by the following map (counties marked in darker color tone – which tend to be wealthier countries – represent stronger support for Democratic Presidential candidate Biden).

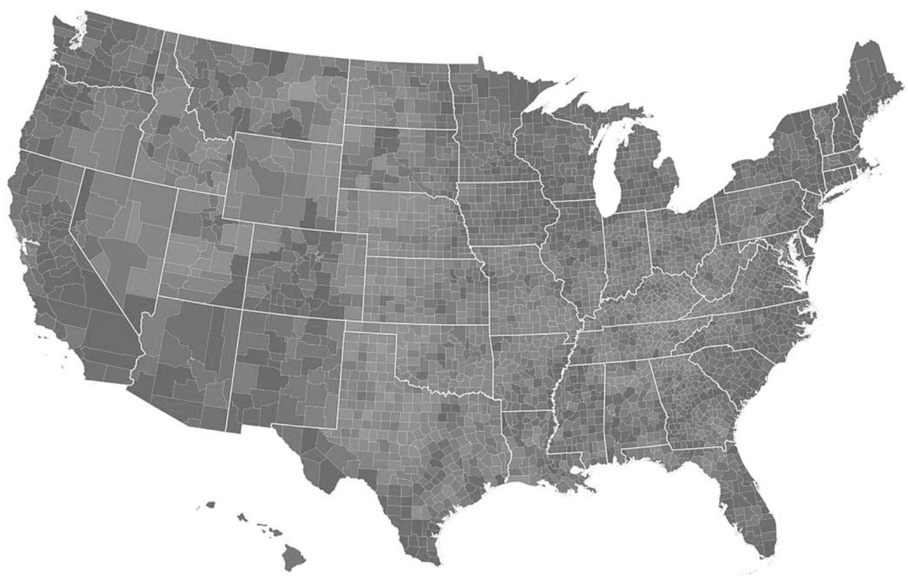

Figure 3: 2020 U.S. Presidential Election Result by County[27]

This map illustrates the regional economic disparity reflected in the election outcome; the counties in regions identified as wealthier, such as the population centers along the East and West coasts (colored darker on the map) voted for Biden and those in the poorer regions, including the South, much of the Southwest and Southeast, and the Midwest, revealed the tendency to vote for Trump.[28]

[27] Mitchell Thorson, Janie Haseman, and Carlie Procell, "Four Maps That Show How America Voted in the 2020 Election with Results by County, Number of Voters," *USA Today*, November 20, 2020, available at: <https://www.usatoday.com/in-depth/graphics/2020/11/10/election-maps-2020-america-county-results-more-voters/6226197002/> [https://perma.cc/93NV-M2XY].
[28] Gabriel (2016), *supra* note 6.

This could be characterized as a national divide in the country with different political preferences affecting the election outcome. Given this divide, each group of counties and regions can be viewed as a country within a country, with vastly different income levels and economic capacities; the poorer counties and regions, analogous to "developing countries" in this sense, exist alongside developed ones on the world stage. President Trump vowed to improve economic conditions for those in economic deprivation and poorer regions, which are his support base,[29] and won the presidency in 2016 and the second largest popular vote in history in 2020; thus, the economic improvement or "economic development" of the poorer regions in the United States has acquired political tenancy.[30]

2.2 Structural Issues in the Economy

In addition to the regional economic disparity, there are substantial structural issues in the U.S. economy, such as stagnant economic growth and economic polarization (worsening income distribution), that necessitate the legal and institutional approaches.

a) Economic growth

The U.S. economy has shown a steady decline in economic growth since the 1970s. Figure 4 illustrates the downward trend of real GDP[31] growth rates.

[29] Heather Long, "*Trump Vows 25 Million Jobs, Most of Any President*," *CNN Money*, January 20, 2017, available at: <http://money.cnn.com/2017/01/20/news/economy/donald-trump-jobs-wages> [https://perma.cc/EC4U-C9NB].

[30] The term, "economic development," is increasingly used in the context of developed-country economies. Reflecting this trend, national, regional and local governments in developed countries have set up offices to promote "economic development." Examples include the Economic Development Administration (EDA) under the U.S. Department of Commerce, the Department of Economic Development in the State of Georgia, and the Office of Economic Development in the City of New Orleans.

[31] "Real GDP" refers to gross domestic product figures adjusted by inflation (calculated in fixed currency value). Economic indicators in "real" terms, such as "real growth" and "real consumption," are also adjusted by inflation.

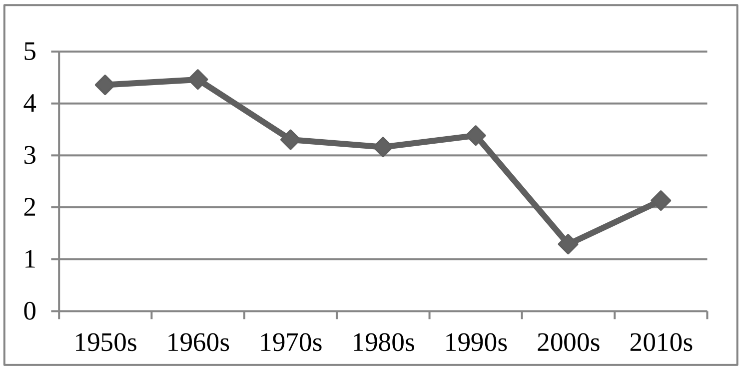

Figure 4: Average Annual Real GDP Growth Rates by Decade (percentage)[32]

There is a long-term trend of steady decline, and the particularly low average real growth rate in the 2000s was due to the 2007-2008 financial crisis. This crisis led to a severe recession in the U.S. economy, sharply lowering real GDP growth rates, which had ranged from 4.36 to 3.03 percent between 2003 and 2005, down to –2.77 and –0.24 percent in 2008 and 2009, respectively.[33] Since then, the United States has seen stagnant recovery and growth, with the real GDP growth rate kept under 3 percent.[34]

This stagnant growth affects employment. The employment/population ratio for males aged twenty-five to fifty-four has been below 87 percent since 2010, compared to over 90 percent until the 1970s,[35] and dipped to 76 percent in November 2020 for all persons aged twenty-five to fifty-four, compared to 81 percent in 1999-2000.[36] A study observes the weakened stability of the labor

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[32] Compiled from *US Real GDP Growth Rate by Year*, available at: <http://www.multpl.com/us-real-gdp-growth-rate/table/by-year> [https://perma.cc/5YCY-DYQH], a table of annual percentage changes in U.S. Real GDP, chained 2012 dollars (inflation-adjusted).

[33] *Ibid.*

[34] *Ibid.*

[35] Edward Glaeser, "Secular Joblessness," *in* Coen Teulings and Richard Baldwin (eds.), *Secular Stagnation: Facts, Causes and Cures* (CEPR Press, 2014), at 70, available at: <https://scholar.harvard.edu/files/farhi/files/book_chapter_secular_stagnation_nov_2014_0.pdf> [https://perma.cc/6ZC7-TRML].

