*Spencer H. MacCallum*

# RESIDENTIAL POLITICS: HOW DEMOCRACY ERODES COMMUNITY

ABSTRACT: *Residential subdivisions governed democratically by homeowners' associations often fall short of their residents' expectations. The fault may lie in the developers' practice of subdividing rather than leasing residential land. Given the widespread success of land leasing in commercial real estate, subdividing residential land seems anomalous, and may be explained by a variety of public policies enacted since World War II that have constrained developers to subdivide rather than lease land for residential purposes. By promoting subdivision, these policies have subjected homeowners to the obsessive rule making, conflict, and counterproductive decision making that characterize democratic institutions. Entrepreneurial management, on the other hand, as practiced in multi-tenant commercial properties, has the potential of promoting true residential "community."*

In the United States, the last third of the twentieth century saw the spread of a new level of government below that of the municipality: the democratically governed subdivision.

Except for the very smallest, virtually every newer subdivision in the United States, including condominiums, townhouses, and other planned real-estate developments, is contractually bound to be democratically governed. Therefore I will not always use the "democratically governed" modifier, but will simply call them "political" subdivisions to

---

*Critical Review* 17 (2005), nos. 3–4. ISSN 0891-3811. www.criticalreview.com

Spencer MacCallum, sm@look.net, a social anthropologist living in Casas Grandes, Mexico, is the author of *The Art of Community* (Institute for Humane Studies, 1970) and of numerous articles on social organization.

distinguish them from older subdivisions, whose residents were subject only to municipal and higher levels of government.

The newer subdivisions' democratic or "political" government flows from the fact that by the terms of the agreement signed by owners of houses in such subdivisions, the subdivision's homeowners collectively (through a homeowners' association) own the streets and other common areas and facilities of their development, and they even have a collective proprietary interest in one another's lifestyles insofar as the latter might be thought to affect the resale values of their houses. These common interests are addressed by the homeowners' association's democratically elected board, whose constituents are the homeowners who, together, own the common areas of the subdivision. When one buys a house in such a subdivision, one automatically buys along with it the right to vote for, and the obligation to obey, an executive committee whose task is to deal with the common concerns that are built into the legal structure of the subdivision. A regime of restrictive covenants set up by the developer before the first lot is sold, and thereafter perpetuated in the property deeds of each home, mandates the "citizenship" of all present and future homeowners.

These political subdivisions evolved slowly from the 1920s and 30s, when they first acquired legal standing to exercise police and tax powers. But from the mid-1960s they spread rapidly, jumping from fewer than 500 in 1965 to more than 250,000 four decades later. Their boards now exercise jurisdiction over more than 50 million Americans. Virtually all new residential housing in major metropolitan areas is governed this way (CAI 2003).

Despite this robust growth, which would seem to imply broad consumer satisfaction, the quality of life advertised to buyers entering such a subdivision is often illusory. This is suggested by litigation statistics, which show the number of appellate cases involving such subdivisions growing almost twice as fast as the number of subdivisions (Winokur 1994, 93–94). The high incidence of complaints and litigation indicates widespread management problems.

The response of disaffected homeowners has been not only to sue, but to form "homeowners' rights" groups seeking municipal, state, and federal legislation and oversight to bring subdivisions into closer conformity with the rules regulating other levels of government. They network through the American Homeowners Resource Center (AHRC),

whose web site is receiving more than three million hits a month and is growing by 400 percent a year.

Fortunately, there is an alternative to collective ownership and democratic control of a commons. An entirely different arrangement is found in commercial real estate. The key to the difference is that in commercial real estate, the land, instead of being subdivided, is kept in single ownership and parceled into its various uses through leasing (rental). This permits profit-oriented management of the infrastructure and of the lease terms by a single entity—but one without conflicting wills, as in an electorate or a homeowners' association board.

This alternative way of managing property is as widespread in commercial real estate as political management is in residential real estate. Analyzing the nonpolitical—or, as I will say, "entrepreneurial"—alternative to political management will help us to understand, by way of contrast, what has driven subdivision development, and what has caused its problems.

Although land leasing is being used with great success in multiple-tenant commercial real estate—as exemplified, for example, in the spread of hotels and shopping malls—current government policy discourages its use in residential real estate. Some of the major obstacles are the mortgage-interest deduction, which applies only to payments for homes owned by the taxpayer (not for homes or home sites rented by him), mightily encouraging homeownership rather than leasing; federal subsidies for building political subdivisions, offered by the F.H.A., H.U.D., F.N.M.A., F.H.L.M.C., and V.A.; and, until 2003, the taxation of dividends at virtually double the rate levied on capital gains. This last factor, which discouraged conservative, long-term investment that would produce dividends in the form of rents generated by leasing, will be reinstated if the dividend-tax cut is not renewed in 2008. If so, then in light of the tax implications, it will continue to make more sense to engage in short-term land subdivision for capital gains than in long-term management for rental dividends.

But for the legally uneven playing field, there is every reason to believe that leasing would bring innovation and variety to the residential housing market, providing many attractive forms of community life that today's homeowners rarely enjoy. For it is becoming abundantly clear that subdivision, and especially political subdivision, militates against precisely the sense and enjoyment of community that one might expect would be encouraged by democracy.

## *Conceptualizing Community*

The concept of "community" is ambiguous. The lengthy search among social scientists for a definition of *community* that all could agree upon suggests an analogy from the physical sciences. Since its discovery by Max Planck in 1900, the quantum has remained a key concept of physical science. It is the smallest event that can be experienced even with the aid of instruments. But for decades the nature of the quantum posed a conundrum; it seemed now a wave and now a particle. During roughly the same years, sociologists faced a similar conundrum. The notion of community seemed a promising candidate to be a key concept in their discipline, but what exactly was "community"? Was it fundamentally a place, or a network of personal relationships? If one of these were missing, could the remainder still be called a community?

The reason for this ambivalence is that before the Industrial Revolution, when mobility and communication were negligible, the village where one lived corresponded almost perfectly with the network of one's personal acquaintances. But with advances in travel and communications technology in the nineteenth century, the spatial and the interpersonal dimensions of human life began to separate. Moving from place to place, people had to break and then re-establish their network of personal ties more often. As the notion of community itself became confused, writers lamented a "loss of community," which they saw as giving rise to widespread feelings of anomie, rootlessness, and alienation.

Today, the geographical and personal dimensions of community have almost completely separated—yet we find that it's not so bad after all. With rapid mobility and the ease of communicating across any distance, interpersonal networks are becoming not only more extensive, but more stable. Technological advances allow us to visit and interact with comparative ease. Geographic place is less crucial for personal relationships; to the extent that face-to-face interaction is desired, almost anywhere will serve. The logical end point toward which technology seems to be moving is that those who once gathered at the neighborhood pub will convene with equal ease in the streets of Bangladesh, Soho, or at the poles of the earth or even beyond—and all at once, if they like. Community in the sense of personal ties has been freed of place and given a new range of possibilities.

Sociologists were reluctant to abandon the search for consensus on a

definition of "community." But the concept combines two dimensions, geographic place and personal relationships, that had been associated only by the accident of primitive transportation and communication. When spatial "community" is intended, the phrase "community of place" is now sometimes used in the literature. But the definitional problem remains: of the many different kinds of populated places, what makes only some of them communities of place? What of a restaurant, a bus, a motel, or a floor in an office building? People in these places have ties, but often they are merely contractual, impersonal, and otherwise indirect. Because of the attenuated personal dimension, most people would not call such aggregations of people in a given place "communities."

To describe such aggregations, as well as aggregations more usually considered communal, I propose using the term *ruim*, which is an old Danish word for space or place. Since it is a cognate of the English word *room*, it can be pronounced the same way.

