

NEW INSTITUTIONS FOR OLD NEIGHBORHOODS

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Residential Community Associations are now the norm in new suburban developments, and in this Article, Professor Robert Ellickson suggests that existing neighborhoods, in inner cities and elsewhere, would benefit from similar institutions. Specifically, he proposes the creation of Block Improvement Districts. These Districts would typically be formed by supermajorities of property owners, who would need to have the power to override objectors to avoid the free rider problem inherent in many kinds of group action. Once formed, these Districts would collect fees from member property owners and, in return, would provide block-level public goods. After exploring both the theoretical and practical aspects of Block Improvement Districts, Professor Ellickson concludes by advocating experimentation with these institutions as a way of more conclusively determining their value.

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The way to multiply big problems is to neglect small ones. There is nothing seriously wrong with our institution of property or our institutional system save our proclivity to waste time in attacking or defending it and to neglect proper tasks of changing it continuously by wise collective experimentation.¹

INTRODUCTION

West 163rd Street crosses Washington Heights, a neighborhood near the northern tip of Manhattan. The scene there is typical of a poor section of an inner city. Drug dealers operate openly in the streets and in abandoned buildings. Graffiti and peeling paint disfigure aging facades. Rubbish accumulates in vacant lots. The sidewalks, street furniture, and street plantings are in a sorry state. The amelioration of many of these conditions would be cost-justified, but no institution is providing the collective goods and services necessary to improve the situation. What is to be done?

According to a September 1997 newspaper account,² officers of the New York City Police Department (NYPD) have concluded that the residents of West 163rd Street primarily need new micro-institutions to enable them to take collective action at the block level. Leaders of the Thirty-Third Precinct of the NYPD have been encouraging the residents to form a tenant association in each apartment building, and have the eventual goal of organizing all residents into an overarching block association. Because membership in each of these associations would be voluntary, however, the NYPD officers have had to overcome residents' fears that the drug dealers who parade on the block would single out neighborhood activists for retaliation. The police officers are reported to have achieved some success in organizing the block's residents and in helping them deliver previously neglected services. But many residents are not confident that their fragile new institutions will endure when the officers of the Thirty-Third Precinct shift to other endeavors. The block's residents face a classic problem of collective action: when the provision of local public goods is voluntary, each individual may be tempted to take a free ride.³

1. HENRY C. SIMONS, *ECONOMIC POLICY FOR A FREE SOCIETY* 33 (1948).

2. See Kit R. Roane, *Siege of 163rd Street: Police Take Over Drug-Ridden Block to Save It*, *N.Y. TIMES*, Sept. 21, 1997, at 41.

3. See ROBERT JAY DILGER, *NEIGHBORHOOD POLITICS: RESIDENTIAL COMMUNITY*

In this Article I propose a legal structure for a block-level institution that would be resistant to the free riding that threatens to undermine the NYPD's efforts on 163rd Street. I refer to this micro-institution as a Block Improvement District (BLID).⁴ My proposal builds on—but in important ways departs from—the ideas of George Liebmann and Robert Nelson, two pioneers who have striven to design new micro-institutions for old neighborhoods.⁵ The basic idea is to enable the retrofitting of the residential community association—an institution commonly found in new housing developments—to a previously subdivided block such as the one on 163rd Street in Washington Heights. Unlike a voluntary-membership tenants association of the sort that the NYPD has been pushing, in the usual instance a BLID would be *mandatory-membership* association of *property owners*.⁶ A BLID would levy assessments on its members in order to finance services supplementary to those ordinarily provided by local governments. Partly because I propose authorizing the owners of a supermajority of property to compel dissenting property owners to join a BLID, this innovation would require passage of a state enabling act to govern the formation, structure, and powers of these institutions. Legislative drafters could pattern these statutes after the ones that many states have enacted during the past decade to authorize the establishment of mandatory-membership Business Improvement Districts (BIDs).⁷ Just as BIDs have successfully revital-

ASSOCIATIONS IN AMERICAN GOVERNANCE 111-15 (1992) (discussing the free rider problem in the context of community governance).

4. The abbreviation "BID" is unavailable because it currently is used to refer to a Business Improvement District. *See infra* notes 7-8 and accompanying text. Because the BID precedent helped inspire the BLID proposal, the close affinity between the two acronyms seems fitting.

5. *See* GEORGE W. LIEBMANN, *THE LITTLE PLATOONS: SUB-LOCAL GOVERNMENTS IN MODERN HISTORY* (1995); George W. Liebmann, *Devolution of Power to Community and Block Associations*, 25 *URB. LAW.* 335 (1993); ROBERT H. NELSON, *ZONING AND PROPERTY RIGHTS* (1977); Robert H. Nelson, *Privatize Inner-City Neighborhoods*, *AM. ENTER.*, Nov./Dec. 1996, at 68; Robert H. Nelson, *Privatizing the Neighborhood: A Proposal to Replace Zoning with Private Collective Property Rights to Existing Neighborhoods* (Aug. 1997) (unpublished manuscript, on file with author) [hereinafter Nelson, *Privatizing the Neighborhood*].

6. Because I envision property-owner control as the default form of BLID governance, I have this form in mind when I refer to a BLID in the ensuing analysis. The promoters of a BLID, however, should be free to propose a variant governance structure, for instance, one that enfranchises tenants. *See infra* Part III.A.

7. *See generally* Richard Briffault, *A Government for Our Time? The Business Improvement District and Urban Governance* (Dec. 4, 1997) (unpublished manuscript, on file with author) [hereinafter Briffault, *A Government for Our Time*] (offering a comprehensive

ized many central business districts,⁸ BLIDs may be able to rejuvenate inner-city residential areas.

I. ALTERNATIVE INSTITUTIONS FOR PROVIDING BLOCK-LEVEL PUBLIC GOODS

Local public goods are services or physical improvements that enhance the appeal of a discrete, circumscribed territory. Some local public goods, such as a mosquito abatement program, a sewage treatment facility, or a tourism office, can benefit an entire metropolitan area. This Article focuses, however, on the provision of public goods that typically benefit only a few blocks—for example, a tot-lot, a street planter, or a block patrol officer.⁹

City residents, including residents of low-income and minority neighborhoods, care greatly about the appearance and orderliness of their streets.¹⁰ The “Broken Windows” theory of crime developed by James Q. Wilson and George L. Kelling offers an explanation for why residents would be so concerned about their block-front environments.¹¹ According to Wilson and Kelling, physical disorder signals social breakdown. An onlooker construes the visible presence of drunks, prostitutes, litter, graffiti, and other low-level annoyances on

account of the legal and policy issues surrounding BIDs); Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 517-21 (1997); Mark S. Davies, *Business Improvement Districts*, 52 WASH. U.J. URB. & CONTEMP. L. 187 (1997) (providing a generally favorable assessment of BIDs); David J. Kennedy, *Restraining the Power of Business Improvement Districts: The Case of the Grand Central Partnership*, 15 YALE L. & POL'Y REV. 283, 294-99 (1996) (criticizing the undemocratic nature of BIDs in New York).

8. See, e.g., Lawrence O. Houstoun, Jr., *Gotham Gets Civil*, URB. LAND, Oct. 1997, at 80 (discussing the contributions of New York City's forty BIDs); David M. Halbfinger, *For Now: 215 Blocks Without Graffiti*, N.Y. TIMES, Oct. 26, 1997, at 33 (describing the successes of Alliance for Downtown New York, a BID operating in Lower Manhattan).

9. For discussions of efficiencies of scale and scope in the provision of public goods, see HOWARD W. HALLMAN, NEIGHBORHOODS: THEIR PLACE IN URBAN LIFE 68-69 (1984); Vincent Ostroin et al., *The Organization of Government in Metropolitan Areas*, 55 AM. POL. SCI. REV. 831 (1961). See also DOUGLAS YATES, NEIGHBORHOOD DEMOCRACY (1973) (reporting the results of various experiments with decentralization).

10. See MATTHEW A. CRENSON, NEIGHBORHOOD POLITICS 118-20 (1983) (reporting survey results indicating that lower-income people strongly dislike dirt, dilapidation, and crime); WESLEY G. SKOGAN, DISORDER AND DECLINE: CRIME AND THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS 56 (1990) (reporting a +.88 correlation in assessments of street disorder between higher- and lower-income respondents, and a +.87 correlation between blacks and whites).

11. See James Q. Wilson & George L. Kelling, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC MONTHLY, Mar. 1982, at 29, 31-32.

a block as a sign of basic inadequacies of public policing and informal discipline. Wilson and Kelling argue that uncorrected disorders tend to multiply because a potential miscreant regards the evident absence of social controls at a location as an additional temptation to misbehave there. Conversely, the repair of broken windows (and the like) is a block-level public good because it proclaims the return of effective governance. Much evidence supports the validity of the "Broken Windows" theory.¹² For instance, Mayor Rudolph Giuliani's efforts to attack quality-of-life crimes in New York City are widely regarded as having contributed to falling felony rates.¹³ Healthy daffodils in a sidewalk planter, it appears, may help deter armed robbery.

Sometimes property owners can succeed in providing block-level public goods even in the absence of a formal institution.¹⁴ For example, informally enforced social norms may induce building owners to paint facades or trim shrubbery. Property owners also may manage to coordinate by express contract, perhaps one that divides the costs of hiring a street patrol service.¹⁵ These decentralized systems work best when a block's owners and residents belong to a closely knit social group. Many inner-city blocks, however, lack social cohesion. When relevant owners and residents are heterogeneous and more numerous than a dozen or two, their efforts at voluntary coordination are likely to be beset by significant free rider problems.¹⁶

A formal institution with coercive powers therefore may be needed to provide block-level public goods. At what territorial scale should such an institution operate? In the continuum of possible sizes

12. See GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* 108-56, 195-206 (1996) (describing how order-maintenance programs reduced crime rates in New York City and Baltimore); Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349, 372-73 (1997).

13. See, e.g., Craig Horowitz, *The Suddenly Safer City*, N.Y. MAG., Aug. 14, 1995, at 20, 23; Kahan, *supra* note 12, at 367-69.

14. For a general overview of self-governed common resources, see ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* (1990).

15. One commentator has stated (without citing authority) that the number of voluntary block associations operating in New York City increased from a few hundred to over one thousand between 1965 and 1980. See Mark Frazier, *Privatizing the City*, 12 POL'Y REV. 91, 95 (Spring 1980).