[36] FRED, *Employment Rate: Aged 25-54: Males for the United States*, available online at: <https://fred.stlouisfed.org/series/LREM25MAUSM156S>, accessed January 3, 2021; and FRED, *Employment-*

market in the United States;[37] until the end of the 1960s, the unemployment rate was relatively steady, averaging approximately 5 - 8 percent, depending on the economic cycle. After 1970, however, unemployment increased sharply during the recession.[38] The 2007-2008 recession was particularly severe, and prime-aged, male unemployment peaked at almost 20 percent, down only to 16.6 percent by 2014.[39] The employment rate has improved since then, but the recent COVID-19 pandemic has turned the tide again.[40]

What is the cause of the stagnant growth in the United States? An important reason is the relative decline of U.S. industries since the 1970s. After the Second World War, U.S. industries enjoyed a dominant position in the world, but its dominance was challenged; first by the European countries, such as Germany, as they recovered from the War and regained productive capacity; subsequently, by Japan and the NICs, such as South Korea and Taiwan; and most recently by China, which rapidly industrialized since the 1980s. Facing competition from the producers in these countries, U.S. producers lost many of their overseas and domestic consumers and many even relocated their production facilities overseas, seeking cheaper labor and consumer outlets, reducing, in turn, employment opportunities for U.S. workers. U.S. producers found strength in some of the new, technological industries, such as IT, biotechnology, and financial services, but are not enjoying a dominant position, as they once did with the traditional manufacturing industries during the postwar period, and they face strong challenges from abroad. Consistent with the economic stagnation, U.S. investment growth, which is measured by the non-residential fixed investment growth rate and the domestic net fixed investment/GDP ratio, has also been in a downward trend, as illustrated by Figures 5 and 6 below.

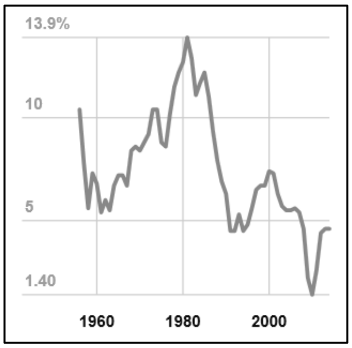
Population Ratio - 25-54 Yrs., available online at: <https://fred.stlouisfed.org/series/LNS12300060>, accessed January 3, 2021.

[37] Glaeser (2014), *supra* note 35, at 74.

[38] *Ibid.*

[39] *Ibid.*

[40] U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey* (last modified December 4, 2020), available at: <https://www.bls.gov/web/empsit/cpseea10.htm> [https://perma.cc/7DLW-PFLA].



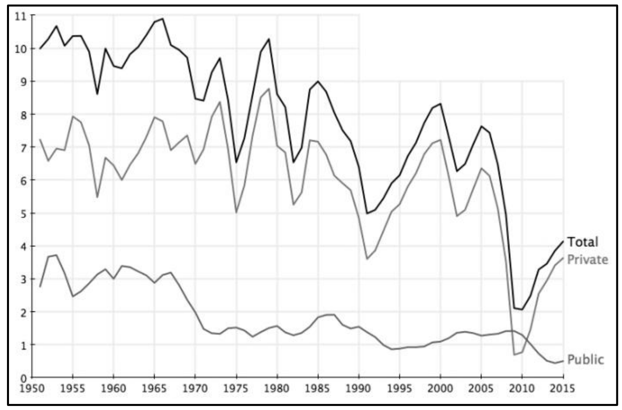


Figure 5 (left): Non-residential Fixed Investment Growth Rate[41]

Figure 6 (right): Domestic Net Fixed Investment (percentage of GDP)[42]

b) Economic polarization

Robert Gordon cites the inequality of income distribution as an impediment to the long-term economic growth of the United States.[43] He observes that the increasing share of the top 10 percent of the income distribution has deprived the middle class of income growth.[44] Since the 1970s, the real incomes[45] of households in the low- to middle-income groups have stagnated, whereas the real incomes of households in the highest income group increased sharply since the 1970s. The

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[41] Excerpted from Chris Matthews, "America's Investment Crisis is Getting Worse," *Fortune Finance* (December 5, 2015), available at: <http://fortune.com/2015/12/02/corporate-investment-crisis/> [https://perma.cc/MGF7-X637]. From 2015 to 2019, the growth rate fell further to 2.9 percent on average. Compiled from YCHARTS, *US Real Nonresidential Fixed Investment QoQ*, available at: <https://ycharts.com/indicators/us_change_in_real_nonresidential_fixed_investment> [https://perma.cc/B83K-PRPF].

[42] Excerpted from AnEconomicSense.org, "How Fast Can GDP Grow?: Not as Fast as Trump Says," *An Economic Sense* (August 1, 2017), available at: <https://aneconomicsense.org/2017/08/01/how-fast-can-gdp-grow-not-as-fast-as-trump-says/> [https://perma.cc/D8UN-74VU].

[43] Robert J. Gordon, "The Turtle's Progress: Secular Stagnation Meets the Headwinds," *in Secular Stagnation: Facts, Causes and Cures, supra* note 35, at 51.

[44] Teulings and Baldwin (2014), *supra* note 35, at 51.

[45] For an explanation of economic indicators in "real terms," see *supra* note 31.

upward mobility in the U.S. economy, which had been active from the 1950s until the 1970s, has been declining; since the turn of this century, polarization has mostly affected lower incomes.[46] The share of middle-income households has decreased from around 58 percent in 1970 to 47 percent in 2014 and the income share of the middle-income household from 47 percent in 1970 to 35 percent in 2014.[47]

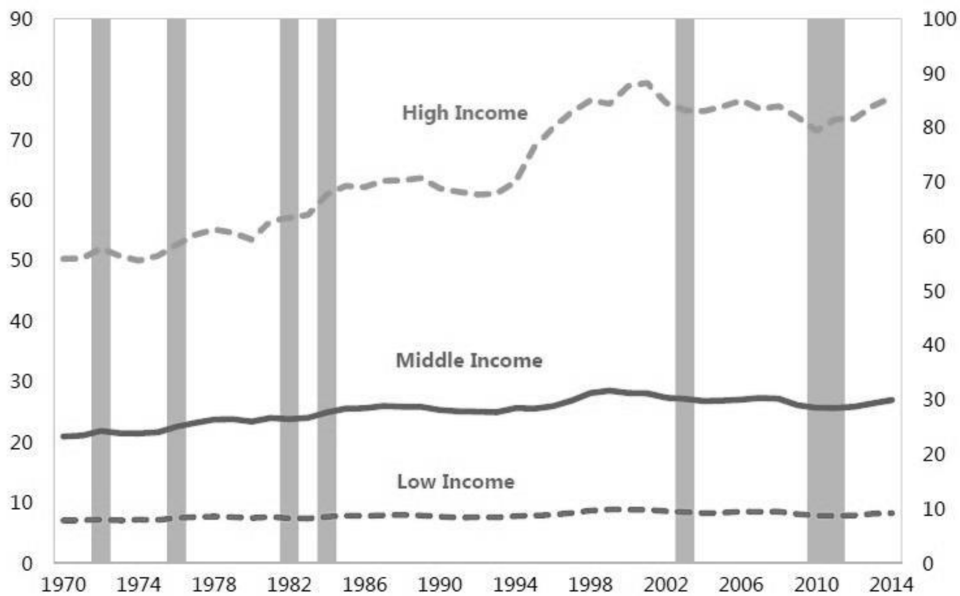

Figure 7: Average Scaled Household Income, 1970-2014 (thousand 2005 US$)[48]

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[46] Ali Alichi, Kory Kantenga, and Juan Solé, "Income Polarization in the United States," IMF Working Paper, WP/16/121 (June, 2016), at 5.