"*Ruim*" designates a certain spatially bounded and widely recurring type of human behavior, namely the occupation by several people of a spatial domain differentiated into private and common areas; along with some allocation of responsibility for performing the activities that will be required if the arrangement is to continue. An advantage of this concept is that it includes many phenomena we might never have thought to call a "community"—such as a theater during a performance, an office building when it is occupied, or a bus with passengers—that have varying degrees of collectivity to them.

On the other hand, since "community" is more familiar to the tongue and to the ear, we can continue to use that term so long as we are clear that we are not limiting our meaning to its conventional usage. I will favor the word *ruim* whenever I want to emphasize the more inclusive category of locales and relationships beyond the strictly personal.

## *Community Governance*

A story that was popular years ago described a young Lothario who, when the husband returned unexpectedly, sought refuge in a closet. Becoming suspicious, the husband flung open the closet and found the intruder cowering naked. "What the hell are you doing here?" he de-

manded, to which the young man stammered, "E-e-everybody's got to be someplace!"

He was right, of course. All human activity has to occur in geographical space. And our use of space, especially when acting in concert with others, requires some degree of coordination, or management. Without spatial management, collective human activity would be mere fleeting conjunctions of events with no staying power.

Managed space occupied conjointly by two or more persons constitutes a *ruim*. Collective activities that have any staying power, from the casual (riding in a plane with strangers) to the profound (worshipping in a church with family members) all take place within a *ruim*, whether managed well or poorly. The management or governance needs of a *ruim*—the tasks required for its continuity—vary according to the activity it is supposed to foster, but normally these tasks include the selection of participants; the allocation to them of space; the design and upkeep of common areas and facilities; and leadership, including dispute management.

Before the advent of states, *ruim* governance was mostly consensual. To the extent that there was any formality about such governance, it stemmed either from the systematics of kinship or from rudimentary contractual agreements. In the first case, seigneurial patterns of land tenure tended to prevail, in which decisions were normally ratified (even if not always formulated) by a designated senior of a kin group. In the second case, manorial forms frequently evolved, conferring land, on agreed terms, upon unrelated families or individuals.

Both systems served their purposes well under conditions of infrequent change among small, homogeneous populations. However, Fred Gearing (1962) has shown how such arrangements could become impaired when population numbers exceeded the optimum for face-to-face relations. Sometimes this happened when environmental conditions prevented growing villages from "hiving off" and thereby reestablishing optimum population size. A crucial example: villages dependent on flood irrigation from a single river, as in early Sumeria. Because of this dependence, new villages were not free to locate just anywhere, but had to remain close to the river. In time, this constraint on village location produced a buildup of population far beyond what was optimal for a kinship system. The inevitably growing conflicts over water were beyond the power of kinship systematics to resolve.

With greater and sustained likelihood of attack came the need for a regularized defense, including the construction of defensive walls,

which in turn led to the establishment of a standing, specialized police or military force. A standing militia is not normally tolerated in tribal society, since allegiance to one's military commander, who both disciplines and provides the wherewithal to live, soon takes precedence over kinship relations and customary law. Gearing (1962) describes similar dynamics at work among the eighteenth-century Cherokee engaged in arms trade with the English, and among nineteenth-century Plains Indians hunting buffalo. Such environmental stresses may explain how states first arose and spread, introducing systems of institutionalized coercion that perpetuated themselves even after the conditions that gave rise to them might have passed.

Thus might *propriety* have first yielded to *rulership.* Although it is a minority view now, I predict that rulership will one day be commonly understood not as a third method of *ruim* management, alongside kinship and contract, but as a social pathology arising under conditions of environmental stress and signaling the absence, failure, or immaturity of reciprocal and consensual relations. In any event, the following discussion will show that contemporary subdivision governance takes on aspects of rulership, whereas leasehold governance is in the tradition of contractual *ruim* management. This contrast can best be seen against the background of the two altogether different histories of subdivision and of land leasing in the United States.

## *Subdividing America*

Whether large-scale and systematic or small and casual, subdivision has been the characteristic pattern of American settlement from early colonial times. While subdivision is commonly thought of as a recent suburban phenomenon, the fact is that most settlements throughout the colonial period began and developed as such. They even resembled modern subdivisions in that their governance was by the vote of the landowners. This is the origin of the property qualification for the franchise in American towns and cities, which lasted well into the nineteenth century.

Land speculators were instrumental in the founding of most early American settlements. George Washington surveyed lands for Lord Fairfax and other large landowners eager to attract population and subdivide their holdings, since these were worth little in their wilderness state. Subdivision was equally desired by the buyers of land. For immi-

grants to America, ownership even of a small piece of land symbolized escape from the oppressive regimes of Europe, where such ownership typically had been the prerogative of the nobility who, in varying degrees, had made up the government. In America, every man was a king, and his home was his castle. In the light of the European experience, tenancy implied lower or inferior class and dependency, which ran counter to the American credo of equality and independence.

Such was the attraction of separate homeownership on one's own plot of land that it spawned a populist movement for homesteading as the United States acquired territories to the west. Successive political administrations reaching for the popular vote fanned this particular flame until it became a fundamental part of the American dream, myth, and tradition. Nor did it soon burn out. After each war, following a precedent older than the Roman Empire, the United States government subsidized or granted land outright to returning veterans. Veterans-Administration and other federal home-subsidy programs that helped spawn the current regime of political subdivision are part of the legacy of World War II.

But American government policy went still further in promoting single-family, detached homes on subdivided lots. Such building is encouraged not only by the mortgage-interest deduction and the disparity between the high tax rates on dividends and the low tax rates on capital gains, but by federal mortgage insurance, which is offered only for homes in subdivisions governed by a qualified homeowners' association. This insurance confers a competitive advantage upon developers who turn *ruim* management over to politics.

Thus do historical accident, cultural bias, and government policy combine to produce a disincentive for residential land-leasing. Within these constraints, Americans continue to own their own plot of ground—even if theirs be only a paper ownership requiring payments to a mortgage holder and compromised by extensive control of their lives by neighbors acting through their homeowners' association.

## *The Economic Value of Community*

The dominance of collectively governed, planned neighborhoods was a long time coming. Around the turn of the twentieth century, prescient developers first discovered that the crucial site qualities are those conferred by surrounding land uses and natural features. Hence the adage

that the three most important features of real estate are location, location, and location. This discovery suggested a practical application: plan a whole tract as an integrated neighborhood before selling off the parts, and each part will increase in value through its relation to the rest. Profit will come from systematically building in positive "neighborhood effects."

A few planned neighborhoods had been built before, motivated more by social and aesthetic considerations than economic ones. But the early twentieth century is referred to as the "era of the community builders" because that is when the idea of integrated neighborhood developments took off.

Pioneering community builders corresponded and socialized with one another, and from their intellectual contact came some of the finest residential neighborhoods in the United States. Edward H. Bouton's Roland Park in Baltimore, begun in 1891, led to Jesse Clyde Nichols's Country Club District in Kansas City in 1906 and Hugh Potter's River Oaks in Houston in 1925. In 1936, these developers founded the Urban Land Institute (ULI) to serve as a focal point for research and information exchange. Offsetting that laudable founding purpose is the fact that the ULI, more than any other single organization, forged a strong partnership between the real-estate industry and the federal government, and thereby contributed in a major way to the politicization of subdivisions.

But because they well understood the complementarity of land uses, the pioneers of the nonpolitical subdivision made great strides in neighborhood design. They studied and improved upon conventional street layout, and they experimented with clustering retail stores and integral parking, permitting the orderly introduction of businesses into a neighborhood of homes, and producing the first convenience shopping centers. The benefit of this last was reciprocal: residents liked having "built-in" stores with convenient traffic patterns and parking, while the businesses liked having "built-in" customers. Nor did these early pioneering developers overlook parks and recreational areas, schools, and churches.