16. For a classic synopsis of reasons why an increase in group size leads to a higher incidence of free riding, see MANCUR OLSON, JR., *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* 48 (1965). *But cf.* FRED FOLDVARY, *PUBLIC GOODS AND PRIVATE COMMUNITIES: THE MARKET PROVISION OF SOCIAL SERVICES* 1-16 (1994) (arguing that most commentators exaggerate the risks of free riding).

three candidates stand out: the block, the neighborhood, and the city. A city's boundaries are obvious, but those of a block or neighborhood are not. A face-block is a territory that consists of the lots that front both sides of a common street.¹⁷ In this Article, "block" denotes an area including from one to a handful of face-blocks. "Neighborhood," by contrast, denotes an area big enough to be known by a name that is meaningful to outsiders. Washington Heights is a neighborhood, as are Hancock Park in Los Angeles, Hyde Park in Chicago, and Trinity Park in Durham. While most blocks have a resident population that numbers only in the dozens or hundreds, a neighborhood's population typically ranges from 2,000 to 50,000.¹⁸

What are the comparative advantages of block, neighborhood, and city institutions in providing block-level public goods? The conundrum of the optimal fixing of boundaries arises in many contexts—in the sizing of business firms, land parcels, and other units of resource management, as well as territorial governments. An adjustment in territorial size simultaneously affects the efficiency of the scale of production, the transaction costs of internal governance, and the seriousness of transboundary spillover effects.¹⁹ Like other people, urban residents recognize that the ideal scale of governance varies with the task at hand. They therefore commonly create a "federal" system of governance—that is, nested territorial institutions operating at varying scales. A federal system typically honors the principle of subsidiarity, which calls for the allocation of a governmental function to the most decentralized institution competent to perform it.

A. The Niche for Block-Level Institutions

Before exploring the theoretical advantages of the provision of services by block-level entities, I adduce evidence that participants in markets for new residential areas have been busily creating institutions that operate at that scale. What works in a new subdivision can provide clues about what might work in an old one.

17. I borrow "face-block" from GERALD D. SUTTLES, *THE SOCIAL CONSTRUCTION OF COMMUNITY* 55-57 (1972). Suttles asserts that urbanites regard these as the smallest residential collectivities.

18. For discussions of how to define a neighborhood and its boundaries, see HALLMAN, *supra* note 9, at 12-17, 56-58; SUTTLES, *supra* note 17, at 57-61.

19. See Robert C. Ellickson, *Property in Land*, 102 *YALE L.J.* 1315, 1332-34 (1993).

1. *Lessons from the Residential Community Association.* Residential community associations (RCAs)²⁰ have been greeted with resounding approval in new real estate developments. The number of RCAs in the United States increased from fewer than 1,000 in 1960²¹ to an estimated 205,000 in 1998.²² By 1998 more than forty million Americans were living within the jurisdiction of an RCA.²³

Today a developer of a large subdivision routinely organizes a mandatory-membership RCA before selling the first unit and publicizes the RCA during the marketing period. This business strategy is sound only if most homebuyers anticipate that the value of an RCA's services will exceed the costs of assessments and other burdens it will engender. The prevalence of RCAs in new developments demonstrates that most homebuyers sense that these micro-institutions are effective providers of low-level public goods.²⁴ Because members rarely vote to terminate an RCA,²⁵ their initial expectations apparently tend to be fulfilled. Indeed, residents of RCAs generally report a high level of satisfaction with the operation of their associations.²⁶

Surveys have found that an average RCA includes from 40 to 160 dwelling units.²⁷ *This is a strong clue that micro-institutions retro-*

20. "Residential community association" appears to have won out over competing labels such as "homeowners association." For example, both DILGER, *supra* note 3, and Liebmann, *supra* note 5, refer to RCAs. On the history of RCAs in the United States, see DILGER, *supra* note 3, at 41-60.

21. See DILGER, *supra* note 3, at 18.

22. See Felicia Paik, *Private Properties*, WALL ST. J., Mar. 27, 1998, at W8 (reporting data collected by the Community Associations Institute in Alexandria, Va.).

23. See *id.*

24. There is some evidence that, all else equal, most housing consumers are willing to pay a significant premium to live in a neighborhood served by an RCA. See Wayne S. Hyatt, *Common Interest Communities: Evolution and Reinvention*, 31 J. MARSHALL L. REV. 303, 334 (1998).

25. A leading practitioner of RCA law reports that it is "extremely rare" for members to decide to close down an ongoing association. Indeed, when the original declaration has created an association that is to last for only a limited time span and the sunset date approaches, members commonly make great efforts to extend the association's life. Telephone Interview with Wayne S. Hyatt, Partner, Hyatt & Stubblefield (Aug. 27, 1998). The attorney who served as president of the Community Associations Institute during 1995-96 confirms that members seldom seek to terminate an association. The prime candidate for eventual extinction is an association that a developer reluctantly created solely to appease the demands of zoning authorities or lenders. Telephone Interview with Robert M. Diamond, Partner, Hazel & Thomas, P.C. (Aug. 27, 1998).

26. See DILGER, *supra* note 3, at 89-90.

27. See *id.* at 20. The private street associations in St. Louis County, much-analyzed precursors of the modern RCAs, generally are similarly sized. In four St. Louis suburbs the average sizes of these associations ranged from 21 to 102 dwelling units. See Ronald J. Oakerson,

*fitted onto already subdivided urban lands should be scaled to the level of the block, not of the neighborhood.*²⁸

There are significant differences, of course, between an RCA in a new subdivision and a BLID on an inner-city block. First, because the declaration creating an RCA is recorded before the first unit is transferred, a buyer of an RCA dwelling makes a voluntary decision to accept the association along with the residence. By contrast, if the owners of a supermajority of the property were to retrofit a BLID, the members of the outvoted minority would have been coerced into membership. Second, many RCAs have no municipal lands within their boundaries. In a typical BLID, by contrast, the key common area would consist of a public street and its sidewalks, whose management a BLID usually would have to share with its city. Third, although RCAs appear in many varieties, in most of them members are relatively homogeneous and also relatively prosperous (or at least not poor). The effectiveness of block-level government in diverse, lower-income neighborhoods is unproven. Taken together, these differences might thwart the successful transplantation of the RCA model to the inner-city block. Only experiments with BLIDs will tell.

2. *Some Advantages of Block-Level Institutions.* Why have housing markets generated tens of thousands of RCAs that typically contain only a few dozens or hundreds of dwelling units? Small institutions may outperform larger ones for a number of reasons. First, micro-institutions seem to be efficiently scaled to produce the most localized varieties of public goods. RCAs in suburban developments commonly engage in removal of refuse, landscaping of public spaces, management of recreation facilities such as swimming pools, and administration of regulations such as architectural

Private Street Associations in St. Louis County, in ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, RESIDENTIAL COMMUNITY ASSOCIATIONS 55, 56 (1989); see also David T. Beito & Bruce Smith, *The Formation of Urban Infrastructure Through Nongovernmental Planning: The Private Places of St. Louis, 1869-1920*, 16 J. URB. HIST. 263 (1990) (explaining the formation and characteristics of private street associations).

RCAs tend to be somewhat less populous than the "deme," the basic unit of local government in ancient Athens, which had an average adult population of about 400. See Liebmann, *supra* note 5, at 372-73.

28. Typically an RCA is created in conjunction with a new development project. In these instances the efficient scale of construction and marketing activities may influence a developer's decision on RCA size. Because a BLID would be retrofitted onto an existing streetscape, data on the sizing of condominium conversions and similar retrofitting efforts might be more pertinent to the issue of the optimal sizing of a BLID. Unfortunately, there have been few studies of the sizing of retrofitted associations as such.

controls. Similarly, in an inner city, a BLID might involve itself in maintaining sidewalk planters and tot-lots, removing litter and abandoned vehicles, conducting block-watch programs,²⁹ and providing other highly localized benefits.

Second, block-level institutions are better able than neighborhood institutions to cater to individuals' tastes for uncommonly provided public goods. For instance, if artists were to concentrate their studios on a particular city block, their BLID could make unusually heavy expenditures on street sculptures. Indeed, the prospect of forming a Block Improvement District might encourage artists to cluster together in the first place.³⁰

Third, support from a coterminous informal social network helps an institution flourish. A high level of solidarity generally is easier to maintain within a small group than within a large one. Heterogeneity of interests is less likely when numbers are few. Smallness also enhances the quality of internal gossip and the frequency of chance encounters. These features of a small group help its members administer informal rewards and punishments on one another.³¹ As a result, at the block level, social pressures to pull one's oar tend to be stronger than they are at the neighborhood level.³² Indeed, the act of creating a formal block-level organization such as a BLID might foster acquaintanceships that would then strengthen the informal social capital of the block's residents and property owners.³³ A person who

29. Experiments with voluntary block-watch programs in Chicago and Minneapolis failed to produce higher levels of neighborhood satisfaction. See SKOGAN, *supra* note 10, at 137-49. It is unclear whether these disappointing results were largely attributable to a dishearteningly high incidence of free riding or to other program defects.

30. Cf. Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956) (envisaging households "voting with their feet" among municipalities offering varying packages of public goods). On the optimal size of territorial clubs engaging in Tiebout-style competition, see FOLDVARY, *supra* note 16, at 62-78.

31. For a list of sources supporting this proposition, see ROBERT C. ELLICKSON, *ORDER WITHOUT LAW* 182 nn.48-49 (1991). Note also that experiments indicate that the ability to communicate significantly reduces free riding in the supply of public goods. See Gary J. Miller, *The Impact of Economics on Contemporary Political Science*, 35 J. ECON. LIT. 1173, 1179-81 (1997).

32. See Oakerson, *supra* note 27, at 59-60 (concluding that the smallness of private street associations in St. Louis was essential to their success in smoothly solving collective action problems). By analogy, most faculty members seem to be more dutiful citizens of their departments than they are of their universities.

33. A 1987 survey found that 74% of RCAs were distributing a newsletter at least four times a year. See DILGER, *supra* note 3, at 139. On the concept of social capital, see JAMES S. COLEMAN, *FOUNDATIONS OF SOCIAL THEORY* 300-21 (1990); ROBERT D. PUTNAM, *MAKING DEMOCRACY WORK* 163-85 (1993). On the benefits of social capital at the block level, see

knows his neighbors is more likely, say, to keep his facade painted, to refrain from littering, and to reprimand delinquent children on the block. As Jane Jacobs has perceptively observed, the presence of informal “eyes upon the street” enhances a pedestrian’s sense of security.³⁴ Establishment of a BLID on a block might add to the number not only of formal block patrols, but also of informal lookouts.

Fourth and finally, block-level institutions are well scaled to strengthen members’ involvement and skills in collective governance. Many commentators seek to revitalize civic life in the United States.³⁵ They should welcome block organizations that might serve as incubators of local social capital.³⁶ The proceedings of a block organization would provide easy opportunities for people to engage in meaningful debate, voting, office-seeking, and other forms of community participation.³⁷ Candidates for office would be few.³⁸ There would be little or no wait to speak at a meeting.³⁹ Participants would be unlikely to be

Robert J. Sampson et al., *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 *SCIENCE* 918 (1997).

34. See JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 35-37 (1961).

35. See, e.g., ROBERT BELLAH ET AL., *HABITS OF THE HEART* (1985); MICHAEL J. SANDEL, *DEMOCRACY’S DISCONTENT* (1996); Robert D. Putnam, *Bowling Alone: America’s Declining Social Capital*, *J. DEMOCRACY*, Jan. 1995, at 65.