[47] *Ibid.,* at 5-8. The low-income group is comprised of households with less than 50 percent of the median income; the middle-income group, households with 50-150 percent of median income; and the high-income group, households with more than 150 percent of median income. Household income is divided by its size using OECD's equivalence scale. *Ibid.,* note 6. According to another study, the income share of the middle-income household fell from 62 percent in 1970 to 43 percent in 2018. Pew Research Center, *Trends in Income and Wealth Inequality* (January 9, 2020), available at: <https://www.pewsocialtrends.org/2020/01/09/trends-in-income-and-wealth-inequality/#fnref-27657-5> [https://perma.cc/SLX7-V49M]. The middle-income group is categorized differently in this study: it includes households with annual incomes that are two-thirds to double the median family income, after incomes have been adjusted for household size and the local cost of living. *Id.*

[48] Alichi, Kantenga, and Solé, *supra* note 46, at 4.

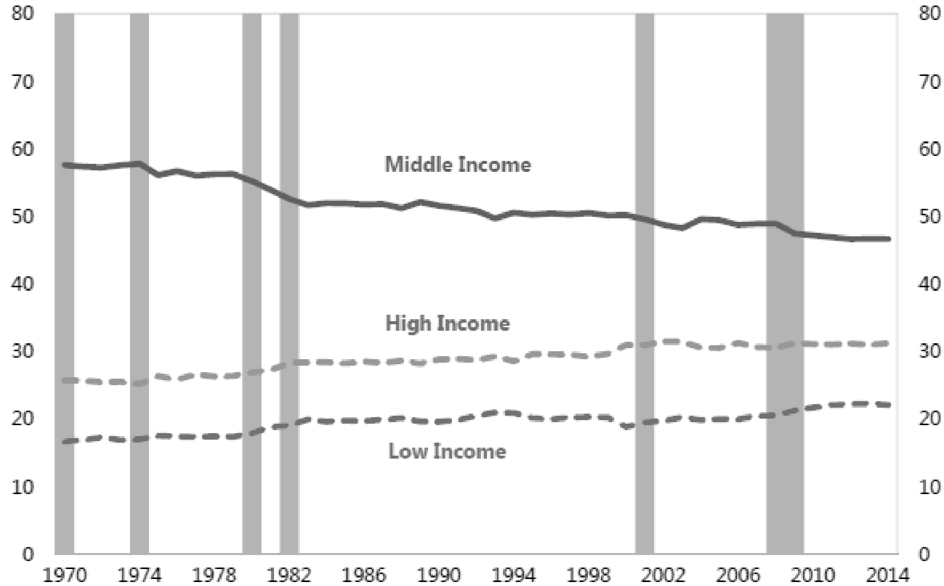

Figure 8: Number of Households by Income Group, 1970-2014 (percentage)[49]

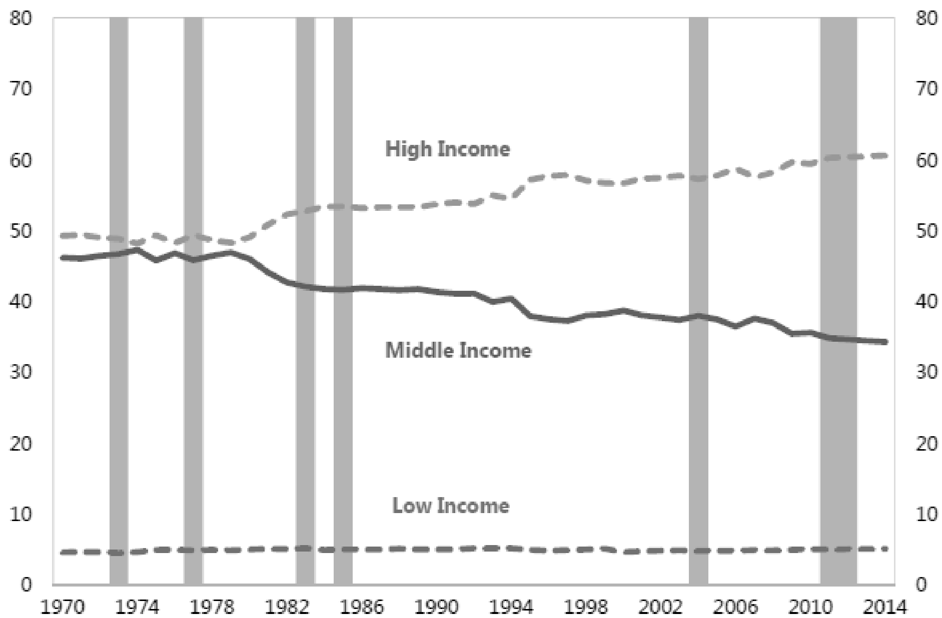

Figure 9: Income Shares by Income Group, 1970-2014 (percentage)[50]

[49] *Ibid.*, at 5.
[50] *Ibid.*, at 8.

The polarization has continued in a deteriorating trend; while more of the middle-income households moved into the high-income group rather than the low-income group during 1970-2000, only 0.25 percent of households have moved up to the high-income group since 2000 compared to 3.25 percent of the middle-income households who have moved down to the low-income group.[51] With the stagnation of income growth for middle- and low-income groups, the majority of U.S. households have experienced stagnant income growth since the 1970s.

Economic polarization presents a significant structural problem in the economy, because it lowers the level of real consumption for the whole economy, suppressing, in turn, economic growth.[52] It is because low- and middle-income households spend a larger share of their income, in relation to high-income household spending, in order to meet their cost of living ("higher propensity to consume"). Therefore, the stagnant income growth in these two income groups and the shrinking middle-income households means weakening consumption, and it also explains stagnant economic growth over the years.