Nevertheless, it was insufficient merely to create an attractive residential and business environment. Environment has to be maintained. Buyers wanted assurance that their investment would hold its value in years to come. This raised two problems inherent in subdivision.

One problem is the obsolescence—rapid or gradual, but inevitable—of any given developmental plan relative to the best use of the land in a

given area. Lot size and the layout of streets and common areas become obsolete as fashion and the technology of transportation and construction change.

A classic instance was the problem that arose for subdivided trailer parks when double- and triple-wide models were first introduced (MacCallum 1970, 31–32). The wider models had not been anticipated by trailer-park developers, who designed the parks with lots that accommodated only the once-standard single-wides. Fortunately, most trailer parks had been retained under single ownership as multiple-tenant income properties, and these could be replatted. Those that had been subdivided became islands of deteriorating land value.

The layout of a development becomes rigid once the land title is fragmented. No longer does anyone have the authority that enabled the developer initially, as sole landowner, to design the neighborhood. Little further planning or redevelopment is possible—short of invoking eminent domain or, alternatively, waiting until growing obsolescence brings land values down to a point where it becomes economical to buy and reassemble the properties and start over. Meanwhile the land is used suboptimally, a condition called "blight."

The other significant drawback of subdivision has to do not with the obsolescence of physical arrangements, but with the activities of those using the land. What are perceived as undesirable neighbors, poorly maintained homes or common areas, or incompatible lifestyles, are all negative externalities that can affect the resale value of properties.

## *The Birth of the Political Subdivision*

Dealing with such negative externalities of behavior and lifestyle was a problem from the outset. Early in the twentieth century, large developer-builders such as Jesse Clyde Nichols began to insert restrictive covenants into their property deeds to help ensure that the lots and houses they sold would maintain their value. Initially this helped the developer by assuring that his inventory would not decline in price before the last lot was sold, but it also conveyed an aura of exclusivity that became a selling point for prospective residents.

A weakness of such covenants soon became apparent, however. Once a subdivision is sold out and the developer is gone, the new property owners are left on their own to police the common interest. Enforcing deed restrictions among neighbors is a costly and delicate task. To make

enforcement more practical, therefore, and to better represent home ownership as a safe investment, developers began providing for a homeowners' association to manage the commons and enforce rules in the private areas. The associations were voluntary at first, but the larger developers soon made membership mandatory.

Nichols experimented with mandatory homeowners' associations and popularized the concept in the real-estate industry, as he did the idea of partnering with local governments. In the 1920s, these concepts were promoted by a circle of lawyers, political scientists, architects, planners, and public-administration experts who, inspired by the Garden City movement in England, collaborated to build an experimental new town which they hoped would revolutionize American community development. The new town—Radburn, New Jersey—would be a subdivision and would boast a new form of democratic government. It would be based on the Progressive-era town council/city manager plan, enacted through deed restrictions that imposed a mandatory-membership homeowners' association. Begun in 1928, Radburn is regarded as the first modern—i.e., political—subdivision.

For decades, political subdivisions did not spread widely beyond Radburn. Deed restrictions mandating homeowners' associations were used mainly in luxury subdivisions, where restrictive covenants allowed not only exclusivity but, in particular, racial and ethnic exclusion. The dramatic spread of political subdivision began in the 1960s, for very different reasons.

Most residential construction having been suspended during the Depression and World War II, the end of the war released pent-up demand for housing. Postwar suburbia was a mass market, and corporate America quickly learned to mass-produce homes by assembly-line methods, turning them out a thousand at a time. For nearly 20 years, however, these mass-produced homes were built in traditional subdivisions, without restrictive covenants or homeowners' associations.

Mass-produced housing soon consumed most of the suburban land that could be developed without expensive preparation. As the inventory of readily developable land was used up, it became too expensive for developers to continue in the old way. Between 1950 and 1988, the cost of acquiring and preparing land for development rose from 11 percent to 30 percent of total home-construction cost (CAI 1988, 6). If the large corporations now dominating the field were to continue making profits, they would have to build more houses on less land. How could that be made palatable to home buyers?

In the early 1960s, the F.H.A. and the Urban Land Institute jointly promoted the concept of "planned-unit developments" to preserve the suburban look while increasing density. Instead of giving each home its own yard, developers began to cluster homes around a common green area, which they then enhanced with amenities such as swimming pools, tennis courts, and gate houses that were beyond the means of an individual homeowner. But complex commons require management. The developer could manage them initially, but when he left, the burden of responsibility would shift to the residents. To provide management continuity, the developers turned to the political-subdivision formula of a commons governed by a mandatory homeowners' association, something then still regarded as experimental even in the exclusive neighborhoods where it was sometimes being used.

Within the housing industry, questions were raised from the beginning as to whether this model would be viable when replicated in a mass market (McKenzie 1994, 107–110). But there seemed little choice. Subdivision was so ingrained in the industry that no one thought of land-leasing as a viable alternative. Consequently, the development industry began aggressively pushing political subdivision. The Urban Land Institute opined authoritatively that "the homes association is an ideal tool for building better communities" (ULI 1964, 4), while the closely allied F.H.A. prepared the way both legally, by promoting special development ordinances among local governments, and financially, by offering federal mortgage insurance for homes in such developments. In 1963, the F.H.A. took the key step of requiring a mandatory-membership homeowners' association in any development that was to qualify for federal mortgage insurance (F.H.A 1964, 52), the rationale being that such homes would be more likely to retain their value. This federally subsidized bonanza for political-subdivision builders diverted investment from home construction and renovation in the inner cities, where federal insurance was not available, adding impetus to the already massive middle-class exodus to "suburbia," which now meant, almost exclusively, political subdivisions.

In cities, the same period witnessed the debut of politically governed apartment buildings—condominiums—which subdivided their space not only horizontally but vertically. Condominium ownership was attractive in areas where rent-control laws were making apartment houses unprofitable. The advantage to apartment dwellers was that they could now become homeowners, with the attendant tax benefits and capital-gains possibilities. But atomized apartment ownership was unfeasible,

since many apartment buildings had elevators and all had common utilities. The industry and government were quick to introduce and promote mandatory democratic condominium associations, and their novelty and cachet helped popularize political management generally.

Still another factor came into play, both in cities and in the suburbs. Federal aid to cities began to dry up in the early 1970s, and developers found it increasingly necessary to provide services and infrastructure that formerly had been provided by municipalities. Political subdivision provided a way for this infrastructure to be privately owned and maintained, enabling financially strapped muncipalities to cut down on expenditures even as more homes were being built, increasing the cities' property-tax base. Municipal governments were anxious, therefore, to promote housing developments that provided their own services, and many cities and towns now require this of all new housing.

## *Controlling the Subdivision*

Unfortunately, the management of homeowners' associations ran into difficulties with independent-minded residents almost from the beginning. These troublemakers alarmed the large corporate land developers, whose profitability would be threatened if the perception spread that politically managed subdivision was not viable. The industry had to respond. The strategy it decided upon was to strengthen the authority of governing boards over the homeowners who elected them. If residents were permitted to question board decisions and challenge the enforcement of rules and restrictions, homeowners' associations might break down. The industry aimed, therefore, at disallowing such challenges. Since the coalition lobby is well financed and organized and homeowners are not, the trend of legislation affecting political subdivisions has been uniformly to strengthen board authority over residents.

The industry coalition consists primarily of the Community Associations Institute (CAI), a trade and lobbying organization controlled by professional property managers, lawyers, and accountants who make their living from homeowners' associations; the Urban Land Institute, a trade and lobbying organization of real-estate developers and home builders; and the F.H.A., which is closely allied with the development industry. But the formidable power of this coalition is not all that explains the trend in housing law.