36. There is a lively debate over whether an institution governed by property owners can provide true opportunities for meaningful participation in community life. See DILGER, *supra* note 3, at 36-40, 131-44, 153-54. For a skeptical view, see Gregory S. Alexander, *Dilemmas of Group Autonomy: Residential Associations and Community*, 75 *CORNELL L. REV.* 1 (1989). Like many analysts, Alexander embraces the statist perspective that participation in the affairs of governments—“civic participation”—is inherently more fulfilling than participation in the myriad other forms of collective social endeavor. See *id.* at 43-47. See also DILGER, *supra* note 3, at 162 (concluding that an RCA can contribute to civic engagement because it can serve as a vehicle for lobbying local governments); SANDEL, *supra* note 35, at 331-33 (arguing that “private” territorial institutions such as RCAs diminish civic resources because they provide substitutes for the “public” places where the rich and poor might commingle). But see, e.g., Putnam, *supra* note 35 (stressing the importance of a strong civil society, in which participation in governmental affairs is just one form of collective endeavor).

37. See Liebmann, *supra* note 5, at 336-39. See also *id.* at 372-79 (distilling the views of Rousseau, Jefferson, Tocqueville and others on the advantages of decentralized government). Cf. ROBERT A. DAHL & EDWARD R. TUFTE, *SIZE AND DEMOCRACY* 4-16 (1973) (describing how political theorists since Plato have tended to favor small nation-states); KIRKPATRICK SALE, *HUMAN SCALE* 492-507 (1980) (discussing the upper population limits of community).

38. See DILGER, *supra* note 3, at 140 (reporting that candidates for board positions in RCAs seldom outnumber board openings).

39. In 1986 the typical attendance at general membership meetings of RCAs ranged between 25% and 50% of the membership. See *id.* Although some critics see this as a sign that RCAs fail to engage their members, these percentages undoubtedly dwarf the percentage of a typical city’s residents who attend a city meeting in a given year. They also are greater than the percentage of resident adults voting in a typical municipal election. See *id.* at 147 (relying on data assembled in Gerald Korngold, *Resolving the Flaws of Residential Servitudes and Owners*

intimidated by the setting because the turf would be familiar and most of the faces known.⁴⁰ On routine issues involving block welfare, an ordinary owner or resident would have little reason to be cowed by the views of experts.

B. Neighborhood-Level Institutions

Unlike a block association, a neighborhood institution is too large to be supported by a dense social network.⁴¹ Nevertheless, a neighborhood-wide entity has some potential advantages over a block-level organization. The block is far too small a unit for provision of a public good that involves either scale efficiencies or widespread benefits—a service such as elementary education, a sewer system, or police detective work. In addition, a block-level association may be prone to render decisions that are good for the block but bad for the neighborhood. For example, a BLID might decide to erect a street barrier to calm block traffic without regard to the barrier's effects on neighborhood traffic.⁴²

Neighborhood-level institutions come in a wide variety of forms. This section describes the limitations of two extant types and advocates some experimentation with a third.

1. *Neighborhood Civic Associations.* As befits the tradition that Tocqueville famously praised, Americans frequently establish *voluntary* neighborhood organizations to achieve common ends.⁴³ A typical civic association's principal activity is lobbying city hall on a neighborhood issue—for example, a school closing, a zoning amendment, or a proposed parking policy. Such associations may be

Associations: For Reformation Not Termination, 1990 WIS. L. REV. 513, 513-35).

40. A survey conducted in a random sample of Baltimore neighborhoods found that the great majority of respondents regarded most neighbors on the same block as either "friends" or "acquaintances." CRENSON, *supra* note 10, at 99-100.

41. See LIEBMANN, *supra* note 5, at 55-56 (noting that residents were more likely to participate in block-level, than in neighborhood-level, organizations involved in War on Poverty programs of the late 1960s). Cf. David W. Chen, *Community Boards Inviting Feedback on Internet*, N.Y. TIMES, Sept. 25, 1997, at B6 (reporting that, of 211,000 constituents of city-appointed Community Board 8 on Manhattan's Upper East Side, less than a dozen are apt to show up at the Board's public meetings).

42. For instance, some private street associations in St. Louis have gated their streets. See Oakerson, *supra* note 27, at 59.

43. See ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 513-24 (J.P. Mayer ed. & George Lawrence trans., Harper & Row 1969) (1835). On neighborhood organizations in particular, see CRENSON, *supra* note 10.

effective in these limited endeavors. Nevertheless, a voluntary association's efforts to raise funds and to mobilize volunteer labor are likely to be beset by free riding.⁴⁴ As a result, neighborhood civic associations rarely succeed in providing a broad array of public goods.⁴⁵

2. *Community Development Corporations.* Around 1960, Paul Ylvisaker launched a Ford Foundation program to establish local nonprofit corporations to revitalize declining neighborhoods.⁴⁶ As part of the Johnson Administration's War on Poverty, in the mid-1960s the federal government joined the Ford Foundation in subsidizing these Community Development Corporations (CDCs).⁴⁷ Although the names of the relevant Ford Foundation players and federal statutes have changed, these flows of financial aid have continued. By the early 1990s, there were over 2,000 CDCs, supported by an elaborate web of foundation grants, direct federal subsidies, city pass-throughs of federal Community Development Block Grant funds, bank donations prompted by the federal Community Reinvestment Act, and so on.⁴⁸

CDCs aim to serve neighborhoods, usually large ones. To cite an extreme example, the Bedford-Stuyvesant Restoration Corporation, a prominent CDC formed in the mid-1960s, was designed for a Brooklyn neighborhood with a population of 450,000.⁴⁹ A national survey conducted in 1988 found that, based on locally provided population estimates, neighborhoods served by CDCs had a mean population of 69,000 and a median population of 32,500.⁵⁰ These are not closely knit groups.

44. See *supra* note 16 and accompanying text.

45. The best-known attempts to mobilize a neighborhood for radical political change ultimately failed. See ROBERT HALPERN, *REBUILDING THE INNER CITY* 53-56 (1995) (describing Saul Alinsky's efforts, beginning in 1938, to organize Chicago's Back of the Yards neighborhood for militant political action); HALLMAN, *supra* note 9, at 129-40 (recounting the flop of a Tom Hayden-led effort to build a social protest movement in a poor Newark neighborhood in 1964-66).

46. See HALPERN, *supra* note 45, at 89-101.

47. See *id.* at 106-24.

48. See generally *id.*; AVIS C. VIDAL, *REBUILDING COMMUNITIES: A NATIONAL STUDY OF URBAN COMMUNITY DEVELOPMENT CORPORATIONS* (1992). A first-rate, if now dated, discussion of CDCs appears in ROBERT K. YIN & DOUGLAS YATES, *STREET-LEVEL GOVERNMENTS* 141-57 (1975), a book that, despite its title, has little to do with block-level institutions.

49. See YIN & YATES, *supra* note 48, at 146.

50. See VIDAL, *supra* note 48, at 38.

Although the activities of CDCs vary, few focus on providing public goods. Instead, most strive to produce private goods. Thus, CDCs develop and rehabilitate housing, open supermarkets and small shopping centers, and engage in (or support) business enterprises.⁵¹ This strategy has proved to be unsound. Both theory and evidence suggest that a nonprofit organization is unlikely to be as efficient as a small for-profit firm in providing private goods.⁵² A CDC commonly is governed by an ungainly board of directors that may include donor representatives, neighborhood activists, local business leaders, and city functionaries.⁵³ A small for-profit firm has the advantages of a leaner management structure and sharper financial incentives to perform. Although the Ford Foundation originally had hoped that individual CDCs would become economically self-sufficient, virtually all of them have continued to require heavy financial support.⁵⁴ In most settings, the CDC strategy has turned out to have been an expensive blind alley.⁵⁵

3. *Toward Experimentation with Neighborhood Improvement Districts.* The foundations that have been supporting CDCs might consider funding experiments involving a quite different form of neighborhood organization. I envision a Neighborhood Improvement District (NID) as a mandatory-membership organization of property

51. See *id.* at 5-7.

52. See HENRY HANSMANN, *THE OWNERSHIP OF ENTERPRISE* 238-42 (1996) (discussing when nonprofits are most likely to compete successfully); Michael H. Schill, *The Role of the Nonprofit Sector in Low-Income Housing Production*, 30 *URB. AFF. Q.* 74 (1994) (asserting that the niche for nonprofits is project-based housing subsidies, which usually are less efficient than housing allowances spendable on for-profit housing). Direct evidence on the issue of the relative efficiency of nonprofit housing developers is sparse. *But cf.* R. ALLEN HAYS, *THE FEDERAL GOVERNMENT AND URBAN HOUSING* 128 (2d ed. 1995) (reporting that, of developers involved in the federal government's section 236 new construction program, 32.6% of nonprofits lost their projects through default, while only 7.1% of for-profits did).

53. For example, the unwieldy board of the nonprofit South Bronx Development Organization includes city officials, state officials, and representatives from six community boards. See HALLMAN, *supra* note 9, at 220. For a more general survey of CDC board composition, see VIDAL, *supra* note 48, at 39-40.

54. See HALPERN, *supra* note 45, at 139-40.

55. Most published evaluations of CDCs are far more upbeat. See, e.g., Brian Glick & Matthew J. Rossinan, *Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice: The East Brooklyn Experience*, 23 *N.Y.U. REV. L. & SOC. CHANGE* 105 (1997) (arguing that CDCs can succeed in protecting and reviving their neighborhoods when they receive effective legal assistance). *But cf.* Michael H. Schill, *Assessing the Role of Community Development Corporations in Inner City Economic Development*, 22 *N.Y.U. REV. L. & SOC. CHANGE* 753, 781 (1996-97) (concluding that evidence needed for assessment of CDC economic-development activity is not yet available).

owners—a BLID expanded to the area of a neighborhood. For instance, an enabling act might authorize the owners of a supermajority of the property in thirty blocks of Washington Heights to create a NID. Unlike a CDC, a NID would concentrate on the production of *public* goods, such as the neighborhood-wide security and cleanup programs that some of the larger Business Improvement Districts have engaged in.⁵⁶

There are precedents for property-based associations encompassing large territories and populations. Several BIDs in Manhattan include 100 or more blocks.⁵⁷ A developer of a large-scale planned community such as Columbia, Maryland, commonly creates an umbrella RCA to provide community-wide public goods⁵⁸ that a sectional RCA would have inadequate incentives to deliver.

Despite these prototypes, experience with RCAs suggests that a micro-territorial institution functions better when scaled at the level of the block, not of the neighborhood.⁵⁹ Nonetheless, because a neighborhood-level entity would fill a different institutional niche, the nation would benefit if a few states were to serve as laboratories for limited experiments with the retrofitting of NIDs to existing neighborhoods.

C. Cities

The primary function of a municipality is to provide local public goods. An efficient city would provide a service as long as the marginal benefits of the service would exceed the marginal costs of providing it. If cities in fact could achieve that level of competence, there would be little or no case for establishing block- and neighborhood-level institutions. It is hardly news, however, that many cities are in-

56. For other conceptions of mandatory-membership neighborhood governments, see HALLMAN, *supra* note 9, at 267-70 (envisioning limited-purpose, democratically elected neighborhood governments); MILTON KOTLER, NEIGHBORHOOD GOVERNMENT 39-44 (1969) (arguing for simultaneous neighborhood autonomy and representation in larger political groups). Cf. LIEBMANN, *supra* note 5 (providing a comparative study of neighborhood-level general-purpose governments in seven major nations).