2.3 Call for a New Approach

Regional economic disparity and the structural issues in the U.S. economy, characterized by stagnant growth and economic polarization, are a major economic impediment that calls for a new approach, addressing the causes of the problem. As discussed in the previous sections, the causes of regional economic disparity, stagnant growth, and economic polarization include: insufficient education and training, particularly for those on the lower end of the economic ladder; lack of infrastructure isolating many areas from economic centers; income inequality weakening the aggregate demand level; the downward trend for investment growth; stagnant population growth

[51] *Ibid.*, at 5.
[52] *Ibid.*, at 2.

eroding the consumer base and supply of labor for the future; excessive debts owed by the public which suppress consumption;[53] and a change in technology reducing the need for employment.[54]

These causes are diverse, multifaceted, and interconnected. There are legal and institutional frameworks in place to promote economic development, but they have proven to be insufficient. For example, the Public Works and Economic Development Act (PWEDA) authorizes the provision of federal grants, loans, and other types of assistance to support businesses in economically distressed areas[55] for the purpose of job creation and economic growth.[56] The Economic Development Administration (EDA), established under the authority of PWEDA, is currently the only federal agency focused exclusively on economic development.[57] The EDA works with local economic development officials and provides grants for relatively small-scale development projects,[58] including public works in economically distressed areas, regional innovation strategies, partnership planning, economic and trade adjustment assistance, and research and evaluation programs.[59]

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[53] United Nations, Development Policy and Analysis Division, "Low Growth with Limited Policy Options? Secular Stagnation—Causes, Consequences and Cures," *Development Issues,* no. 9 (March 1, 2017), at 3, available at: <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/dsp_policy_09.pdf> [https://perma.cc/U43H-5P83].

[54] Yong-Shik Lee, *Sung-Hee Jwa, A General Theory of Economic Development: Towards a Capitalist Manifesto – A Critical Review*, 10 Law and Development Review, no. 2 (2017), 643-657, at 653-654.

[55] Section 301(a)(1) and 301(a)(2) of PWEDA provides that an area is economically distressed if it has a per capita income of 80 percent or less of the national average or an unemployment rate that is, for the most recent twenty-four month period for which data are available, at least 1 percent greater than the national average unemployment rate. 42 U.S.C. §3161. An area that does not meet the criteria in section 301(a)(1) or 301(a)(2) of PWEDA may still be considered economically distressed if it meets the special need criteria under 301(a)(3) of PWEDA. *Ibid.*

[56] PWEDA, as amended, 42 U.S.C. §§ 3121 *et. seq*.

[57] *Ibid*. *C.f.,* at the regional level, the Appalachian Regional Commission is established under the authority of the Appalachian Redevelopment Act of 1965 for the purpose of facilitating economic growth in the economically depressed Appalachian region. 40 U.S.C. §§ 14101 *et. seq.*

[58] In 2018, the per-project grant ranged from $2,000 to $7,110,012, and EDA supported 692 projects for the total grant of 381 million, averaging around $550,000 per project. EDA, *2018 Annual Report* (2019), available at: <https://www.eda.gov/files/annual-reports/fy2018/EDA-FY2018-Annual-Report-full.pdf> [https://perma.cc/2K5S-5UP7].

[59] EDA, *EDA Fiscal Year 2017 Budget Request At-A-Glance: Supporting 21st Century Economic Development*, available at: <https://www.eda.gov/pdf/EDA-FY-2017-Budget-Fact-Sheet_FINAL.pdf> [https://perma.cc/2V7L-PEQQ]. See also EDA (2018), *ibid.*

As a small agency under the Department of Commerce, the EDA's mandate is limited, and the agency does not have the institutional status, authority, and budget to address the cited causes of the economic problems through effective coordination with other federal, State, and local government departments and agencies, as well as with the private sector, on a scale that is necessary to tackle the causes of the economic problems at the national level. Other federal government departments and agencies, such as the Department of Agriculture and the International Trade Administration under the Department of Commerce, also have programs to assist agricultural and industrial producers, but their jurisdiction is limited to specific areas, without the authority to address causes of the economic problems across the board.

To address these causes effectively, there is a need for stronger and more comprehensive institutional and legal frameworks targeting them and focusing on economic development. The purpose of such frameworks is to facilitate effective cooperation and coordination across the different levels of government and between the government and the private sector. The necessity of adopting this new approach arises from the failures in such coordination and cooperation. For instance, the federal effort to establish an efficient trucking network was impeded by individual States' attempt to impose their own regulations.[60] The federal government tried to strike down varied State regulations and set a uniform standard in the trucking industry by applying Supreme Court decisions, but State governments continued to impose their own rules by interpreting these decisions narrowly.[61] This conflict continued until Congress subsequently enacted laws governing the trucking industry nationwide.[62]

[60] Thomas W. Hazlett, *Is Federal Preemption Efficient in Cellular Phone Regulation?*, 56 Federal Communications Law Journal, no. 1 (2003), 155-238, at 186-187.
[61] *Ibid.*
[62] *Ibid.*

Another example shows a conflict between federal and State governments on one side and local governments on the other; the federal and State governments have endorsed fracking, a new technology adopted to extract oil or gas.[63] This technology is reinvigorating manufacturing investment, but such endorsement has faced intense opposition from local governments on environmental grounds.[64] Yet another example shows a lack of coordination between the public and private sectors: real estate developments through the "Public-Private Partnership" models in Minnesota, New Jersey, New York, Pennsylvania and Washington D.C. have failed due to a lack of coordination between public and private interests.[65] Disagreements may ensue among the federal, State, and local governments and between the public and private sectors, but the absence of effective mechanisms that resolve them is not conducive to economic development;[66] the outcome of the failure in coordination and cooperation among them has continued regional economic disparity, stagnant growth, and widening economic polarization for decades.

3. Applying the Legal and Institutional Approaches in the United States

This section, drawing from the experiences of successful developing countries in the past, such as the NICs, discusses the specific nature of the proposed legal and institutional approaches. These developing countries successfully lifted their economies from poverty to prosperity within a single generation, achieving the highest economic growth and the most successful economic development in history.[67] The legal and institutional approaches adopted by these countries present

[63] David B. Spence, *The Political Economy of Local Vetoes*, 93 Texas Law Review, no. 2 (2014), 351-413, at 355-357.
[64] *Ibid.*
[65] See Marc Scribner, "The Limitations of Public-Private Partnerships: Recent Lessons from the Surface Transportation and Real Estate Sectors," Issue Analysis (Competitive Enterprise Institute) (January 2011), at 15-22.
[66] The failure of coordination has also been revealed in the context of the recent COVID-19 pandemic. See Yong-Shik Lee, *Managing COVID-19: Legal and Institutional Issues* (November 6, 2020), available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3724655>, accessed December 10, 2020.
[67] The NICs have achieved unprecedented economic development sustained for over three decades; between 1961 and 1996, Korea increased its GDP (gross domestic product) by an average of 8.75 percent per annum, Hong Kong by 7.61 percent, Taiwan by 8.64 percent, and Singapore by 8.61 percent (calculated with real GDP figures at constant 2005 national prices), while the world's average annual GDP increase and the annual GDP increase of the low and

a useful reference model not only for the other developing countries seeking success in economic development but developed ones today, such as the United States, experiencing stagnant growth and economic polarization.