Many residents feel that rules violations should be prosecuted only if

they involve some provable harm or inconvenience to others. This would preserve the sense of privacy, freedom, and control implied in traditional home ownership (McKenzie 1994,172). But the success of political subdivision depends on the willingness of courts to back boards' enforcement of their rules, and the courts have been predisposed to go along with the boards because they judge these to be matters of private contract in which the judiciary ought not to interfere. As a practical matter, therefore, the courts are biased in favor of the boards. Adding to this is the fact that the courts have yet to agree on an applicable body of law for homeowners' associations. Are the latter governments, businesses, or mutual-benefit organizations (Sproul 1994)? Different courts look to different statutes, or else apply the common-law test of "reasonable" behavior.

Such ambiguity favors the industry, for if a homeowners' association were to be construed by the courts as a government, its actions would be subject to constitutional review, which they now are not. If state and federal constitutional protections of individual rights applied, the authority of the boards would be diminished. If, on the other hand, homeowners' associations were construed to be businesses, they would be subject to full civil liability, which governments are not. Occupying a gray area in which they are not clearly subject either to constitutional review or full civil liability has the effect of giving boards more authority than they would otherwise have.

In a sense, virtually all towns and cities in the United States are democratically governed subdivisions in that, de jure, they are governed by the voting majority of their residents (even though, de facto, they are naturally governed by smaller groups). In the Western world, at least, if voting is not already present, it can be predicted that any extensive subdivision of lands will give rise to it. This is so universal that it permits all but the smallest communities in the United States to be classified according to whether or not membership in the electorate is conditioned on property ownership. That is the main distinction between the governing board of a homeowners' association and the government of a municipality.

Except for the fact that they are elected under a property rule, the boards of homeowners' associations operate much as do all democratically elected governments—albeit with wider discretion because of the legal exemptions noted above. The making and enforcement of rules and regulations imports the worst qualities of politics into homeowners' associations, which are already sorely handicapped by inexperience

and apathy. Most homeowners have their own lives to pursue, with little time or inclination to spend long hours in association meetings. When they do participate, it may be to accomplish a given purpose—usually a negative one, as fear is a great motivator—and then resume their lives. The people who end up running the association are usually those with few outside interests, who are often the least qualified by experience; or those attracted to the power and theater of politics; or those with some private agenda.

Many first-time home buyers move to the suburbs hoping to experience not just the enjoyment of nature, but freedom from the intrusive rules, arbitrary authority, and office politics characteristic of the workplace. How disappointing to find that they must now endure on a regular basis, in what was to have been their haven from bureaucracy and politics, versions of the very pathologies from which they sought relief.

## *The Path Not Taken*

It is one of the ironies of history that the building industry in the United States, now thoroughly imbued with the residential model of political management, came close to performing a serious experiment of a very different kind in, of all places, Radburn—the cradle of political subdivision.

The direct inspiration for Radburn was the work of Ebenezer Howard, the grand social experimenter who built the "Garden Cities" of Letchworth and Welwyn on rural land outside London at the end of the nineteenth century. Many planning features of Radburn and of contemporary subdivisions, such as functional zoning, density control, design control, and greenbelts, were adapted from Howard's Garden Cities. Radburn was a self-conscious effort to transplant Howard's ideas to America. But half of his legacy, and certainly to his mind the greater half, failed to survive the trans-Atlantic crossing. Howard did not build his Garden Cities as subdivisions. Influenced by long British tradition, his genius was to build his cities on the land-lease principle, making them equivalent to large-scale, outdoor hotels. Anticipating that lease revenues would be sufficient to fund the administration, Howard saw no need for local taxation.

Radburn's backers debated whether it should be developed on the land-lease pattern, but democratic ideology won the day. The decision to develop Radburn as a subdivision seriously compromised Howard's

legacy; for now, when the developer moved on, the new community would be left without either a source of ongoing revenue or a means of management. To avoid such an impasse, Radburn's supporters in the Regional Plan Association of America consciously applied principles of Progressive-era political science, a movement that tried to graft efficient management onto democratic politics. The result was the elected homeowners' association, endowed with whatever legislative and taxing powers its voting constituency saw fit to grant it.

Although Howard's land-lease principle was discarded at Radburn, a wholly independent tradition of property leasing had by then grown up on this side of the Atlantic. This is the tradition of multiple-tenant commercial properties—entrepreneurial rather than political *ruims*. An apt term for these properties would have been *proprietary community*, had that not already been preempted for political subdivisions, in recognition of their property qualification for voting. That term well describes a multiple-tenant commercial property, a *ruim* in which all relationships among the members are proprietary without exception. In a shopping mall, for example, no one's property is taxed or assessed, and no one's behavior anywhere on the property is circumscribed by rules established through voting or other political procedures.

English speakers in most areas outside the United States would call an entrepreneurial community an "estate." Its diagnostic feature is that title to the underlying ground (but not necessarily the buildings or other improvements on it) is kept intact, while the use of various sites is parceled out by lease. Because this preserves a concentrated entrepreneurial interest in the land, it makes it possible for the founder to seek to make a profit by well managing its use.

Under the rubric of "manorialism," parceling by leasehold is an old and familiar practice in agrarian societies throughout the world. Today, it is no longer chiefly identified with agriculture but, instead, has become the commercial land tenure of choice in many urban settings. Indeed, in America the growth of entrepreneurial commercial communities is one of the more dramatic and least remarked developments in the country's economic history.

Hotels were the first distinctly modern version of entrepreneurial community in the United States, the earliest being Boston's Tremont House, which opened its doors in 1829. Later in the nineteenth century, the office building (acclaimed as a "skyscraper") and the apartment house each made its dramatic debut. But the main growth of entrepre-

neurial communities, like that of political subdivisions, followed on the heels of World War II.

Most conspicuous in this growth was the shopping center, which arrived on the postwar scene barely in time to save the United States from inundation beneath the snarl and sprawl of commercial strip development—as anyone observing America at the time will remember. There were fewer than a dozen shopping centers at the close of World War II, and these were small, experimental convenience centers called "park-and-shops." Now shopping centers in the United States number more than 50,000, and some are vast malls combining hundreds of stores and other kinds of businesses with a broad spectrum of cultural activities that cater to vast geographical regions.

In addition to hotels and shopping centers, the major forms of multi-tenant commercial *ruims* include office buildings and office parks, land-lease manufactured-home communities, marinas, mobile-home parks, rental-apartment complexes, industrial estates, medical clinics, and research parks. Many lesser forms could be named, including even passenger ships, trains, and planes—which are unique in their rapid turnover of clientele and in offering as a service variability of location.

One noteworthy aspect of the growth of multiple-tenant commercial properties has been a trend among many toward greater population size and heterogeneity. At the MGM Grand Hotel in Las Vegas, with its chapels, medical services, restaurants, shopping, and entertainment, no guest need leave the hotel for any basic need. The hotel claims to be a self-contained city, which is not such a stretch, given that its population of 35,000–70,000 daily (counting staff, registered guests, and visitors) is two to four times that of Boston at the time of the War of Independence. The trend toward greater size and heterogeneity suggests that "private" approaches to *ruim* administration might one day offer "public" services over wide areas in lieu of local government as we know it today. Certainly, the proposition that rents instead of taxes could fund the operation of a city was amply proved by Howard's garden cities, Letchworth and Welwyn. By the time they were nationalized by the Labour Government in 1962, these two English cities had for several decades provided a combined population of 80,000 with a full spectrum of public services without levying taxes (MacCallum 1972, 17–24).