57. See *Kessler v. Grand Cent. Dist. Management Ass'n, Inc.*, 960 F. Supp. 760, 763-64 (S.D.N.Y. 1997), (describing the boundaries of the Grand Central BID, which enclose an area of about 100 blocks); Halbfinger, *supra* note 8 (reporting on the Lower Manhattan BID, which serves 215 blocks).

58. See FOLDVARY, *supra* note 16, at 186-87.

59. See *supra* text accompanying notes 20-40.

ept. After a blizzard in 1996, for example, the District of Columbia was notoriously incapable of plowing the city's streets.⁶⁰

Why might a city be less competent than a territorial institution scaled to the size of a closely knit social group? The basic reason is that increasing size weakens constituents' incentives to monitor.⁶¹ A city therefore is more vulnerable to being captured by rent-seeking groups such as political machines, municipal unions, public works lobbies, and downtown business interests. These factions favor city policies that deliver largesse to them. To disguise this largesse from voters, these interest groups push for clumsily indirect systems for the delivery of favors. Vulnerability to rent-seeking thus leads to substantive city policies that are inherently wasteful.⁶² In addition, perhaps to reduce a city's vulnerability to capture by rent seekers, state law and a city's charter may dictate complex procedures for public hiring, bidding for public contracts, sale of public assets, and so on. While these procedural safeguards may stem corruption, they also make municipal bureaucracies relatively sluggish.

Block-level organizations are likely to be more efficient than cities in delivering block-level public goods.⁶³ Who can doubt that a BLID in Washington, D.C., would have been more responsive than the city to demands for street plowing after the 1996 blizzard?⁶⁴ The smaller an organization, the more easily its members can detect and punish rent seekers. A BLID therefore generally would be less likely than a city to adopt a wasteful policy to benefit a narrow interest group. In addition, because a block-level organization would be relatively invulnerable to rent seekers, it could be freed from most of the

60. See Eugene L. Meyer, *Love It or Leave It . . . Why I Decided to Go*, WASH. POST, Apr. 21, 1996, at C1 ("In the Blizzard of '96, on 17th Street, we saw our first plow a full nine days after the snow fell. Trash wasn't picked up for almost a month."). See generally FRED SIEGEL, *THE FUTURE ONCE HAPPENED HERE* (1997) (describing the woes of New York City, Los Angeles, and the District of Columbia).

61. See *supra* note 16 and accompanying text.

62. See Stephen Coate & Stephen Morris, *On the Form of Transfers to Special Interests*, 103 J. POL. ECON. 1210 (1995) (attributing inefficiency of transfers—e.g. public-works contracts, political favors—to voters' imperfect information). A related point is that some city administrations may deliberately discriminate in delivering services, perhaps against neighborhoods whose residents have failed to support the incumbent political party.

63. A 1990 survey found that most members of RCA boards consider local governments to be no more efficient than RCAs in providing local services (with the possible exceptions of street lighting and street repair). See DILGER, *supra* note 3, at 22-23. (However, the survey's respondents apparently were not asked the converse question: to identify services that their RCA could deliver more efficiently than their local government.)

64. See *supra* note 60.

substantive and procedural shackles that state statutes and city charters place on cities. More specifically, a BLID should be exempt from civil service rules, public bidding requirements, and the Davis-Bacon Act regulations that require cities to pay the equivalent of union wages in certain contexts. These exemptions would acknowledge a chief advantage of governance at the block-level—the ease with which the governed can observe and control the acts of governing officials.

II. THE STRUCTURE AND FUNCTIONS OF A BLOCK IMPROVEMENT DISTRICT

The BLID proposal envisions authorizing the owners of a supermajority of the taxable real property in an existing block to create an organization that would have limited powers to tax and govern all taxable real property within the district's boundaries.

A. *The Case for Governance by Property Owners*

Hyper-egalitarian commentators tend to be hostile to RCAs and other institutions that are governed by property owners. They prefer conventional liberal democracy—that is, governance by residents who vote according to the principle of one-resident/one-vote.⁶⁵ History, theory, and constitutional precedents, however, all cast doubt on the soundness of the hyper-egalitarians' normative position.

1. *Historical Precedents.* In numerous contexts American legislatures have authorized landowners to create, by less than unanimous agreement, institutions to govern already subdivided lands within a small district. The roots of this tradition—which is directly at odds with the one-resident/one-vote principle—are ancient. Prior to the American Revolution some colonial governments authorized landowners to obligate reluctant neighbors to participate in the draining of meadows and marshes.⁶⁶ More

65. See sources cited *infra* note 138. "One-resident/one-vote" is more precise than the usual locution, "one-person/one-vote."

A shift from voting by residency to voting by property ownership does not invariably reduce the size of an electorate. A block's property owners may outnumber its residents, especially if the block has numerous commercial uses and vacant parcels. On the other hand, a block's residents may significantly outnumber its owners, particularly where apartment buildings are common.

66. See John F. Hart, *Colonial Land Use Law and Its Significance for Modern Takings*

contemporary examples also are plentiful. Some states have enacted unitization statutes that authorize a supermajority of landowners to compel the minority to participate in joint exploitation of a common field of oil and gas.⁶⁷ By the late 1980s many states had begun authorizing urban landowners to petition to create a Business Improvement District.⁶⁸

Most pertinently, there are scattered precedents for the compulsory unitization of residential neighborhoods in cities.⁶⁹ In the early twentieth century, before the Supreme Court had upheld the constitutionality of ordinary zoning, a few states authorized a majority of homeowners in a neighborhood to prohibit uses other than single-family housing provided that they compensate the property owners damaged by the restrictions.⁷⁰ The city of Laredo, Texas, and municipalities in St. Louis County, Missouri, frequently have privatized street segments to enable abutting homeowners to set up a street association empowered to levy assessments.⁷¹ Many states authorize property owners to approve (or disapprove) the formation of a special assessment district (or other special district) that possesses the power to tax.⁷²

In sum, governance by property owners hardly has been exceptional in American law. Indeed, the state statutes that regulate condominium associations and other RCAs almost invariably *require* that an association allot voting power according to property owner-

Doctrine, 109 HARV. L. REV. 1252, 1268-72 (1996).

67. See 1 BRUCE M. KRAMER & PATRICK H. MARTIN, *THE LAW OF POOLING AND UNITIZATION* § 18.01 (3d ed. 1980).

68. See, e.g., CAL. STS. & HIGH. CODE §§ 36600-36651 (West Supp. 1998) (first enacted in 1994); N.Y. GEN. MUN. LAW § 980 (McKinney Supp. 1998) (first enacted in 1989). See generally Kennedy, *supra* note 7, at 285-93 (discussing the rise of BIDs).

69. See DILGER, *supra* note 3, at 91-93.

70. See ROBERT C. ELLICKSON & A. DAN TARLOCK, *LAND-USE CONTROLS* 693-94 (1981).

71. See FOLDVARY, *supra* note 16, at 7, 190-93; LIEBMANN, *supra* note 5, at 58-59. Most of the approximately 450 private street associations of greater St. Louis, however, were created at the time of original subdivision. See Beito & Smith, *supra* note 27, at 264, 277, 285. *But cf. id.* at 294 (referring to several retrofitted associations). St. Louis's notorious ineptitude in providing infrastructure during the latter part of the nineteenth century possibly was responsible for the rise of these institutions. See *id.* at 269-76.

72. See, e.g., CAL. STS. & HIGH. CODE § 10311 (West Supp. 1998) (authorizing owners of a majority of land area to protest against improvement project to be financed by special assessments); CONN. GEN. STAT. ANN. § 7-339p (West 1989) (authorizing formation of special services districts); WASH. REV. CODE ANN. §§ 85.38.010(3), 85.38.060 (West 1996) (authorizing formation of special drainage districts).

ship rather than according to the one-resident/one-vote principle.⁷³ What could be the appeal of this system for governing a micro-territorial institution?⁷⁴

2. *The Rationale for Voting by Property: The Capitalization of Local Benefits and Assessments into Land Values.* A block-level institution's niche is the provision of public goods with territorially focused benefits. Both theory and evidence indicate that most of the benefits of a localized public good redound to the owners of real estate located within the benefitted territory. The advent of a desirable public good prompts households and firms to bid more to rent or buy the benefitted properties. As a result, the value of ownership interests in the affected real estate rises.⁷⁵

A tiny territorial institution is not a suitable locale for income distribution because it is highly vulnerable to opportunistic migration both in and out. Indeed, because redistribution tends to be a negative-sum game, the fiscal constitution of a micro-institution commonly either bars or discourages it from redistributing wealth.⁷⁶ A hoary rule of this stripe is the "benefit principle" of taxation, which holds that taxes should be imposed according to benefits received.⁷⁷ Among other advantages, adherence to the benefit principle tends to make rent-seeking fruitless, thereby reducing the incidence of that wasteful activity.

73. See Robert C. Ellickson, *Cities and Homeowners Associations*, 130 U. PA. L. REV. 1519, 1543-44 (1982) [hereinafter Ellickson, *Cities and Homeowners Associations*] (discussing voting rules in RCAs).

74. The popularity of the system poses intriguing questions for theorists of democracy. The general issues are fruitfully explored in, for example, James A. Gardner, *Liberty, Community and the Constitutional Structure of Political Influence: A Reconsideration of the Right to Vote*, 145 U. PA. L. REV. 893 (1997) (contrasting "protective democracy" and "communitarian democracy" theories of voting rights); Frank I. Michelman, *Political Markets and Community Self-Determination: Competing Judicial Models of Local Government Legitimacy*, 53 IND. L.J. 145 (1977-78) (contrasting public-choice and civic republican conceptions of collective endeavors). See also sources cited *infra* note 137.

75. See FOLDVARY, *supra* note 16, at 25-43; Ellickson, *Cities and Homeowners Associations*, *supra* note 73, at 1547-54; Michael S. Johnson & Michael J. Lea, *Differential Capitalization of Local Public Service Characteristics*, 58 LAND ECON. 189 (1982).

76. See Ellickson, *Cities and Homeowners Associations*, *supra* note 73, at 1525-26, 1532; Stewart E. Sterk, *Minority Protection in Residential Private Governments*, 77 B.U. L. REV. 273, 320-22 (1997).

77. See RICHARD A. MUSGRAVE & PEGGY B. MUSGRAVE, *PUBLIC FINANCE IN THEORY AND PRACTICE* 237-41, 470-72 (3d ed. 1980) (contrasting the "benefit principle" with the "ability-to-pay principle").