Among the NICs, the case of Korea is particularly helpful because it shows not only how a successful developing country maintained a high level of economic growth for over three decades but also how it was able to break out of a period of stagnation and achieve sustained economic growth. The country achieved one of the most successful and inclusive economic growths in history,[68] ending a period of stagnation in the 1950s;[69] thus, the study of the legal and institutional dimensions of this transformation may shed light on the legal and institutional approaches that could be adopted, despite the large differences between the two countries, to sunset the current economic stagnation, bridge the regional economic gaps, and reduce the economic polarization prevalent in the United States. This paper also applies the General Theory of Law and Development[70] ("the General Theory") to address economic issues in the United States.

The General Theory is comprised of two parts: the first part addresses the conceptual parameters of "law" and "development," and the second part analyzes the impact that law has on development through the regulatory impact mechanisms.[71] The preceding discussion has established the

middle income countries for the corresponding period were 3.85 and 4.39 percent, respectively. Robert C. Feenstra, Robert Inklaar, and Marcel P. Timmer, Penn World Table Version 8.1 (April 13, 2015), available at: <http://www.rug.nl/ggdc/productivity/pwt/pwt-releases/pwt8.1> [https://perma.cc/AUP9-FPZC] and World Bank data, available at: <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG> [https://perma.cc/ZRJ4-VEV5].

[68] *Ibid.* Between 1961 and 1996, Korea increased its GDP by an average of 8.75 percent per annum. Lee (2019), *supra* note 2, Section 4.1.

[69] With substantial U.S. aid, the Korean economy recovered from the destructions of the War in the 1950s, but economic stagnation began when the United States started to reduce its aid to Korea in 1958. Korea's economic growth rate was 3.49 percent in 1958, but it was lowered to 1.63 percent in 1959 and further reduced to mere 1.18 percent in the following year. Calculated from FRED (Federal Reserve Economic Data), *Real GDP at Constant National Prices for Republic of Korea*, available at: <https://fred.stlouisfed.org/series/RGDPNAKRA666NRUG> [https://perma.cc/GR35-ESTT].

[70] Yong-Shik Lee, *General Theory of Law and Development*, 50 Cornell International Law Journal, no. 3 (2017), 415-472.

[71] *Ibid.*

development objectives of the United States as bridging regional economic disparity, stimulating economic growth, and reducing economic polarization.[72] The applicable law under analysis would be legislation, including statutes and regulations, and judicial precedents that are binding as law in a common law country, such as the United States.[73] This section moves to the second part of the theory, "the regulatory impact mechanisms," comprised of three categorical elements: "regulatory design," "regulatory compliance," and "quality of implementation."[74]

3.1 Applying the General Theory of Law and Development: Regulatory Design

This sub-section begins with the first element of the regulatory impact mechanisms, "regulatory design," which deliberates how optimally law is designed to achieve its regulatory objectives.[75] The assessment of regulatory design, which is potentially a complex task, is performed by examining three sub-elements: anticipated policy outcome; organization of law, legal frameworks, and institutions (LFIs); and adaptation to socioeconomic conditions.[76]

a) Anticipated policy outcome

The first sub-element of regulatory design, "anticipatory policy outcome," refers to the policy outcome that law is anticipated to deliver.[77] For the United States, the policy objectives will concern the economic problems that have been identified in the preceding discussion: regional economic disparity, stagnant economic growth, and deepening economic polarization. Just as

[72] Lee (2019), *supra* note 2, Section 6.2.
[73] "Common law" refers to the legal system that originated in England based on binding judicial precedents that is adopted in much of the former British colonies and territories, such as the United States, Canada, India, Australia, and New Zealand. "Civil law" is the legal system that originated in Roman law that is now prevalent in Continental Europe, Latin America, and East and Southeast Asia, and is based on formally legislated "codes."
[74] Lee (2019), *supra* note 2, Section 3.2.
[75] *Ibid.*
[76] *Ibid.*
[77] Law exhibits a policy or policies forming regulatory objectives. *Ibid.*

Korea devised laws that were designed to meet the economic needs at the time (*i.e.*, industrial development and export promotion),[78] a similar approach could be adopted in the United States, including devising laws addressing the causes of these problems. For example, the earlier discussion has identified the causes of persistent regional economic disparity, including location (*e.g.*, access to ports and transportation links), infrastructure, the availability of human capital through educational attainment, and natural amenities.[79]

To address these causes, the government may adopt statutes that mandate government support to develop necessary infrastructure, improve public education in economically distressed regions, and promote the establishment and expansion of businesses in those same regions. PWEDA has provided for some of these supports, including facilitation of businesses in these areas,[80] but its operational scale is thus far inadequately small.[81] Specific support measures may vary and include subsidy grants, loans, and tax exemptions.[82] Consideration should be given to the appropriate level of government at which this task should be undertaken. Given the potentially large budgetary requirement for these types of projects and the limited financial capacity of State and local

[78] Lee (2019), *supra* note 2, Section 4.2.3(a) (for examples of development-facilitating statutes).
[79] See Section 2.1 *supra.*
[80] *Supra* note 58 (for a reference on the projects supported under PWEDA).
[81] *Ibid.* An empirical study concluded that the overall magnitude of EDA program effect on changes in income growth rates was insignificant. Randolph Martin and Robert Graham, *The Impact of Economic Development Administration Programs: Some Empirical Evidence*, 62 The Review of Economics and Statistics, no. 1 (1980), 52-62, at 62. Public investment in economically depressed areas or isolated rural areas needs to be increased. Other studies indicated that the employment impacts of public works projects in these areas were relatively large and that federal economic development programs helped rural communities to sustain, grow, and create new businesses, diversifying their economies. Richard Barrows and Daniel Bromley, *Employment Impacts of the Economic Development Administration's Public Works Program*, 57 American Journal of Agricultural Economics, no. 1 (1975), 46-54, at 53 and Anne Berblinger, *Federal Aid for Rural Economic Development*, 529 The Annals of the American Academy of Political and Social Science, no. 1 (1993), 155-163.
[82] These were also the primary means to support individual industries and promote exports in Korea in the process of its economic development. Lee (2019), *supra* note 2, Section 4.2.3(a). PWEDA authorizes grants and loans for development projects.

governments,[83] the federal government would have to take the primary responsibility,[84] but State and local governments, as well as the private sector, should participate in this process. The primary responsibility of the federal government does not preclude State and local governments from setting up their own laws and institutions to meet their economic development objectives within the bounds of their own resources, provided that there is intergovernmental coordination and cooperation. The subsequent discussion examines the necessity of coordination and cooperation among different levels of government and the institutional frameworks required for this task.