Although financed entirely from ground rents, Letchworth and Welwyn differed importantly from multi-tenant commercial properties in the United States in being established as nonprofit trusts whose direc-

tors were elected by the townspeople. Letchworth's accountant, C. B. Purdom (1949, 14), considered this a defect, observing that "the absence of any equity interest was to prove well-nigh fatal to the company." It explained, he thought, considerable inertia and unresponsiveness in the management of the two cities. But if this was a handicap, it was only one of a long list, any of which might have killed a weaker venture. Among other problems were insufficiently long-term initial financing; extreme leasing concessions to attract shops and industry to an untried location; commercial and industrial leases ranging from 99 to 999 years, without any provision for periodic renegotiation; the burdens imposed by two world wars; depreciation of the British pound by 75 percent; nationalization of the utilities business on which Letchworth depended for much of its revenue; and finally, in 1954, nationalization of development values in all land, effectively removing the economic basis of the Garden Cities (MacCallum 1972, 21–22). That both cities remained solvent to the end clearly vindicates Howard's belief in the feasibility of financing local government from land revenue.

More significant than mere relief from the burden of local taxation, however, is the fact that land-leasing enables a *ruim* to be entrepreneurially managed, opening possibilities for a superior quality of life.

## *The Tragedy of the Democratic Commons*

Why are democratic communities any less likely than entrepreneurial communities to produce good management?

The elected representatives in a democratic community are vulnerable to being overwhelmed by the conflicting views of the voters—in the case of democratically governed subdivisions, the owners of different parcels of land. These views are colored by conflicting perceptions of self-interest, interpersonal and ideological agendas, and simple ignorance of what is going on and how things might be done better: in other words, by politics. Commercial residential *ruim*s, on the other hand, by virtue of being set up to profit by rendering services to their customers, would bring the dynamics of markets into the administration of residential life—"community" as traditionally conceived.

For community administration to become entrepreneurial would mean, in part, that there would be a manager who could make decisions relatively free of bias as compared to participants in the conventional political process. In any matter requiring a policy decision, the

entrepreneur has a strong incentive to be (or to hire) just such a person, seeking the optimal decision for the community as a whole. Such a manager is in an ideal position to provide leadership because he is interested in attracting and keeping as many of his tenants as possible, and, by the same token, to be disinterested when adjudicating among them.

Political communities, by contrast, legally disperse de jure authority among all the voters. The lowest-common-denominator interest of this electorate is individual self-preservation: maintaining the status quo and preventing the deterioration in value of one's own home. Anything more creative is apt to die on the barricades of conflicting agendas. Moreover, while it is possible for homeowners' associations to hire management firms, these firms are an added expense that may be politically unpopular when they produce higher association assessments. Nor can management firms be empowered to undo the underlying democratic structure of legal authority in the development, which would be necessary in order to make other changes that might displease current residents (including a change that would give the manager the right to set assessments). This situation stymies the proliferation of, and competition among, creative managers offering different visions of community living. Entrepreneurship is not mere management of the status quo; the competition we see among different types and brands of hotels to innovate (in ways that customers might not imagine in advance would be beneficial) is nowhere to be found in residential *ruins*, and it is hard to imagine hotel entrepreneurship surviving a conferral by subdivision of ownership authority upon the residents of hotel rooms.

Voting, on which the political subdivision depends, serves as the great legitimizer of modern politics (Weissberg 1996, 11–13; Smith 1998). But it is not a means either of discovering truth or of making informed decisions. It is a way of fighting without engaging in overt violence, an example of what anthropologists call "ritual combat." Rather than resort to direct combat, contesting factions in democracies marshal numbers to their cause through covert lobbying and overt rhetorical confrontation. They then let the electoral tally symbolize victory for one side or the other, the primitive idea presumably being that he who had marshaled the most bodies would have come out the winner in battle, had it come to that.

Voting is a method of overriding real or imagined differences of interest. The entrepreneurial community, however, has no need of voting because the entrepreneur's unitary interest in the land permits a single

person to make decisions about common areas and services. Fortunate and exceptional is the non-entrepreneurial community in which elected leadership is endowed with enough vision, charisma, and courage to overcome such conflicts and produce creative, concerted action.

Conflict in democratically governed communities often stems from the land being subdivided. In a subdivision, while the common interest of all homeowners is for property values to rise (or at least not fall), the particular interest of each individual is identified with a separate location. Since each location has unique attributes, the various owners' interests never completely mesh. In the subdivision, therefore, some overriding authority must impose costs on the owners of some locations. The dispersion of authority among the individual title holders lays the groundwork for factional political conflict.

Consider a parallel situation in commercial real estate, one that contributed to the rise of the shopping center. By the mid-twentieth century, the streets and parking capacity of many downtown business districts had become obsolete as the surrounding towns grew. Widening the streets and providing off-street parking would have served the interests of most property owners, but when it came to which side of the street to widen or whose property to take for parking, the interests of the businesses disproporionately affected would sometimes create a political stalemate that led to a decline in business for all. Unified but undemocratic ownership could have gradually made changes to accommodate growth as leases expired or came up for renewal.

The ability to transcend conflicts of interest is, as in the preceding example, often connected to greater flexibility in land use. When the developer of a subdivision departs, the layout of the *ruim* is frozen. The use of restrictive covenants only makes the problem more difficult, especially in a time of accelerating technological change, by blocking the reassembly of parcels and their conversion to new uses. Land leasing, however, introduces flexibility in land usage. This flexibility extends even to the basic layout of streets and common areas. An entrepreneurial community need not be allowed to deteriorate to the point where it can be reassembled only because low property values make the residents eager to leave.

A dramatic reminder of the importance of preserving flexibility in land use was the demise of Chicago's Central Manufacturing District (CMD), a story told by Robert C. Arne (2002). Possibly the most outstanding achievement of private planning and complex community de-

velopment in U.S. history, the CMD was a subdivision, albeit not a politically governed one. The reason for its success was that its developer, Frederick Henry Prince, took a long-term view in planning it and did not abandon its management after he developed it. The reason he stayed on and continued to provide guidance, management, and community services was that his main financial interest was not in the CMD itself, but in the railroad that served it. A profitable railroad required a successful community of industries, and he developed one to an extraordinary degree.

Prince's model and inspiration was Trafford Park Industrial Estate in Manchester, England. But once more, a key element in a British model failed to survive: Prince subdivided the land. We can only speculate that his reason may have been to free up development capital by selling off the sites as they were improved. In any event, his decision to subdivide set the layout of the CMD in concrete, so to speak, such that when transport technology eventually changed and trucking took over much of the role of railroads, the CMD could not adapt. Prince's sons sold the declining railroad and what they owned of the CMD itself. They left behind a blighted area. Had Prince leased rather than sold sites, the various industries locating there could have applied their capital more productively in their specialized lines of business rather than tying it up in real estate. Prince's heirs would have owned a several-hundred-acre parcel of prime land in downtown Chicago, which they could have guided to other uses. Furthermore, all of south Chicago would have benefited from the stabilizing effect of a major, prosperous development.

Similar casualties, already noted, were the early mobile-home parks that had been developed as subdivisions. Designed to accommodate single-wide homes, they could not adapt when double- and triple-wides were introduced, and so they became blighted. Those that had been maintained under single ownership as income-generating properties, however, had the flexibility to accommodate the new housing. These and Chicago's CMD are object lessons in an age of ever-accelerating change.

## *Creativity vs. Bureaucracy*

In the subdivision, no one has the means to continuously enhance the value of the community as a whole. The developer, whose profits de-

pend upon sales of the original units rather than the ongoing satisfaction of the residents, is typically devoted to the short term. For example, he will often set annual assessments unrealistically low to make units more attractive to new buyers. A study by Stephen E. Barton and Carol J. Silverman (1987, 21) found that the financial reserves of subdivisions averaged only 40 percent of the annual association budget, instead of the 75 percent recommended by most industry experts. A focus on initial sales alone was also surely a contributing factor in the rash of quality-control problems encountered in the construction of subdivision housing from the late 1970s through the 1990 recession. Surveys cited by Evan McKenzie (1994, 30) suggest that as many as one-third of all subdivisions had major defects in original construction.