Because the benefits of a BLID's activities would be positively capitalized into the values of property interests, a BLID embracing the benefit principle would finance its activities by imposing assessments on the owners of those interests. To prevent free riding, all benefited owners would have to be liable for assessments, even those owners who did not favor the creation of the BLID.⁷⁸ Just as benefits would be positively capitalized, the burdens of BLID assessments would be negatively capitalized into the value of assessed properties.⁷⁹

For several reasons, these capitalization effects should tend to impel creators of micro-territorial institutions to allocate votes according to property ownership, not residency.⁸⁰ First, power to control a micro-institution is best allocated to those who bear the great bulk of both the benefits and costs of its decisions. That approach increases the likelihood that the institution's leaders will be pressured to pursue cost-justified projects. For instance, if short-term tenants were to control a BLID's board of directors, they might favor BLID sponsorship of an overly lavish Fourth of July block party. The landlords on the block, by assumption those liable to pay assessments to finance the BLID's activities, would have sharper incentives to rein in the budget for such a party.⁸¹ Similarly, a BLID board controlled by short-term tenants would tend to underinvest in street trees or

78. In Massachusetts, where a statute authorizes an owner of property within a BID to opt out of paying assessments, no BIDs have been formed. See Briffault, *A Government for Our Time?*, *supra* note 7, at 41 n.184. Municipal and RCA law both authorize a territorial association to impose a lien on the delinquent property when an assessment is overdue. See *id.* at 41. Taxpayer compliance with mandatory property-based assessments should therefore tend to be high.

79. In some contexts a tenant can reap a portion of the benefit from a local public good in the form of added consumer surplus. This is particularly likely where tenants have long-term leases or where, as in Washington Heights, rent controls are in place. See Ellickson, *Cities and Homeowners Associations*, *supra* note 73, at 1552-54. In these contexts it might be appropriate to include the market value of tenants' leases in the valuation of a district's total real property. That approach would both confer property-based voting rights on tenants and also subject them, in the same proportion, to liability for paying a portion of the district's assessments. Indeed, because market values may fail to fully reflect subjective valuations, a tenant conceivably might be entitled to unilaterally declare an even higher leasehold valuation. To lessen the risk of a strategic exit by a tenant in arrears, however, a tenant's right to extra voting power based on an above-market valuation of the leasehold could be conditioned on the tenant's being current in paying the assessments that had been levied on that extra value.

80. *But see* Liebmann, *supra* note 5, at 369, 382-83 (suggesting a one-resident/one-vote system for the creation of mandatory-membership block associations).

81. The difference lies in incentives, not tastes. Owners and renters in the inner cities tend to have highly correlated views about the identity of disamenities. See SKOGAN, *supra* note 10, at 55-56.

other capital improvements that have a long gestation period. Although a fee simple landowner has an infinite time horizon, a tenant's time horizon is limited to the anticipated duration of the leasehold. Allocation of votes by property ownership, instead of by residency, would give rise to an electorate attuned to both the costs and benefits of decisions, an outcome that enhances the probability of prudent institutional governance.⁸²

Second, and relatedly, tenants generally are less vulnerable to majoritarian expropriation than are landlords. A tenant unhappy about the policies of a block-level government usually can cheaply escape by moving away. A landowner, by contrast, cannot exit from a block with the land in tow. A rent-seeking block organization therefore might attempt to capture the value of a landowner's immobile assets. Any person who cannot exit is especially deserving of a vote, a basic medium for exercising voice.⁸³

Third, giving control over block-level institutions to landowners would increase effective political support for the creation of these entities. If votes were to be allocated according to residency but assessments according to property owned, owners of large property holdings would tend to oppose the creation of a BLID in an area where most residents happened to be tenants.⁸⁴ These landowners' political opposition would be decisive in many instances, partly because tenants tend to be relatively uninvolved in local affairs.⁸⁵ In practice, the

82. For additional discussions of the advantages of correlating voting power with economic stake, see 1 WILLIAM BLACKSTONE, COMMENTARIES *171-72 (stressing the risk that votes of low-stakes electors may be too easily influenced by the wealthy and powerful); Ellickson, *Cities and Homeowners Associations*, *supra* note 73, at 1539-63; Sterk, *supra* note 76, at 290. See also FRANK R. EASTERBROOK & DANIEL R. FISCHER, THE ECONOMIC STRUCTURE OF CORPORATE LAW 67-73 (1991) (discussing rationales for the one-share/one-vote system typical in corporate governance); Oliver Williamson, *Corporate Governance*, 93 YALE L.J. 1197 (1984) (stressing the importance of empowering those with transaction-specific assets, who might otherwise be exploited). But see Frank Michelman, *Universal Resident Suffrage: A Liberal Defense*, 130 U. PA. L. REV. 1581 (1982). The advantages of correlating votes with stakes are widely recognized. For instance, a university typically confers more power over academic appointments upon members of its tenured faculty, who have long-term stakes in hiring decisions, than upon students or part-time faculty.

83. For a discussion of voice and exit, see ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY (1970).

84. This is a serious defect in, for example, CONN. GEN. STAT. ANN. § 7-325 (West 1989), which essentially empowers a district's voters (not its property owners) to create a special tax district by two-thirds vote.

85. See CRENSON, *supra* note 10, at 174, 211 (reporting that owners are over three times more likely than renters to be involved in voluntary community associations); Ellickson, *Cities and Homeowner Associations*, *supra* note 73, at 1549.

extension of the one-resident/one-vote principle to inner-city BLIDs would frustrate progress not only in the provision of localized public goods, but also in the establishment of institutions capable of enhancing participation in collective governance.

3. *The Constitutionality of Voting by Property Ownership.* In some contexts courts have deemed allocation of votes according to property ownership to be a violation of the Equal Protection Clause.⁸⁶ Hyper-egalitarians have invoked the Supreme Court's one-resident/one-vote doctrine to attack the constitutionality of the Business Improvement District, and could be expected to challenge BLIDs as well.⁸⁷ The Court has ruled in one case, however, that the one-resident/one-vote principle did not extend to a governmental unit that served only "special or limited purpose[s]."⁸⁸ Thus far, BIDs have survived constitutional attacks on their governance structures⁸⁹ and ordinary BLIDs should be able to weather them as well. As noted, block-level institutions governed by property owners have appeared frequently in history and have many inherent advantages. While promoters of a BLID should be free to choose the one-resident/one-vote approach, judges are likely to refrain from invoking the general language of the Equal Protection Clause to impose that system upon them. Because a state and a city can exercise general regulatory powers to check abuses by block-level districts, a court sensitive to the virtues of federalism is particularly unlikely to train the heavy artillery of the federal Constitution on the voting rules of these micro-institutions.

B. Powers and Functions

What services should a BLID be authorized to provide? There are two polar conceptions of the niche of a micro-territorial institution.

86. The case law is reviewed in Richard Briffault, *Who Rules at Home?: One Person/One Vote and Local Governments*, 60 U. CHI. L. REV. 339, 345-59 (1993).

87. See Kennedy, *supra* note 7, at 294-99; see also sources cited *infra* note 137.

88. *Associated Enters., Inc. v. Toltec Watershed Improvement Dist.*, 410 U.S. 743, 744-45 (1973) ("[W]e hold that the State could rationally conclude that landowners are primarily burdened and benefited by the establishment and operation of watershed districts and that it may condition the vote accordingly.").

89. See *Kessler v. Grand Cent. Dist. Management Ass'n*, 960 F. Supp. 760, 773-74 (S.D.N.Y. 1997) (stressing the District's lack of power to impose regulations, issue bonds, and levy general taxes).

The first might be termed "provision of supplementary services." Many existing Business Improvement Districts attempt only to augment, not supplant, city services. A BID adhering to this model might steam-clean the sidewalks that its city sweeps. A BLID similarly might restrict its efforts to planting extra street trees, adding security patrols, and so on.

The second conception could be called "substitution for ordinary city services." On this view, a micro-institution might assume some or all of the functions that the encompassing city previously had been performing. To extend the previous example, a BID or BLID could take over sidewalk sweeping from its city.

1. *The Case for Limiting a BLID to Supplementary Services.* When Robert Nelson envisions a micro-government with "walls" around its borders, he seems to be leaning toward the latter model—the supplanting of city functions.⁹⁰ Because many central city administrations are highly incompetent, the substitution model has undeniable appeal because it would foster more robust competition in the supply of local public goods. Nevertheless, in contrast to Nelson, I basically envision a BLID as restricting itself to supplementary services—the model that most existing urban micro-institutions in fact follow.⁹¹

This more cautious conception has several practical virtues. First, according to some precedents, a BLID (like a BID) more likely would be exempt from the one-resident/one-vote stricture if it were to limit itself to a supplementary role.⁹² Second, knotty issues of fiscal equity would be raised if a BLID were to supplant city services. In that event, a BLID member understandably would want to be entitled to calculate the portion of his assessment being used to finance substitute services and then to offset that amount against his liabilities for local taxes.⁹³ Commentators who favor entitling micro-

90. See Nelson, *Privatizing the Neighborhood*, *supra* note 5, at 60. Ventures in this vein are sympathetically discussed in FOLDVARY, *supra* note 16, at 206-08; HALLMAN, *supra* note 9, at 71-74; Frazier, *supra* note 15, at 99-101; Georgette C. Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607, 649-56 (1997).

91. See, e.g., CAL. STS. & HIGH. CODE § 36613 (West Supp. 1998) (restricting BIDs to supplemental services); N.Y. GEN. MUN. LAW § 980-j(a) (McKinney Supp. 1998) (same); *Windham First Taxing Dist. v. Town of Windham*, 546 A.2d 226, 233 (Conn. 1988) (holding that a special tax district is limited to supplying supplementary services).

92. See, e.g., *Kessler*, 960 F. Supp. at 774 (stressing that the BID at issue provided only supplementary services).

93. See DILGER, *supra* note 3, at 28-30. If denied offsets of this sort, property owners

governments to supplant city services have offered ideas on how these offsets might be accomplished, but none of these ideas seems particularly promising.⁹⁴ Third, and relatedly, the supplementation model is far more politically realistic. If a BLID could supplant city services, city bureaucrats and municipal unions would be likely to throw their significant weight against the creation of these micro-institutions. In addition, the Internal Revenue Code currently would not entitle a nonbusiness taxpayer to take payments of BLID assessments as itemized deductions. Because local property taxes *are* deductible, many property owners have a tax incentive for opposing city-provided services being supplanted by BLIDs.⁹⁵

2. *The Specific Powers of Block Improvement Districts.* Both the general enabling statute and the BLID's own articles of incorporation should routinely authorize a BLID to provide supplementary services on at least the following fronts (with examples indicated):

- life safety (block patrols, crossing guards, supplementary sidewalk and street repair, emergency snowplowing);
- sanitation (street cleaning, litter removal, vermin eradication);
- beautification (graffiti removal, street-furniture maintenance, tree and lawn care);

would tend to favor slashing city spending on the same services in other neighborhoods.