Improving the regional economic disparity will have a positive impact on overall economic development, but the legal and institutional approaches could also be adopted to stimulate economic development at the national level. In Korea, the government supported the development of specific industries and exports, but given the technological and financial capacities of U.S. industries, this type of support is unlikely to be necessary.[85] Instead, legislative support can focus on identifying and promoting innovations that facilitate technological and operational transformation, enhancing productivity and competition, and generating employment and higher levels of income, particularly in the areas in which private investment is insufficient.[86] The legislation may also provide a set of criteria to identify qualified innovations and stipulate the types

[83] For a discussion on the insufficient State budget, *see* Lucy Dadayan and Donald J. Boyd, *By The Numbers: 2016: Another Lackluster Year for State Tax Revenue* (Rockefeller Institute of Government) (May 2017), available at: <http://rockinst.org/wp-content/uploads/2018/02/2017-05-08-By-numbers-brief-no9-1.pdf> [https://perma.cc/DQ5A-ESBZ].

[84] Thus, this is distinguished from the approach taken by PWEDA stipulating that "economic development is an inherently local process, the Federal Government should work in partnership ...." PWEDA, 42 U.S.C. § 3121 (a)(4). Economic development is a national, regional, and local process, not just a local process, and the federal government should assume a primary responsibility, particularly when the economy is stagnant across the nation over a long period of time.

[85] In the 1980s, as the economy was being successfully developed, Korea also shifted legislative focus from promoting specific industries to supporting the then robust private sector as a whole and granted assistance to industries on a more selective basis where there was a need to improve their efficiency by restructuring or reorganization. Lee (2019), *supra* note 2, Section 4.2.3(a).

[86] The EDA has offered the Regional Innovation Strategies (RIS) Program to promote economic development projects that spur entrepreneurship and innovation, but the allocated budget for this program has been small (US$ 21 million for 2018). EDA, *supra* note 59.

of government support that can be offered to promote such innovations.[87] Stevenson-Wydler Technology Innovation Act of 1980[88] is an example of such effort, which could be reinforced to promote economic development across the board.

The justification for government support for development-facilitating innovations is that innovators consistently tend to be undercompensated for their innovations, because others may benefit from such innovations through learning and sharing without necessarily paying for their full value ("positive externalities").[89] As this could de-incentivize innovators and hamper innovations, the government has a legitimate interest in supporting innovators in their endeavors to undertake innovations successfully for the interest of economic development. Priority could be given to new and smaller enterprises that, through government support, can grow to challenge market monopolies and enhance competition.[90] The government may also support or engage in innovative research that could lead to technological transformation for economic development.[91]

Additionally, to promote economic growth, it is necessary to counter consistently falling public and private investments (see figures 5 and 6), as the decline in the investments is responsible for

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[87] For legislation supporting innovations, there are a number of questions to be addressed before such laws could be devised. What specific activities are qualified as such innovations to be supported by public funding? How can the outcomes of such identified innovation be reliably estimated? What are the most effective means of government support? What measures should be taken to ensure that government "support" does not interfere or overlap with the private sector efforts being made for their own innovation and avoid waste of public resources? Should all qualified innovators be the beneficiary of government support or should there be limitations? This potentially very complex task will require much of the government's analytical and investigative resources.

[88] Stevenson Wydler Technology Innovation Act of 1980, 15 U.S.C. §§ 3710 – 3753.

[89] Sung-Hee Jwa, *A General Theory of Economic Development Towards a Capitalist Manifesto* (Cheltenham: Edward Elgar, 2017), at 30-34.

[90] Small Business Innovation Development Act of 1982 set up Small Business Innovation Research (SBIR) programs to assist small businesses with innovations. 15 U.S.C. § 638.

[91] The National Artificial Intelligence Research and Development Strategic Plan, funded by the federal government, would be an example of this type of research support. National Science and Technology Council, *The National Artificial Intelligence Research and Development Strategic Plan* (October 2016), available at: <https://www.nitrd.gov/PUBS/national_ai_rd_strategic_plan.pdf> [https://perma.cc/V49Y-94FW]. The Bayh–Dole Act of 1980 also encourages innovations by permitting federal contractors to acquire ownership of inventions made with federal funding. 35 U.S.C. §§ 200–212.

stagnant growth. The legal and institutional approaches are also relevant in this area; for instance, consideration could be given to legislation that requires monitoring of investments, allocation of resources for key public investments essential to economic development (*e.g.*, transportation, communication, and education infrastructures), and facilitation of private investments in the key areas by offering appropriate incentives (*e.g.*, tax benefits and subsidies).

Finally, laws that promote certain social development objectives may also be relevant to economic development. For example, laws that protect gender equality and the rights of minorities in work places also contribute to economic growth by motivating more women and minorities to participate in productive pursuits.[92] Laws facilitating education and training, particularly for those at the lower ends of the socioeconomic ladder, reducing the large costs of necessities for the middle class, such as increasing healthcare and college education costs (including debt repayments), and reinforcing taxation on the highest income brackets, countering and overturning economic polarization, will also assist with economic development efforts. Laws that support immigration and protect immigrants will counter the lowering population growth rate, which is cited as a cause of stagnant growth by eroding consumer base and the supply of labor for the future.[93]

b) Organization of LFIs

The second sub-element of regulatory design is organization of law, legal frameworks, and institutions.[94] Synergetic coordination among law, legal frameworks, and institutions are the key

[92] See European Institute for Gender Equality, *Economic Benefits of Gender Equality in the European Union: Report on the Empirical Application of the Model* (2017), available at: <http://eige.europa.eu/sites/default/files/documents/mh0217174enn_web.pdf> [https://perma.cc/S3MV-EEJ8]; and Sarah Treuhaft and David Madland, *Prosperity 2050: Is Equity the Superior Growth Model?* (Center for American Progress, April 2011), available at: <https://cdn.americanprogress.org/wp-content/uploads/issues/2011/04/pdf/prosperity_2050.pdf> [https://perma.cc/UZT4-W5YL].

[93] Gordon (2014), *supra* note 43, at 47-50.

[94] Lee (2019), *supra* note 2, 3.2.2.

to effective legal and institutional approaches.[95] In Korea, the development-facilitating laws[96] were supported by effective institutions. For example, the Korean government set up the EPB (Economic Planning Board) within the central government in 1961.[97] The EPB developed economic development plans and coordinated and instructed other government departments on a wide range of policy measures related to economic development.[98] The EPB, like Taiwan's IDB (Industrial Development Bureau) and Japan's MITI (Ministry of International Trade and Industry), was a control center for Korea's industrial policy and economic development. In addition to the EPB, the Korean government also set up a number of other institutions, including KOTRA, as an agency to collect and disseminate economic and trade information to assist with Korean businesses.[99]

Some of these institutional functionaries, such as those that facilitate coordination and cooperation among government departments and offices, can also be adopted by the United States. Lack of coordination and cooperation among the different levels of government (*e.g.*, federal, State, and local) and between the public and private sectors has proven to be an impediment to economic projects.[100] As discussed earlier, the EDA, as an agency subordinate to the Department of Commerce, has not enjoyed the status and authority that the EPB wielded in Korea for intergovernmental coordination.[101]

Thus, an EPB-type control center at the federal government, charged with the role of coordination and cooperation with relevant federal, State, and local governments in the development and

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[95] *Ibid.*
[96] Lee (2019), *supra* note 2, 4.2.3(a) (for examples of development-facilitating laws).
[97] *Ibid.*, Section 4.2.3(b).
[98] *Ibid.* The head of the EPB, who had a higher status than other ministers as a deputy prime minister, had budgetary and personnel authority over other government departments and agencies. This status and authority enabled the EPB to coordinate and instruct them effectively in the implementation of economic development policies. The EPB led the economic development of Korea until its merger with the Ministry of Finance in 1994.
[99] Lee (2019), *supra* note 2, 4.2.3(b).
[100] *Supra* notes 60, 63, and 65 (for examples of failed coordination)
[101] *Supra* note 98 (for the status and the authority of the EPB).

implementation of economic development policies, would enhance effectiveness in policy development and implementation. This type of central coordination institution, which could be provisionally entitled, "Economic Development Council" or "EDC," may also be open to the participation of the private sector and invite inputs from relevant private sector players in the development and implementation of policies.[102] Consideration can also be given to the mandatory appointment of certain private sector personnel, such as industry representatives, in the decision-making body within the EDC.