Once the developer leaves the subdivision, it is in the hands of its residents, who must use political means to solve any problems that arise. Even where elected board members are aesthetically motivated, they lack the required authority and resources to maintain a beautiful and otherwise livable community—let alone to improve it and adapt it to change—unless they can persuade their constituents to part with new fees. Moreover, as amateurs volunteering their services, they typically lack the expertise necessary to make effective use even of resources they have.

Under political governance, communities all too often fail to respond to their residents' needs. When trying to evaluate the promises and rhetoric of homeowners'-association politicians, resident-voters are, in effect, asked to become experts on landscaping, road maintenance, and the other issues about which homeowners' associations must routinely make decisions. Under proprietary auspices, dissatisfied customers have no need to be informed about such important but mundane matters, nor need they theorize about why things have gone awry with the snow-removal service or the availability of parking—or why the rent is due to increase while the quality of life has declined. They can simply fail to renew their leases, leading to less revenue for the entrepreneur. Conversely, if things are going well, they needn't concern themselves with why that is the case. All they need to do is renew their leases.

If homeowners could turn to a viable market in entrepreneurial communities, they might exit from poorly managed political ones. But the various subsidies received by political communities have made this impossible, so people have little choice but to live in politicized com-

munities where de jure decision-making authority is ultimately vested in *themselves*: voters who are susceptible to manipulation and misinformation by opposing factions that want to control change.

De facto decision-making authority is often, of course, a different story. The effective authority that is exercised by the association board *does* allow change to occur—in fact, it allows too much, of the wrong kind. One might expect that individual ownership would convey more security than a lease, but when individual ownership is coupled with collective management, everything is subject to arbitrary change. Even though a supermajority may sometimes be required, there is nothing in the covenants, conditions, and restrictions governing political subdivisions that can't be undone by vote.

In practice, it may not even require that. Nellie Huang (1994) notes that

> by law, a majority of the homeowners in an association have to approve any change in the bylaws. But many boards sidestep this by simply changing their house rules, which are as binding as bylaws but can usually be rewritten without asking all the homeowners. "Even if you were to be given the rules today, they would probably already be out of date because [boards are] constantly making changes to the rules at whim," says Elizabeth McMahon, a co-founder of the American Homeowners' Resource Center, a San Juan Capistrano, California consumer group.

Consequently, nobody really knows what they are agreeing to when buying into a development. To some, this may be acceptable. Especially as they become accustomed to it, they may feel that newly issued rules prohibiting the garage door from being in the up position more than three hours a day, forbidding parking in one's driveway, dictating the color of a child's swing set, disallowing certain kinds of plants in one's back yard, or specifying the color, material, and place of purchase of curtains visible from the street are minor annoyances, a small price to pay for living in the community. But should the behavior of the board that sets, interprets, and enforces such rules become insufferable, the residents' only recourse is to petition higher levels of government for relief, either by suing the association or by lobbying a legislature to regulate some aspect of board behavior. This is a costly and arduous recourse, however, and the outcome is anything but assured. Moreover, the very fact that control of one's lifestyle and use of one's property are subject to the vagaries of an elected board and the fortunes of neigh-

borhood politics can make even a successful outcome in the courts dangerous if it puts one crosswise with the directors. Consequently, many homeowners simply choose to endure the problem.

A land lease, on the other hand, cannot be amended at unpredictable times by board members or faceless voters. All the rules that will ever apply are stipulated at the outset by the contracting parties. They know where they will stand for the term of the lease, however long or short they care to make it.

The rules in a land-lease community, moreover, need not be enforced in overbearing fashion. Managers who err on the side of being either too bureaucratically rigid or too arbitrarily flexible will find themselves losing tenants to competitors who strike a better balance. A typical case of striking such a balance (MacCallum 1971) involved a shopping-mall tenant who had been fitted with a cast after breaking a leg in a weekend skiing accident. On Monday morning, he parked his car near his store rather than in the designated area for tenant and employee parking; like most malls, this one specified in its leases that parking spaces near the stores are reserved for customer use. The tenant received a warning from a security guard that day and another one on Tuesday. However, when the mall's manager discovered the circumstances, he stopped the guards from issuing further notices. The tenant later resumed parking in the appropriate area. The manager commented, "There are mitigating circumstances you must take into consideration. You have to use your head and be reasonable." In another instance, however, a nurse employed in the same mall openly flouted the parking rule not once but several times, for no good reason. The outcome here was quite different: the doctor who employed the nurse was given the choice of firing her or leaving the mall.

That this same reasonableness can be exercised in a residential context is suggested by the case (MacCallum 1971) of an older woman in a mobile-home community who, in clear violation of a no-pets rule, saved the life of a kitten and gave it a home. Worse, she let it wander. The manager spoke to her twice but did nothing more until some of the woman's neighbors complained. When the woman next stopped at the office for her mail, the manager sat down with her and told her she would have to move out of the park if the kitten continued to roam. The woman cried. Afterwards, the manager called the neighbors in and told them what she'd said to the woman. She added, "Do you want her to leave—and take your chances on a new neighbor whom you don't know?" The upshot was that the kitten continued to wander and there

were no further complaints. The neighbors felt they had been listened to. "Kitty is on probation" is how the manager summed it up. The manager of another mobile-home community disclosed the presence of both children and animals in violation of the rules, remarking, similarly, that "they're all on probation." In marked contrast with homeowners' associations, the policy of these managers was that rules need not be enforced in the absence of complaints.

The fact that the manager of an entrepreneurial community has discretion in rule enforcement does not guarantee that he or she will always make good decisions. The point is that an owner or his agent is more likely to exercise discretion wisely than a popularly elected board member, who is relatively insulated from the consequences of bad decisions. So attenuated is his proprietary interest in the subdivision as a whole that he feels little compunction about indulging in rigid behavior that might needlessly offend other residents.

Indeed, beyond its responsibility for common-area maintenance, the board has a legal mandate to enforce the covenants, conditions, and restrictions (CC&Rs), requiring it, in effect, to handle all cases alike rather than weighing their merits—not only to sidestep politically toxic charges of favoritism, but to avoid weakening residents' overall commitment to the CC&Rs. Cookie-cutter treatment is also fostered by the fact that the board is operating with commonly appropriated funds, a fiduciary relationship that legally circumscribes its behavior. Once a rule is promulgated, it must be enforced aggressively and inflexibly if the board members and the managers hired by them are to protect themselves from personal liability for error under the "business judgment rule" (Sproul 1994, 81–82).

Unsurprisingly in light of these incentives, Barton and Silverman (1994, 310) conclude that managers of political subdivisions see "people problems" as "an annoyance and impediment to getting the real work done. Differences among residents are perceived only as troublesome interference with the smooth operation of the association or, at best, as business for lawyers." In the same vein, Evan McKenzie (1994) notes that "legalistic managerialism" pervades the world of the political subdivision. Residents come to be regarded as subjects, i.e., as persons who are subject to the board's authority. Because compliance is the all-important goal, noncompliant subjects must be made an example of.