94. One option is to condition formation of a district on local government approval of a formula for the offset. See Nelson, *Privatizing the Neighborhood*, *supra* note 5, at 10-11 (proposing "service transfer agreement[s]"); CONN. GEN. STAT. ANN. § 7-339t (West 1989) (authorizing the city and municipal special services district to agree to this sort of arrangement). This approach increases the likelihood of a municipal veto of the creation of a proposed BLID. To reduce that risk, the city's protection could be limited to a liability rule (the right to collect a certain level of taxes), as opposed to a property rule (the power to veto the formula for offsets). See Frazier, *supra* note 15, at 99-108. A few local governments, including Houston, Texas, and Montgomery County, Maryland, in fact entitle an RCA member to a property tax rebate to the extent that the local government saves on account of the RCA's provision of services. See DILGER, *supra* note 3, at 102. A state legislature, however, might balk at adopting the liability-rule approach because critics might argue that it would foster micro-secessions that might overly balkanize an urban area.

95. Of course, the federal tax preference for city financing of services in micro-territories could (and should) be reduced or eliminated. See Ellickson, *Cities and Homeowners Associations*, *supra* note 73, at 1578-79 (proposing that a nonbusiness federal taxpayer be entitled to deduct only one-third of state and local taxes paid).

- culture and entertainment (parties, newsletters, research on block history); and
- political activity on behalf of the block (lobbying, litigation).

In addition, a BLID routinely should have the authority to undertake a variety of capital improvements:

- street furniture (signage, benches, light posts, waste receptacles);
- landscaping of public spaces (street trees, sidewalk planters);
- supplementary or ornamental repavings (sidewalks, streets); and
- land purchases (community gardens, tot-lots, lots with derelict buildings (in order to eliminate them)).⁹⁶

Should a BLID also have regulatory powers? As Liebmann and Nelson both contend, there is a compelling case for empowering a block association to *relax* many of its city's zoning restrictions.⁹⁷ Nelson plausibly anticipates that a grass-roots organization would be more likely than a municipality to bargain to lift an inefficient land use restriction, such as a legal barrier to opening a day care center.⁹⁸ As a long-time proponent of the decentralization of land use regulation, I applaud experimentation on this front.⁹⁹ Most zoning regulations mainly govern use allocations, building bulks, lot shapes and sizes, parking requirements, and other land uses whose spillover effects are limited. A BLID should be empowered to grant variances from these sorts of regulations, although perhaps not from the few

96. Cf. DILGER, *supra* note 3, at 20-27 (explaining the operational functions of RCAs); FOLDVARY, *supra* note 16, at 191 (listing the activities of St. Louis's private street associations); HALLMAN, *supra* note 9, at 158-69 (detailing the self-help activities of voluntary neighborhood associations); Houstoun, *supra* note 8, at 82-86, 121 (chronicling the activities of six New York City BIDs); Liebmann, *supra* note 5, at 351-64, 381-82 (recommending functions for mandatory-membership block associations).

97. See LIEBMANN, *supra* note 5, at 143 (endorsing the conferral of this power "subject to safeguards against external effects"); Liebmann, *supra* note 5, at 343-46; Nelson, *Privatizing the Neighborhood*, *supra* note 5, at 13-14, 66-70 (discussing the relaxation of zoning regulations through their sale and conferral to neighborhood associations).

98. See Nelson, *Privatizing the Neighborhood*, *supra* note 5, at 66-70 (discussing prospects of relaxation of municipal land use controls in newly developing areas).

99. See Robert C. Ellickson, *Alternatives to Zoning: Covenants, Nuisance Rules, and Fines as Land Use Controls*, 40 U. CHI. L. REV. 681, 761-71 (1973).

zoning provisions (such as limits on extraordinary heights) that are aimed at preventing neighborhood-wide negative externalities.

Nelson also proposes entitling a block organization to *impose* new regulations within its territory.¹⁰⁰ The success of RCAs, which typically have limited powers to adopt bylaws to regulate members' behavior, suggests that experiments in this vein would be worthwhile. Conferring this power might prove to be unwise, however. American law rightly is more tolerant of grass-roots deregulation than of grass-roots regulation.¹⁰¹ A BLID's regulations might irk both property owners who dissented in the referendum that established it, and also resident tenants who were not eligible to participate in that referendum. Liebmann, therefore, is wary of empowering block-level organizations to regulate.¹⁰² As a compromise, I urge drafters of a state enabling act to authorize formation of extraordinary Regulatory BLIDs (RBLIDs). An RBLID's articles of incorporation could include limited regulatory powers of the sort that an RCA typically possesses. The statute would deny these powers to an ordinary BLID. On the other hand, to enhance an RBLID's legitimacy and responsiveness, the enabling act also would condition the formation of an RBLID on approval by extraordinary and concurrent majorities of both its owners and residents.¹⁰³ The statute might also require affirmative votes both from owners of three-fourths of the taxable property in the district and from two-thirds of the resident registered

100. See Nelson, *Privatizing the Neighborhood*, *supra* note 5, at 12-14. See also Davies, *supra* note 7, at 217-18 (advocating that BIDs have some zoning powers).

101. This distinction is reflected in the traditional zoning system, which authorizes a board of zoning appeals to grant a variance or special exception that provides individuated relief, but not to impose a new site-specific regulation. The distinction also appears in the Supreme Court decisions from the *Lochner* era that hold that the Due Process Clause does not prohibit lot owners from lifting a land use restriction, but does prohibit them from imposing one. Compare *Thomas Cusack Co. v. City of Chicago*, 242 U.S. 526, 530-31 (1916) (upholding an ordinance that empowered lot owners to lift billboard restrictions), with *Eubank v. City of Richmond*, 226 U.S. 137, 144 (1912) (invalidating an ordinance that authorized lot owners to impose minimum front yard setback). This legal preference for deregulation may partly derive from the reality that land use regulations tend to be excessively restrictive.

102. See Liebmann, *supra* note 5, at 346-48, 362 (discussing but ultimately opposing empowering districts to impose additional regulations).

103. Possession of governmental powers helps trigger applicability of the one-resident/one-vote constraint. See *Ball v. James*, 451 U.S. 355, 362-66 (1981); see also *Avery v. Midland County*, 390 U.S. 474, 474-75 (1968) (establishing the principle); *Hadley v. Junior College Dist.*, 397 U.S. 50, 53-54 (1969) (applying the principle to the election of trustees of a community college district). A state legislature could test the limits of the constitutional envelope by empowering residents to vote only in the referendum on a BLID's formation and not in subsequent elections of board members.

voters casting votes in the referendum. To further curb regulatory abuses by RBLIDs, courts could look to the well-developed body of law on judicial review of RCAs.¹⁰⁴ The general point is that a governing institution such as RBLIDs warrants more and more external checks as its power grows.

III. PROCEDURES FOR THE FORMATION, OPERATION, AND TERMINATION OF A BLOCK IMPROVEMENT DISTRICT

In the spirit of Liebmann and Nelson, this section sketches how a state enabling act might structure the process of creating a BLID.¹⁰⁵

A. Circulation of a Petition

Any person should be entitled to draft and circulate a petition to form a BLID. To be valid, the petition would have to identify the precise boundaries of the proposed district. The enabling act might set a minimum size (for example, inclusion of at least two acres of land, owned by at least ten different people or entities) to prevent the use of a BLID to solve coordination problems that could better be handled by means of contracts or informal norms.¹⁰⁶ In addition, a state legislature wary of the establishment of a large territorial institution controlled by property owners might set a maximum area (such as 200 acres) for an urban BLID.¹⁰⁷

The petition also would have to include a proposed articles of incorporation (or an analogous charter) that would articulate the powers of the proposed BLID and set out its governance structure. In the

104. See generally WAYNE S. HYATT, *CONDOMINIUM AND HOMEOWNER ASSOCIATION PRACTICE: COMMUNITY ASSOCIATION LAW* (2d ed., 1988); ROBERT G. NATELSON, *LAW OF PROPERTY OWNER ASSOCIATIONS* (1989). A BLID or an RBLID conceivably might possess a number of other controversial powers, such as eminent domain, bonding authority, and power to grant variances from building and housing codes. Experiments along these lines belong on the back burner.

105. Cf. Liebmann, *supra* note 5, at 381-82; Nelson, *Privatizing the Neighborhood*, *supra* note 5, at 10-11.

106. This may be one reason why many states set a minimum population for a new municipality. See LIEBMANN, *supra* note 5, at 54. Enabling statutes for BIDs commonly do not specify minimum and maximum sizes. See, e.g., CAL. STS. & HIGH. CODE §§ 36600-36651 (West Supp. 1998); N.Y. GEN. MUN. LAW § 980 (McKinney Supp. 1998) (requiring different procedures to be followed in municipalities with populations of over 1,000,000 people but not specifying minimum and maximum sizes).

107. Enabling legislation might permit a NID, discussed *supra* in text accompanying notes 56-58, to be more expansive. To assume affirmative regulatory powers, however, a NID should be required to give its residents significant voting rights.

spirit of modern corporate law, the enabling act would specify defaults for various provisions of the articles, but also permit the promoters of a BLID to make some tailored changes in these defaults.

A key provision in the articles would articulate the formula to be used for apportioning both assessments and votes for BLID directors. The enabling act would designate one vote per dollar of taxable real property as the default formula. Nevertheless, promoters of a BLID could propose some other system, such as one vote per lot, one vote per dwelling unit (if the entire district were residential), or one-resident/one-vote.¹⁰⁸ They also could devise a system of class voting, such as one that ensured that both tenants and non-resident landlords would be represented on the board of directors.

The enabling statute would set the minimum number of votes necessary for the petition to qualify for forwarding to the city legislative body. It might require, for example, the signatures of the owners of at least twenty-five percent of the assessed value of the taxable real property located within the proposed district's boundaries.¹⁰⁹

B. City Consideration of the Petition

Because antagonism between a BLID and its city could lead to destructive feuding, the enabling act should empower the city legislative body to either approve or reject the proposed petition as written.¹¹⁰ Anticipating this review by the city, promoters of a BLID

108. For example, in Walt Disney World, where the Reedy Creek Improvement District, a former drainage district, is the key territorial institution, votes for board members are allocated one-per-acre. See FOLDVARY, *supra* note 16, at 118-19. In most contexts, though, property value is a better proxy than land area for measuring an owner's economic stake in the affairs of a micro-institution.

109. Nelson would require owners of 60% of the taxable property value to sign the petition. See Nelson, *Privatizing the Neighborhood*, *supra* note 5, at 10. That seems too high an initial hurdle.