Given the complexity of the economy and the strength of the private sector, the EDC could not be expected to develop the Korean-style "economic development plans" with the target growth rates and specific industrial promotion goals.[103] The primary role of the EDC would include the development of long-term economic strategies, facilitation of intergovernmental and public-private sector coordination, and identification of the focus areas in which such coordination and cooperation will be essential. A KOTRA-type agency that collects and disseminates business and trade information would also be useful, particularly for businesses in economically depressed regions, with limited resources and information. These agencies can also cooperate with the existing State or local offices for economic development.[104]

c) Adaptation to socioeconomic conditions

[102] At the federal level, the EDC should be granted an independent status from the other departments and agencies as well as the mandate to coordinate and cooperate with them, including the Department of Commerce, the Department of Finance, the Department of Agriculture, and the Department of State (for development policies with international ramifications).

[103] Lee (2019), *supra* note 2, Section 4.2.2.

[104] These offices include the existing State and local economic development agencies. For an overview of their activities, see Norton Francis, "What Do State Economic Development Agencies Do?" *Economic Development Strategies Information Brief 6* (Urban Institute) (July 2016), available at: <https://www.urban.org/sites/default/files/publication/83141/2000880-What-Do-State-Economic-Development-Agencies-Do.pdf > [https://perma.cc/4MJB-JPED].

The third and final sub-element of regulatory design is law's adaption to socioeconomic conditions. A law may not be effective if it does not conform to social, political, economic, and cultural conditions (socioeconomic conditions) that are essential to the successful operation of law, including social or religious norms.[105] In the context of the United States, the proposal for the new legal and institutional approaches may run counter to some of its socioeconomic conditions, such as the ideologies and established practices in the United States. First, those subscribing to the traditional liberal or neoliberal economic stance[106] may disagree that the issues such as regional economic disparity, stagnant growth, and economic polarization are problems that require remedial measures. From this perspective, differences in economic performances and income levels among regions and individuals are natural consequences of competition in a free market economy and not a problem that justifies government intervention. Second, as to the stagnant economic growth, a study has concluded that the time for rapid economic growth has passed,[107] and now the economy faces "secular stagnation," which is a new normal state in today's economy.[108]

Third, there is a deeper cultural characteristic embedded in the American ethos that may not be consistent with this proposal. In a culture that emphasizes and values individual autonomy, the economic wellbeing of an individual rests primarily on his or her own effort and responsibility, not to be expected from government aid, either in hard cash or regulatory support. The government

[105] Lee (2019), *supra* note 2, Section 3.2.3.
[106] Neoliberalism is a dominant political-economic ideology that emerged in the 1980s, which discourages positive government interventions in the economy and promotes free market approaches, including privatization and trade liberalization. Neoliberalism is based on the "Washington Consensus," which refers to a set of policies representing the lowest common denominator of policy advice being advanced by Washington-based institutions, such as fiscal discipline, a redirection of public expenditure priorities toward areas offering both high economic returns and the potential to improve income distribution (such as primary healthcare, primary education, and infrastructure), tax reform to lower marginal rates and broadening the tax base, interest rate liberalization, a competitive exchange rate, trade liberalization, liberalization of inflows of foreign direct investment, privatization, deregulation (to abolish barriers to entry and exit), and protection of property rights. John Williamson, "What Washington Means by Policy Reform," *in* John Williamson (ed.), *Latin American Readjustment: How Much Has Happened* (Washington, D.C.: Peterson Institute for International Economics, 1990).
[107] Robert J. Gordon, *The Rise and Fall of American Growth: The U.S. Standard of Living since the Civil War* (Princeton NJ: Princeton University Press, 2016).
[108] United Nations (2017), *supra* note 53.

is expected to protect individual political and economic liberties and secure fair market rules (*e.g.*, punishing a disseminator of fraudulent information on the stock market) but not to intervene in the economy and use its regulatory power to meet economic growth targets. From this perspective, the establishment of new legal and institutional frameworks focusing on economic development might be seen as an unconventional attempt to play a role that is not consistent with the traditional American expectations of government.[109]

However, public trust and confidence in the ethos and traditional policy recommendations of the establishment have been weakened since the 2007-2008 financial crisis. Many Americans seem to realize that regional economic disparity, stagnant growth, and economic polarization have created obstacles to the extent that it is no longer possible for most, if not all, individuals to improve their own economic wellbeing solely on their own efforts without systematic assistance from the government, whichever it might be. The adverse economic effect of the financial crisis and the economic hardship caused by the recent COVID-19 pandemic[110] have created momentum to develop a more active role for the U.S. government in facilitating economic development for the majority of the American population, allowing for the proposed legal and institutional approaches to be addressed in this context.

3.2 Regulatory Compliance and Quality of Implementation

This sub-section addresses the second and the third elements of the regulatory impact mechanisms under the general theory: "regulatory compliance" and "quality of implementation"[111] in the economic context of the United States.

[109] The enactment of PWEDA and the establishment of the EDA do not deviate from these traditional expectations in that they only offer small-scale assistance for economically distressed areas with a modest budget. See *supra* note 59.
[110] Congressional Budget Office (CBO) estimated in May 2020 that the gross domestic product (GDP) would be $3.9 trillion lower over the 2020–2021 period than the same year's January estimates. CBO, *Letter to Honorable Nancy Pelosi* (June 9, 2020), available at: <https://www.cbo.gov/system/files/2020-06/56395-CBO-Pelosi-Letter.pdf> [https://perma.cc/E8FL-JB7H].
[111] Lee (2019), *supra* note 2, Sections 3.3.1 and 3.3.2.

a) Regulatory compliance

The second element, "regulatory compliance," refers to "compliance with law by those who are subject to the application of law."[112] For the United States, a country that is an ardent advocate of the rule of law around the world, the level of regulatory compliance is generally high, as demonstrated by its high rankings in the rule of law indexes (21 among 128 countries under the Rule of Law Index 2020 by World Justice Report and 89.9 percentile under the Rule of Law Indicator 2020 by the World Bank)[113] – as the rule of law would not be feasible without regulatory compliance.