The following cases, which are not at all uncommon, typify this kind of thinking:

> In Monroe, New Jersey, a homes association took a married couple to court because the wife, at age 45, was three years younger than the association's age minimum for residency. The association won. The court ordered the 60-year-old husband to sell, rent the unit, or live without his wife. (United Press International 1987.)
>
> In Delaware County, Pennsylvania, when a resident put up a four-foot-high fence of black fabric in his back yard to keep his young son from falling off a 400-foot cliff, his homes association took him to court, contending that he had violated a rule against fences. The court ruled in his favor. (Goldstein 1991.)
>
> In 2003, Claudio and Luz Trujillo bought their dream home in Glenville, Illinois, a perfect place to raise their children, Jaime, 10, and Melissa, 5. But Jaime was disabled by a seizure disorder and had to use a wheelchair. He was made to enter the building through a rear service door lest his chair mar the front entrance. Filing suit under the Fair Housing Act, the Trujillos won a settlement allowing Jaime to use the front door. "My concern," says Claudio, "was that my son be treated with dignity." (Jerome 2004.)
>
> Courtly, a development of expensive homes near Philadelphia, began construction in the late 1980s. A couple bought one of the homes in 1989 and brought their son's metal swing set with them when they moved in. A year later the association told them to take the swing set down, even though there were as yet no written rules regarding swing sets. When the rules finally appeared, they prescribed that all swing sets be made of wood. Why? "It has to do with what the overall community should look like," said an attorney for the association. The couple then submitted a petition supporting the swing set that was signed by three-fourths of the homeowners, along with Environmental Protection Agency warnings about the dangers to children, in this case, aged 2 and 4, posed by the poisonous chemicals used in pressure-treated wood, the type needed for swing sets. The association's response was to impose a daily fine of $10 until the set was removed, refusing all offers of compromise, which included painting the swing set in earth tones. The association, besides passing rules governing the placement of firewood, rabbit hutches, and trash cans on the curb, also banned "offensive conduct"—defined simply as "activity which in the judgment of the Board of Directors is noxious or offensive to other home lot owners." (McCullough 1991.)

McKenzie (1994, 202) describes a homeowners' association meeting he attended:

> The group spent a good deal of time discussing how to help a neighborhood association appeal a case it had lost against a homeowner. The association had cited a . . . homeowner for violating the rule against television antennas by installing a satellite dish, which he had concealed from view inside a structure. The point, members of the BHOC argued, was that a satellite dish is an antenna. The fact that in this case it neither looked like an antenna (in fact, it was not visible to anyone) nor sat atop the roof was deemed irrelevant by the board.

## *The Politicization of Daily Life*

Aggravating top-down imperatives for imperiousness in the management of subdivisions are pressures emanating from the bottom up. Since few people in an increasingly mobile society anticipate spending a lifetime in one place, the importance of liquidity and safety in a real-estate investment looms large. A couple buying a new home in a subdivision may be making the largest single investment they will ever make. Understandably, they are concerned that the investment hold its value. But a house is not a productive investment; it is a speculative one, the future value of which depends upon neighborhood factors largely outside the couple's control.

The only means for protecting themselves is to try to control the local factors affecting the value of their investment. Unfortunately, apart from the vote they may cast for members of the association board, the consequences of which are imponderable, their most viable option is to try control who their neighbors are and how they live. The homeowner thus has a financial incentive to be adversarial rather than friendly toward her neighbors.

The result often is a sterile neighborhood, off limits to unknown visitors, more resembling a Victorian parlor than a comfortable living room—the ultimate manifestation of the suburban soullessness that has become a standard target of novelists and filmmakers. Some residents make it their civic duty to spy on their neighbors. A homemaker complained:

> I find that the neighbors come to visit outwardly acting friendly but they are really checking up on you. My neighbors reported me for having a clothes line in my back yard, out of sight of the road, when they were supposedly visiting casually. (Alexander 1994, 161.)

The subtle but corrosive effect upon neighborliness of homeowners' financial fears—i.e., the diminution of the feeling of "community"—would for all intents and purposes disappear in an entrepreneurial community. The reason is not merely that each homeowner's investment would be perhaps a third lower, since they would have bought only a house and not the land under it, but something more fundamental. There would be a community entrepreneur whose full-time business it would be to maintain and build the attractiveness of the land component of the community and along with it, the value of all of the homes, leaving residents free to interact as friends and neighbors. The homeowner's investment would not hinge on a regime of restrictive covenants, the bureaucratic processes that regime mandates, and individuals' efforts to police one another's adherence to the rules issuing from those processes. The investment would be protected by a responsible business enterprise equipped with skills and resources dedicated to making the neighborhood one where people wanted to live. This the enterprise would accomplish through the pursuit of its business goal of optimizing the land revenues from the community. Such a goal is not best served by a regime of bureaucratic inflexibility; and the policing of any rules that might be called for would be shouldered by the manager, freeing community members from the need to side against one another.

Indeed, subdivisions are notorious for their litigiousness. McKenzie (1994, 32) writes that

> covenant enforcement litigation has become a profitable legal specialization for attorneys in states with many subdivisions, as has its corollary: suit, or countersuit, by members against their boards for negligence, breach of their fiduciary duty to the members, abuse of authority, and suit under some theory of quasi-governmental liability, such as alleged violations of constitutional rights.

Because of the large numbers of association directors being harassed or threatened with lawsuits (44 percent during one year, according to Barton and Silverman 1994, 138), the California legislature in 1992 established tort immunity for board members, giving them protections not unlike those of municipal officials. "But in making the job of volunteer director less hazardous, this immunity reduced the incentive for board members to be consistently cognizant of the consequences their actions might have, for residents and others" (McKenzie 1994, 19, 162).

To alleviate the oppressive burden of lawsuits arising from political subdivisions, several states have considered or enacted special provisions for alternative dispute resolution. In Nevada, Eldon Hardy, the ombudsman for homeowners' associations, receives an average of 80 complaints a day from homeowners about their associations. His office appears to be the fastest growing in the Nevada state government. He calls the flood of complaints "one of the biggest problems this state has" (Willis 2003).

Land-lease communities offer a refreshing contrast. As can readily be imagined, competing tenants in a mall are not immune to differences. Yet of 41 cases examined in a field study of such disputes, only one involved a lawyer, and his only action was to write a letter to the mall manager (MacCallum 1971). Disputes among merchants in a mall are usually resolved internally by the manager, who personifies the common interest in serving his tenants evenhandedly.

The realization of their common interest requires that the merchants in a mall work together as a team. But need alone doesn't make it happen. A team needs a coach. The manager's leadership role entails peacekeeping tasks much like that of the headman of an African village. He allots time each day for walking casually through the mall, talking with his tenants. In the course of these contacts he hears of difficulties and complaints, usually from merchants other than those directly involved. One manager remarked that about 90 percent of the complaints he got were indirect: "Somebody says, 'So-and-so's been beefing about that.'" A manager will make it a point to learn about problems before they become serious, hear the stories of the offended parties, go back and forth between them, and mediate a solution—being careful, as one said, not to act precipitously, so as to give the parties "time to cool off." Recounting some of the ways he keeps in touch with his tenants, one manager reported that a Rotary Club consisting entirely of mall tenants had been formed, where 52 merchants met together every week. "We're very close here; it's just like a little town. Now at lunch today, I talked to seven of my tenants . . ." (MacCallum 1971).

## *A "Company Town"—Or a Political One?*

Would anyone want to live in a community where the land was owned by a private company? What would prevent it from becoming exploitative?[1]

The standard argument against a town being in a single title is that a family is vulnerable once it invests in a home, puts down roots, makes friends, and settles into jobs and schools. It becomes difficult and costly to pick up and move again, all the more so because of the family's inability to know before actually moving whether someplace else will be any better. With the family more or less locked in, the owning entity can raise rents above market rates, engage in abusive behavior toward the family, or let the management of the town deteriorate. But the same considerations hold whether the economic and psychological investments one has made are in a home located in a political community or an entrepreneurial one. The real question, then, is which type of community is likelier to address, or to avoid, abusive or other undesirable forms of management.

Land leasing depoliticizes a community and, saving the energy and imagination expended upon politics, harnesses the energy and imagination of entrepreneurial competitors. In the kind of authority they exercise, community entrepreneurs differ altogether from the elected officials of homeowners' associations (or municipal governments). In the commercial real-estate market, competition tends to select for managers who use their authority in a manner that satisfies the lessees. There is no reason to expect that this would be any less the case in a residential real-estate market undistorted by the current regime of political encouragement and subsidy for subdivision. That regime, however, ensures that the conflicts, intrusiveness, and stasis endemic to democratic politics are liable to infect any residential *ruim* to which one might move, undermining its sense of "community" and other important values.