110. Cf. CAL. STS. & HIGH. CODE §§ 36621-36627 (West Supp. 1997) (authorizing the city legislative body to approve the formation of BID); CONN. GEN. STAT. ANN. § 7-339m (West 1989). Nelson would empower the state to approve the creation of a block-level institution. See Nelson, *Privatizing the Neighborhood*, *supra* note 5, at 10. The city is the more appropriate choice because a BLID's actions are highly unlikely to have significant consequences beyond city boundaries. Systems that would require approvals from several higher-level institutions would set up too many potential roadblocks, and similarly would be unwise. Cf. Frazier, *supra* note 15, at 105 (arguing that the creation of a neighborhood-level institution should be reviewed both by the city and by an "independent body"); Kennedy, *supra* note 7, at 293 (describing how creation of a New York City BID must be approved by "the city planning commission, various community boards, the borough president, the city council, and the state comptroller").

would be wise to confer with relevant municipal authorities during the petition's drafting stage. Empowering a city to veto formation of a BLID would help ensure that district boundaries were appropriately drawn, that the BLID would not have powers that might impair the welfare of outsiders, and that the articles would not violate norms applicable to the governance of special districts. There is a risk, of course, that a city would abuse its power to veto a BLID's creation, especially at the behest of traditionally powerful municipal lobbies. This danger should not be exaggerated, however. Local politicians tend to be reluctant to offend well-organized grass-roots activists, such as a band of fervent BLID promoters.¹¹¹

C. Submission for Approval in Referendum by Owners of a Supermajority of the District's Assessed Property Value

The city legislative body's approval of the petition would advance the process to the next stage, a districtwide vote.¹¹² To allow adequate time for debate, the election should be held a few months after the city legislative body has rendered its consent.¹¹³ The enabling act should identify the agency responsible for supervising the polling.

For reasons previously canvassed, owners of taxable¹¹⁴ real property should constitute the electorate eligible to participate in the referendum on the formation of a Block Improvement District. Although a BLID would possess coercive authority, especially the

111. A city decision concerning the creation of a special district is potentially subject to judicial review. *See, e.g., Jensen v. City & County of Denver*, 806 P.2d 381, 385-87 (Colo. 1991) (holding that Denver did not abuse its discretion when approving the creation of a BID).

112. Many analogous enabling acts do not include both petition and referendum stages. *See, e.g., CAL. STS. & HIGH. CODE* §§ 36621-36626 (West Supp. 1998) (requiring the submission of a petition by property owners who will be liable for at least 50 percent of proposed assessments and the holding of a public hearing to create a BID); *N.Y. GEN. MUN. LAW* § 980-d to -g (McKinney Supp. 1998) (establishing BID formation procedures that do not include a referendum); Briffault, *A Government for Our Time?*, *supra* note 7, at 16-32 (describing procedures and practices for formation of BIDs). A two-stage process, however, would generate a more prolonged, and therefore probably more thoughtful, block-level debate over the merits of the proposed institution.

113. Nelson calls for the lapse of at least a year. *See Nelson, Privatizing the Neighborhood*, *supra* note 5, at 11. A delay that long might dissipate promoters' enthusiasm.

114. State law commonly exempts much of the real property owned by a government or nonprofit association from special assessments of any stripe. Enabling statutes for micro-districts therefore typically restrict both votes and assessments to owners of taxable property. *See, e.g., CAL. STS. & HIGH. CODE* § 36621 (West Supp. 1998) (concerning formation of BIDs); *CONN. GEN. STAT. ANN.* § 7-339p (West 1989) (concerning formation of municipal special services districts).

power to levy assessments, it would be impractical to require that affected owners unanimously concur in its establishment. A unanimity rule would spur holdout strategies, thereby greatly increasing the transaction costs of formation.¹¹⁵ On the other hand, a rule of creation by the owners of a simple majority of property value poses risks of majoritarian oppression.¹¹⁶ A state legislature therefore would be wise to condition the creation of a BLID on approval by owners of a supermajority (perhaps two-thirds) of the assessed value of the real property that would be liable for paying the BLID's assessments.¹¹⁷

To enhance the legitimacy of a BLID, a state legislature might condition its formation on concurrent approval by a majority (or supermajority) of some other relevant electorate. To prevent a few large landowners from dominating the creation process, the enabling act might also require that a majority of the district's property owners favor the BLID.¹¹⁸ In some instances, the registered voters residing in a proposed district might be empowered to assent to its formation, perhaps by simple majority of votes cast.¹¹⁹ While this democratiza-

115. This is a shortcoming of, for instance, FLA. STAT. ANN. § 190.005 (West Supp. 1998) (requiring that owners of 100 percent of included property approve formation of a Community Development District).

116. A risk posed for example, by CAL. STS. & HIGH. CODE §§ 36621, 36625 (West Supp. 1998) (putting decisive power, in some contexts, in hands of property owners liable for a simple majority of BID assessments).

117. See *Hood v. Central Bus. Improvement Dist. No. 1*, 781 S.W.2d 35, 36 (Ark. 1989) (describing the Arkansas procedure that entitles owners of two-thirds of the assessed value of real estate in a district to petition the city council to create a BID, without requiring a subsequent election).

118. Nelson would require approval both by 75% of the property owners and by owners of 90% of the property value. See Nelson, *Privatizing the Neighborhood*, *supra* note 5, at 11. Percentages that high might unduly increase the incidence of strategic holdouts. Most analogous statutes employ smaller percentages. See, e.g., N.Y. GEN. MUN. LAW § 980-d(a) (McKinney Supp. 1998) (providing that the initial petition for a BID must be signed by 51% of owners of taxable real property and also by owners of 51% of value of taxable real property); CONN. GEN. STAT. ANN. § 7-339p (West 1989) (imposing similar requirements, but at the referendum stage).

119. This approval system would be much simpler, but also far less exact, than including the value of tenants' leases in the property to be assessed, an approach explored in note 79 *supra*. Liebmann, one of the most creative proponents of urban micro-institutions, has proposed authorizing two-thirds of the registered voters resident in a district to create a mandatory-membership block organization. See Liebmann, *supra* note 5, at 382-83. In practice, Liebmann's proposals would put resident homeowners in the saddle and disempower owners of vacant lots, apartment buildings, and commercial property. I am puzzled at Liebmann's willingness to depart from the principle that power over a micro-institution should be conferred in proportion to the incidence of the costs and benefits of its actions.

tion of the creation process would add complexity and would invite rent-seeking, it would also widen a BLID's base of initial support.¹²⁰

D. Ongoing Administration

The operation of a BLID would involve fistfuls of legal issues. Fortunately, the law of homeowners associations and other RCAs can be consulted for guidance. Community association law provides precedents on, among other issues: procedures for electing directors; duties of directors; record-keeping and access to records; judicial review of decisionmaking; amendments of the articles; annexations and disannexations of territory; and the creation of an umbrella association that encompasses smaller ones.¹²¹

The enabling act should entitle a BLID to integrate the collection of assessments with city property taxes. The BLID could inform the city tax collector of the BLID assessment rate and the tax collector then would levy the appropriate amount as part of the regular property-tax bill. After a property owner had paid the bill, the tax collector would forward the BLID's portion of the revenue to the BLID.¹²² Alternatively, the drafter of a BLID's articles could follow the usual RCA practice of independently billing assessments (and, perhaps, independently assessing property values, as well).

E. Disestablishment

Because a BLID might fail either from the outset or over time, the enabling statute should address procedures for termination. As a default, a petition signed by the owners of twenty-five percent of the assessed value of the taxable real property within the district should be sufficient to force a termination vote. Because a BLID has coercive powers, the default provisions also should entitle the owners of a mere majority of the assessed property value to eradicate the institution.¹²³ In addition, to be faithful to the experimental posture of the

120. Concurrent initial approval by both residents and property owners would be particularly desirable in the case of RBLIDs, which would have the authority to impose new regulations. *See supra* notes 99-103 and accompanying text.

121. *See generally* sources cited *supra* note 104.

122. BID assessments commonly are collected in this fashion. *See, e.g.*, CAL. STS. & HIGH. CODE § 36632 (West Supp. 1998); *Kessler v. Grand Cent. Dist. Management Ass'n*, 960 F. Supp. 760, 765 (S.D.N.Y. 1997).

123. *Cf.* CAL. STS. & HIGH. CODE § 36650 (West Supp. 1998) (authorizing disestablishment of BID by petition by owners of 50 percent of property value); CONN. GEN. STAT. ANN. § 7-339s(a) (West 1989) (providing that municipal special services district may be dissolved by

BLID proposal, a legislature initially might impose a sunset provision. To illustrate, after a BLID had been in existence for seven years its supporters might be required to muster affirmative evidence that both the city and the owners of a majority of the assessed property supported perpetuating the institution.¹²⁴

IV. BLOCK IMPROVEMENT DISTRICTS IN PRACTICE

A. Getting Started

Because BLIDs are untested, initial experiments with these institutions might need a financial boost. Foundations, corporations, and governments currently provide significant support to Community Development Corporations.¹²⁵ If an enabling act for BLIDs were passed, these same donors could provide seed money to promoters of selected BLIDs to defray a portion of the start-up costs. A foundation particularly interested in the revitalization of inner cities could provide technical support by funding, for example, the drafting of model documents for BLIDs.¹²⁶

If early experiments with BLIDs were to pan out, small-scale entrepreneurs might emerge to help propagate the institution.¹²⁷ To finance start-up costs without donor help, a BLID's promoters could be entitled to include in the draft articles a conspicuously identified promoter's fee to be defrayed from BLID revenues in the event that voters later approved the petition to establish the district. Other entrepreneurs could assist a BLID after its creation. For instance, a small contractor might specialize in providing security, landscaping, or street-cleaning services to BLIDs, just as some management firms and contractors now cater to homeowners' associations.

(1) city ordinance or (2) referendum approved by either majority of property owners or owners of majority of assessed taxable property); Liebmann, *supra* note 5, at 383 (proposing that a majority of the members be entitled to terminate).

124. Cf. Briffault, *A Government for Our Time?*, *supra* note 7, at 145 (recommending that a BID be subject to a five-year sunset period).

125. See *supra* notes 46-55 and accompanying text.

126. The salient precedent is the HOMES ASSOCIATION HANDBOOK (Urb. Land Inst. Tech. Bull. No. 50, 1966), which helped stimulate the spread of RCAs.

127. Think, for example, of the efforts of Edward Bassett, Alfred Bettman, George B. Ford, and Robert Whitten—some of the Johnny Appleseeds who helped propagate the practice of zoning during the 1920s. See Martha A. Lees, *Preserving Property Values? Preserving Proper Homes? Preserving Privilege?: The Pre-Euclid Debate over Zoning for Exclusively Private Residential Areas, 1916-1926*, 56 U. PITT. L. REV. 367, *passim* (1994) (identifying proponents of zoning).

On what sorts of blocks would BLIDs be most likely to sprout? The wide diversity of areas in which RCAs are found suggests that block-level institutions can thrive in a variety of settings.¹²⁸ Few RCAs, however, serve districts as poor as West 163rd Street in Washington Heights. Studies have found that homeowners are far more likely than tenants to become block-level leaders, in part because homeowners' stakes are greater and their time horizons longer.¹²⁹ Grass-roots leaders also tend to have more wealth and years of education than do their neighbors.¹³⁰ These facts suggest that the most promising soil for a BLID would be a gentrified (or gentrifying) block located in a city particularly inept at delivering cost-justified local public goods. Indeed, the possibility of later establishing a BLID might prompt a developer to acquire an assemblage of parcels on a block that was prime for gentrification. A BLID also promises to facilitate "incumbent upgrading"¹³¹ on any relatively stable and homogeneous block, say, one where working-class homeowners predominate.¹³² It is far from certain, however, that a BLID would prove to be a useful institution on a declining block inhabited mostly by poor tenants of absentee landlords. Nevertheless, in these distressed environments the potential gains from institutional innovation are

128. See DILGER, *supra* note 3, at 16-27 (describing diversity of activities and organizational structures of RCAs).

129. See CRENSON, *supra* note 10, at 173-74, 211. See also DENISE DIPASQUALE & EDWARD L. GLAESER, INCENTIVES AND SOCIAL CAPITAL: ARE HOMEOWNERS BETTER CITIZENS? (Univ. of Chic. Law & Econ. Working Paper No. 54 (2d series), April 1998) (concluding that homeowners are more likely than tenants to invest in local amenities and social capital).