Despite the high level of general regulatory compliance, there is no assurance that Americans would show active compliance with the laws and policies to be adopted pursuant to the new approaches, as Koreans did during the development era. As discussed in the previous sub-section, a majority of Americans may approve the government mandate to change the economy to work for the majority of working Americans, in light of the systemic economic problems that cannot be overcome solely by individual efforts;[114] however, a substantial number of Americans are likely to remain skeptical for ideological or practical reasons to the government playing a more active and direct role in economic development. The refusal by the Louisiana Governor to accept the State's share of a federal stimulus bill, offered in the aftermath of the 2008 financial crisis, demonstrates this sentiment.[115]

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[112] *Ibid.*, Section 3.3.1.
[113] See World Justice Project, *Rule of Law Index* (2020), available at: <https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf> [https://perma.cc/XU6Z-AE6S] and World Bank, *World Governance Indicators* (dataset 2019), available at: <http://info.worldbank.org/governance/wgi/#reports> [https://perma.cc/L682-PZK2].
[114] See discussion *supra* Section 2.3.
[115] See "Jindal Rejects La.'s Stimulus Share," *The Washington Times*, February 21, 2009, available at: <http://www.washingtontimes.com/news/2009/feb/21/lousiana-gov-rejects-states-stimulus-share> [https://perma.cc/FER7-ZUNP]. States' recent refusal to expand Medicaid, for which the federal government takes up most of the cost, could be another example. Kaiser Family Foundation, *Status of State Medicaid Expansion*

The strength of public support and compliance will depend on the initial success of the new approaches; if the proposed approaches yield successful economic growth, accompanying innovations and job creations, show improvements in economically depressed areas, and reduce economic polarization, then the skepticism and objections to the extended role of the government in economic development could be turned into active support and compliance, as witnessed in Korea during its successful development.[116] Given the federal structure of the United States and the traditions of local governance, it would be important to have active participation from State and local governments, as well as from the private sector in the development and implementation of economic development policies and laws.

b) Quality of implementation

The quality of implementation, which is the third and final element of the regulatory impact mechanisms, explaining the impact of law on development, refers to the act of a state meeting the requirements of law and undertaking mandates under the terms of law to fulfill its objectives.[117] Since it is a state that implements law, "state capacity" and "political will" are two essential elements determining the quality of implementation.[118] State capacity refers to the financial, technological, and administrative capabilities of the state, including internal controls against corruption, to implement laws and fulfill regulatory objectives.[119] Political will, in the context of implementation, can be defined as the commitment and devotion of a country's political leadership to the implementation of law.[120]

Decisions: Interactive Map (November 2, 2020), available at: <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/> [https://perma.cc/S2KW-8S5B].

[116] Lee (2019), *supra* note 2, Sections 4.2.4(b).

[117] *Ibid.*, Section 3.3.2.

[118] *Ibid*.

[119] *Ibid*.

[120] *Ibid*.

The United States government has at its disposal the largest state capacity of all nations in terms of financial, technological, and administrative capabilities. The government may also draw upon the world's largest pool of private sector experts in most areas. Significant intellectual, technological, and financial resources may indeed be necessary to develop economic development policies and devise laws that have been discussed above.[121] Their implementation, including monitoring, coordination, and enforcement, will also require a substantial amount of resources, and the United States has better state capabilities than any other country to meet these needs.

What could be more of an issue in the United States than state capacity is political will. As discussed earlier, the proposed legal and institutional approaches would entail the extended role of the federal government in developing, coordinating, and implementing economic development policies. Those who advocate State and local autonomy may not support this extended role of the federal government in the economy.[122] Private sector players, particularly major multinational enterprises (MNEs), may not welcome such a government initiative, which could be perceived as encroachment upon their business sphere (*e.g.*, allocation of public resources as support for other qualified innovators). The preceding discussion has emphasized the necessity of engaging State and local governments as well as the private sector in the development and implementation of economic development policies and laws in the United States, and it is indeed up to the national political leadership and their political will to overcome potential challenges and turn initial dissenters into supporters.

4. Conclusion: Toward a New Paradigm?

This paper makes a bold attempt by proposing new legal and institutional approaches, those adopted by successful developing countries, to address chronic economic problems in the largest and among the most advanced economies in the world. The idea may seem provocative at the

[121] Section 3.1(a) and *supra* note 87 (for a discussion of difficulties associated with such legislation).
[122] *Supra* note 115 (for an example of State resistance to the federal initiative).

outset, but the rationale of the proposal corresponds to the economic reality on the ground. The magnitude of the problem requires the direct involvement of the federal government, which has due financial capacity; and given the federal structure, the federal, State, and local governments should be working in close partnership toward solving them. The policy initiatives of the Trump administration to protect trade, such as imposing high tariffs on imports from other countries, in contravention of the rules of international trade under the WTO,[123] did not revive the U.S. economy, but instead undermined the consumer interest and the position of U.S. exporters, without resulting in job increases or economic growth.

The proposal instead suggests legal and institutional approaches that would enable more active engagement of the federal government with coordination and cooperation among the different layers of the government and between the public and private sectors. Currently, efforts for economic development are being made in a fragmented fashion at different levels of government, without effective coordination mechanisms in place. As seen above, the current federal legal and institutional frameworks, such as PWEDA and the EDA, are inadequately small in their operational scale to meet the challenge.[124] The private sector in the United States is among the most robust and sophisticated in the world, but prosperous corporations have not offered a solution to the chronic economic problems in the United States, namely regional economic disparity, stagnant growth, and economic polarization. As seen in the earlier section, these problems are not being relieved but have worsened over the years.[125] This calls for a new approach and a new paradigm.

The proposed legal and institutional approaches could be this new paradigm. The core of these approaches is the development of the legal and institutional framework for economic coordination among the federal, State, and local governments and between the public and private sectors, which

[123] See Lee (2019), *supra* note 7.
[124] See discussion *supra* Sections 2.3 and 3.1(a) *supra.* See also *supra* notes 58 and 59.
[125] Lee (2019), *supra* note 2, Section 6.2.3.

allows the government, as well as the private sector, to make strategic investments for innovation and long-term growth. This approach is successful elsewhere; the economic achievements of successful developing countries, such as the NICs, owe more to the successful coordination function of the government and investment for innovation than anything else, including economic planning *per se* and state control over industries that have also been tried by many other (unsuccessful) developing countries. Countries succeeded in achieving economic development when they were also successful with this coordination and strategic investment. When they were not, efforts by the government and the private sector became fragmented and ineffectual, and they achieved little in economic development.[126] Should these new legal and institutional approaches be proven successful, it will expand the scope and applicability of law and development to all nations, not just developing ones.

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[126] The successful coordination in Korea and its failure in South Africa have produced very different development outcomes. Lee (2019), *supra* note 2, Sections 4.2 and 5.2.

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