Because a well-run community is humanly satisfying, good business practice can be expected to encourage true neighborliness—which is something that tends to erode in modern subdivisions, where "community" is conflated with democratic political governance. Why this conflation is so common is something of a puzzle. The same scholars who are sensitive to the inhumanity of political subdivisions tend nonetheless to welcome their further politicization, ascribing the existing problems not to too much politics but to too little. It is as if the only form of community they can envision is that of the New England town meeting. Yet in our own lives, the most meaningful and satisfying of communities—families—are apolitical. To have to resort to voting or inflexible rule enforcement is a sign of a dysfunctional family, not a healthy one.

This same is true of the wider forms of "community" that have

given sociologists so much definitional trouble. If our goal is to extend the politicking of electoral competition or of the bureaucratic workplace into our most intimate circles, in a mindless celebration of "democracy," then suburbia as it is today should actually be seen as a sort of Utopia. That the modern suburb is hardly utopian suggests that politics may not, in fact, comprise the good life for man—and that true privatization may not be the antithesis of community that it is so often assumed to be.

## NOTE

1. See Fishback 1992, chs. 8–9, on whether company towns were actually as exploitative as is commonly believed.

## REFERENCES

Alexander, Gregory S. 1994. "Conditions of 'Voice': Passivity, Disappointment, and Democracy in Homeowner Associations." In Barton and Silverman 1994.

Arne, Robert C. 2002. "Entrepreneurial City Planning." Ch. 5 of Beito et al. 2002.

Barton, Stephen E., and Carol J. Silverman. 1994. *Common Interest Communities: Private Governments and the Public Interest*. Berkeley: Institute of Governmental Studies.

Barton, Stephen E., and Carol J. Silverman. 1987. *Common Interest Association Management Study*. Sacramento: Department of Real Estate.

Barton, Stephen E., and Carol J. Silverman. 1989. "The Political Life of Mandatory Homeowners' Associations." In *Residential Community Associations: Private Governments in the Intergovernmental Systems?* Washington, D.C.: Advisory Commission on Intergovernmental Relations.

Beito, David T., Peter Gordon, and Alexander Tabarrok, eds. 2002. *The Voluntary City*. Ann Arbor: University of Michigan Press.

Boudreaux, Donald J., and Randall G. Holcombe. 2002. "Contractual Governments in Theory and Practice." In Beito et al. 2002.

Bridgman, Percy W. 1936. *The Nature of Physical Theory*. New York: Dover.

Community Associations Institute (CAI). 2003. Telephone interview with Frank Rathbun, Vice President, Communications and Public Relations. Alexandria, Va. (June 9).

Community Associations Institute (CAI). [1985] 1993. *Community Association Members' and Residents' Bill of Rights*. Alexandria, Va.: Community Associations Institute.

Community Associations Institute (CAI). 1988. *Community Associations Factbook*. Alexandria, Va.: Community Associations Institute.

Cromley, Elizabeth C. 1990. *Alone Together: A History of New York's Early Apartments*. Ithaca: Cornell University Press.

Eskew, Garnett Laidlaw. 1959. *Of Land and Men*. Washington, D.C.: Urban Land Institute.

Federal Housing Administration (FHA). 1964. *Planned Unit Development with a Homes Association*. Revised. Land Planning Bulletin No. 6. Washington, D.C.: Urban Land Institute.

Federal Housing Administration (FHA). 1964. *The Homes Association Handbook*. Technical Bulletin no. 50. Washington, D.C.: Urban Land Institute.

Fishback, Price V. 1992. *Soft Coal, Hard Choices: The Economic Welfare of Bituminous Coal Miners, 1890–1930*. New York: Oxford University Press.

Gearing, Frederick O. 1962. *Priests and Warriors: Social Structures for Cherokee Politics in the Eighteenth Century*. American Anthropological Association, Memoir 93.

Goldstein, Steve. 1991. "Don't Even Think About Pink Flamingos." *Philadelphia Inquirer*, October 27.

Hirschman, Albert O. 1970. *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations, and States*. Cambridge, Mass.: Harvard University Press.

Huang, Nellie S. 1994. "Ten Things Your Homeowners' Association Won't Tell You." *Smart Money*, December.

Department of Housing and Urban Development (HUD). 1975. *Condominium and Cooperative Study*, 3 vols. Washington, D.C.: Department of Housing and Urban Development.

Jerome, Richard, Shia Kapos, Oliver Jones, Lyndon Stambler, Siobhan Morrissey, Margaret Nelson, and Colleen O'Connor. "Loathe Thy Neighbor," People, October 4, 2004.

MacCallum, Spencer H. 1970. *The Art of Community*. Menlo Park, Calif.: Institute for Humane Studies.

MacCallum, Spencer H. 1971. "Jural Behavior in American Shopping Centers: Initial Views on the Proprietary Community." *Human Organization* 30(1): 3–10.

MacCallum, Spencer H. 1972. "Associated Individualism: A Victorian Dream of Freedom." *Reason* 4(1): 17–24.

MacCallum, Spencer H. 2002. "The Entrepreneurial Community in the Light of Advancing Business Practice and Technology." In *The Half-Life of Policy Rationales: How New Technology Affects Old Policy Issues,* ed. Fred E. Foldvary and Daniel B. Klein. New York: New York University Press.

Manne, Henry G. 1964. "Some Theoretical Aspects of Share Voting." *Columbia Law Review* 64: 1427–45.

McCullough, Marie. 1991. "It's a Swing Set! There Goes the Neighborhood." *Philadelphia Inquirer*, October 9.

McMichael, Stanley L. 1947. *How to Operate a Real Estate Business*. Englewood Cliffs, N.J.: Prentice-Hall.

McKenzie, Evan. 1994. *Privatopia: Homeowner Associations and the Rise of Residential Private Government*. New Haven: Yale University Press.

Nelson, Robert H. [1999] 2002. "Privatizing the Neighborhood: A Proposal to Re-

place Zoning with Private Collective Property Rights to Existing Neighborhoods." In Beito et al. 2002.

Osborn, F. J. 1946. *Green-Belt Cities: The British Contribution*. London: Faber and Faber.

Purdom, C. B. 1949. *The Letchworth Achievement*. London: J. M. Dent and Sons.

Reichman, Uriel. 1976. "Residential Private Governments: An Introductory Survey." *University of Chicago Law Review* 43: 253–306.

Richardson, Harry W. 2002. "Foreword" to Mark Pennington, *Liberating the Land: The Case for Private Land-Use Planning*. London: Institute of Economic Affairs.

Silverman, Carol J., Stephen E. Barton, Jens Hillmer, and Patricia Ramos. 1989. *The Effects of California's Residential Real Estate Disclosure Requirements*. Sacramento: California Department of Real Estate.

Smith, L. Neil. 1998. "Pizzacracy: Majoritarianism Versus Unanimous Consent." *Freedom Network News*, March: 17–19.

Sproul, Curtis C. 1994. "The Many Faces of Community Associations Under California Law." In Barton and Silverman 1994.

United Press International. 1987. "Court Finds Wife Too Young for Retirement Condo." *San Diego Daily Transcript*, December 11.

Weissberg, Robert. 1997. "Election Day: A Means of Control." *The Voluntaryist* 89, December.

Willis, Larry. 2003. "State Ombudsman Flooded with Homeowner Association Woes." *Las Vegas Mercury*, November 18.

Winokur, James L. 1994. "Choice, Consent, and Citizenship in Common Interest Communities." In Barton and Silverman 1994.