130. See CRENSON, *supra* note 10, at 196, 260; SKOGAN, *supra* note 10, at 133.

131. This is a notion developed by Hallman. See HALLMAN, *supra* note 9, at 209-11; see also *id.* (attributing the creation of this term to ANTHONY DOWNS, NEIGHBORHOODS AND URBAN DEVELOPMENT 72 (1981)).

132. Stability and homogeneity abet block mobilization by enhancing social cohesion. See CRENSON, *supra* note 10, at 176 (presenting positive correlation between socioeconomic homogeneity and levels of informal efforts to improve street); SKOGAN, *supra* note 10, at 17-18 (discussing failure of community-based programs such as block clubs in heterogeneous, high-turnover neighborhoods); SUTTLES, *supra* note 17, at 21-43 (recognizing homogeneity's enhancing effects on social cohesion in "defended neighborhoods," though not finding homogeneity necessary for social cohesion). For this reason, Herbert Gans, who opposes homogeneity at the level of the city, generally favors some homogeneity at the neighborhood level. See Herbert Gans, *The Balanced Community: Homogeneity or Heterogeneity in Residential Areas?*, in HOUSING URBAN AMERICA 135, 137 (Jon Pynoos et al. eds., 1973). Cf. HANSMANN, *supra* note 52 *passim* (explaining how homogeneity of interests may facilitate business operations).

particularly large.¹³³ Why not experiment with a BLID on the likes of West 163rd Street?

B. Overcoming Objections

Although political centrists should have no serious objections to BLIDs, both libertarians and hyper-egalitarians might oppose this institutional innovation. A libertarian might see a BLID as a threat to freedom because it would not be created by unanimous consent of the governed.¹³⁴ There are two responses to this argument. First, the nurturing of intermediary organizations such as BLIDs in the long run promises to limit the expansion of the role of city governments, which surely tend to be more coercive than BLIDs. Second, even a staunch libertarian should concede that, as numbers mount, people encounter increasing difficulty in coordinating by unanimous contract.¹³⁵ Indeed, there is good reason to infer that high transaction costs commonly prevent property owners on an already subdivided block from producing public goods by voluntary agreement: *although a residential developer is highly likely to establish a residential community association, residents of an existing block virtually never succeed in unanimously agreeing to create one.*¹³⁶ Moreover, a city dweller loses freedom when streets are unplowed or unsafe. To enable a citizenry to reap the freedoms that public goods make possible, a libertarian should be willing to stomach the narrowly tailored form of supermajoritarian coercion that a BLID entails.

For their part, hyper-egalitarian commentators are likely to oppose the creation of BLIDs on two grounds. These critics seem to

133. See CRENSON, *supra* note 10, at 112-13 (noting that black residents of inner-city areas are especially likely to identify with block-level territories); *id.* at 114-20 (asserting that residents of poor and predominantly black areas tend to be greatly dissatisfied with neighborhood conditions); SKOGAN, *supra* note 10, at 65 (arguing that social and physical disorder demoralizes and angers all urban residents).

134. See, e.g., Steven J. Eagle, *Devolutionary Proposals and Contractarian Principles*, in *THE FALL AND RISE OF FREEDOM OF CONTRACT* (F.H. Buckley ed., forthcoming 1998).

135. Cf. Todd J. Zywicki, *A Unanimity-Reinforcing Model of Efficiency in the Common Law: An Institutional Comparison of Common Law and Legislative Solutions to Large-Number Externality Problems*, 46 CASE W. RES. L. REV. 961, 1029 (1996) (arguing that judicially-made nuisance rules replicate outcomes to which the affected parties "would have unanimously agreed if voluntary negotiation and side-payments were possible").

136. In the 1950s, homeowners on several blocks of Pershing and Westminster Avenues in St. Louis "successfully petitioned the city to privatize their streets." Beito & Smith, *supra* note 27, at 294. Beito and Smith do not expressly indicate, however, that the affected homeowners *unanimously* supported these petitions. I have found no other scholarly references to retrofitted associations.

seek to expand the sphere of social life that is subject to the one-resident/one-vote principle. They therefore are deeply suspicious of all territorial associations that vest political control in property owners.¹³⁷ In addition, in order to protect the security of tenure of low-income tenants, many hyper-egalitarians seek to impede gentrification.¹³⁸ They are likely to recoil from the prospect of middle-class homeowners using mandatory-membership block associations to upgrade inner-city neighborhoods.

Hyper-egalitarians would be prudent to refrain from attempting to derail experiments with BLIDs.¹³⁹ These institutions promise to improve the supply of local public goods, spawn inner-city microenterprises, and augment social capital. Theory and evidence indicate that a block-level institution works best when governed by the property owners who receive most of the benefits and bear most of the costs of the institution's policies.¹⁴⁰ Instead of standing in the way of progressive institutional change in the inner city, hyper-egalitarians should seek to identify and soften its possibly harsh side effects. For example, they might lobby to ensure that a tenant ousted as a result of a BLID-engendered gentrification would be entitled to receive relocation benefits, funded either by the city or by the BLID itself.¹⁴¹

There also is little factual basis for the hyper-egalitarians' focus on impeding gentrification. Most older neighborhoods in central cities are *degentrifying* (and most also are losing population).¹⁴² The un-

137. See, e.g., EVAN MCKENZIE, *PRIVATOPIA: HOMEOWNER ASSOCIATIONS AND THE RISE OF RESIDENTIAL PRIVATE GOVERNMENT* 7, 21 (1994) (asserting that RCAs, which are called "common interest developments" in this book, are "illiberal and undemocratic"); Alexander, *supra* note 36, at 45-47 (criticizing allocation of votes according to property ownership); Gerald E. Frug, *Cities and Homeowners Associations: A Reply*, 130 U. PA. L. REV. 1589, 1592-96 (1982) (equating voting by property ownership with "plutocracy," a regime inherently offensive to liberalism); Kennedy, *supra* note 7, at 305-10 (arguing that giving residents affected by BIDs "some sort of vote may be good policy").

138. See, e.g., Lawrence K. Kolodney, *Eviction Free Zones: The Economics of Legal Bricolage in the Fight Against Displacement*, 18 FORDHAM URB. L.J. 507, 512-20 (1991) (urging poverty lawyers to fight gentrification by vigorously defending against evictions); Margaret Jane Radin, *Residential Rent Control*, 15 PHIL. & PUB. AFF. 350 (1986) (defending the use of rent control to protect tenants' roots and to maintain existing communities of tenants). *But see* Robert C. Ellickson, *Rent Control: A Comment on Olsen*, 67 CHI.-KENT L. REV. 947, 950-54 (1991) (critiquing Radin's analysis).

139. Cf. Davies, *supra* note 7, at 220-23 (arguing that BIDs may further egalitarian goals).

140. See *supra* notes 66-89 and accompanying text.

141. Cf. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601-55 (1994) (authorizing relocation assistance to those displaced by certain federally funded programs).

142. See John D. Kasarda et al., *Central-City and Suburban Migration Patterns: Is a Turn-*

ceasing suburbanization of middle-class households is leading to ever greater disparities between central-city and suburban wealth.¹⁴³ This is worrisome, in part, because middle-class residents of a socially diverse urban neighborhood can be valuable role models for lower-class residents.¹⁴⁴ In the long run, poor people living in inner cities would benefit from the creation of new micro-institutions such as BLIDs.¹⁴⁵

CONCLUSION

Many wealthy people in the United States live in managed residential environments that largely insulate them from the poverty and disorder of the inner city. Robert Reich and other commentators have lamented this "secession of the successful" and have worried about its effects on the nation's social fabric.¹⁴⁶ Some hyper-egalitarians have sought to reverse the trend by attacking the legality and legitimacy of the residential community association. This strategy is exactly backwards.¹⁴⁷ The resounding success of RCAs in new housing developments suggests the merits of enabling the stakeholders of inner-city neighborhoods to mimic—at the block level—the micro-institutions commonly found in the suburbs.

I end with words of caution. The urban landscape is littered with failed policy initiatives. The merits of retrofitting mandatory-membership institutions onto already subdivided blocks are uncertain. This proposal for experiments with Block Improvement Districts assumes that their benefits can be large and that only the trans-

around on the Horizon?, 8 HOUSING POL'Y DEBATE 307, 314-19 (1997) (stating that the migration of higher-income households out of the central-cities is "striking" and noting the net loss of households at all income levels).

143. In 1990, median incomes in central cities were almost 30% lower than those in suburbs. See Margery Austin Turner, *Achieving a New Urban Diversity*, 8 HOUSING POL'Y DEBATE 295, 295 (1997).

144. See WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED* 55-60 (1987). Thus, an institution such as a BLID that promotes homogeneity at the block level may contribute to heterogeneity at the neighborhood or city level. Cf. *supra* note 132.

145. See Kennedy, *supra* note 7, at 328-29 (urging creation of BIDs in poorer neighborhoods); cf. Roberto G. Quercia & George C. Galster, *Threshold Effects and the Expected Benefits of Attracting Middle-Income Households to the Central City*, 8 HOUSING POL'Y DEBATE 409, 411-17 (1997) (exploring the situations in which cities benefit from attracting middle-income households).

146. Robert B. Reich, *Secession of the Successful*, N.Y. TIMES, Jan. 20, 1991, § 6 at 16; see also EDWARD J. BLAKELY & MARY GAIL SNYDER, *FORTRESS AMERICA: GATED COMMUNITIES IN THE UNITED STATES* (1997).

147. See Nelson, *Privatizing the Neighborhood*, *supra* note 5, at 58.

action costs of overcoming free riders have stood in the way of their creation by contract. These assumptions may prove to be false. Nevertheless, it is worth recalling that during the past half century the passage of enabling acts sparked the rapid spread of two significant micro-territorial institutions, namely, condominium associations and Business Improvement Districts.¹⁴⁸ Those precedents demonstrate that spontaneous order has its limits. It appears that lawyers and legislators—despite their plummeting reputations—at times can play a constructive role in propagating fresh institutional arrangements.

148. In 1958, Puerto Rico became the first United States jurisdiction to enact a condominium statute. All fifty states eventually followed. See Robert G. Natelson, *Condominiums, Reform, and the Unit Ownership Act*, 58 MONT. L. REV. 495, 500-01 (1997). By 1988, there were on the order of 130,000 condominium associations in the United States. See DILGER, *supra* note 3, at 18-19. On the rapid growth of BIDs, see *supra* notes 7-8, 68 and accompanying text.