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THE RISE OF SUBLOCAL GOVERNANCE

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It would have been difficult to imagine as recently as 2007 that the workings of local housing markets would hold the key to the macroeconomic future of the nation. Yet, as we learned in 2008, problems with subprime mortgages, and in U.S. housing markets more generally, precipitated a major economic crisis with implications not only for the United States but all the world. The previous lack of scholarly interest in housing markets reflects a wider lack of interest in local government, land markets, and other local affairs. It is, arguably, America's most important, least-studied area of major public policy concern.

In 2006, the total value of residential property owned in the United States was $22 trillion, greater than the total value of stock holdings ($16 trillion in 2007). By 2009, total residential property value had fallen to $15 trillion (and total stock value to $11 trillion), representing a drastic loss of wealth for U.S. households that caused many of them to cut back sharply on their spending. The zoning and other regulatory policies of local governments were major influences on home values in local housing markets. Simply crossing a border from one school district to another can alter home values by tens of thousands of dollars. Indeed, Dartmouth economist William Fischel argues in *The Homevoter Hypothesis* that the primary factor influencing homeowner voting in local elections is the impact of taxation, education, land-use, and other local policies on their home values.[1]

A Large and Diverse System

Part of the reason for the historic lack of scholarly interest in local affairs in the United States is the difficulty of studying local governments, owing to their very large number of many types. There are 39,044 "general purpose" local governments (providing a full range of local services and regulations) in the United States, 14,561 school districts, and 39,381 other special districts with purposes such as water, sewer, transportation, irrigation, pest control, and many others. Assembling aggregate data for this large and diverse system of local governance is often difficult if not impossible. Researchers must often therefore undertake field investigations and case studies, methodologies out of favor in the social sciences (which have awarded the highest prestige to research that could discover—or claim to discover—well-defined laws, ideally capable of mathematical expression, of social behavior).

The general-purpose governments in the United States include 3,033 county governments, 19,492 municipal governments, and 16,519 townships. Complicating scholarly efforts to understand the system of local government is the diversity from state to state. In New Jersey and Pennsylvania, local governments are largely municipal (566 and 1,016 respectively) and township (324 and 1,546, respectively). In contrast, in Maryland and Virginia, local government is much more county government and there are many fewer municipalities (157 and 229, respectively), and no townships at all.

Until the early twentieth century, the trend of local government in the United States was towards consolidation into one or a few large cities in a metropolitan area. As land was newly developed, the areas were likely to be annexed by the center city. In this way, the large central cities of the Northeast and Midwest were formed. Progressive-era political and economic theories encouraged this trend because they saw central planning and coordination as necessary for the efficient management of land use and other local government tasks. Any large number of

small independent governments would make it difficult to harmonize their policies to achieve common metropolitan goals.

The Experts versus the Real World

It was thus contrary to the prevailing view of expert opinion that the American decentralized system of suburban governance emerged in the first half of the twentieth century. Large numbers of local governments—often with populations of only a few thousand—arose in the suburbs. These governments commonly resisted annexation by incorporating as new municipalities (which under most state laws had the legal power to prevent annexation). Because most urban experts lamented these trends, their policy influence was limited. In general, they showed little ability to understand the motives of the suburban residents and the substantial gains that the suburbanites perceived in the newly evolving and highly decentralized metropolitan system. It was only a few outsiders such as Jane Jacobs who could understand how unplanned and spontaneous urban development could achieve results superior to those of the expert planners—who assigned the highest values to scientific management, efficiency, and order.

Vincent and Elinor Ostrom at Indiana University were also thinking well outside the box. It would be much later, but Elinor Ostrom would eventually be recognized for these efforts with the Nobel prize in economics in 2009. The Ostroms were the core members of the "Bloomington School," as Paul Aligica and Peter Beottke have recently characterized it.[2] In the 1960s and 1970s, they honed their approach to the study of commons arrangements and other small-scale governance around the world through their investigations of local governance in the United States.

The conventional urban thinking could see only "chaos" in the multiplicity of municipal governments and the many overlapping special districts of metropolitan America. As Aligica and Boettke write, however, "the very application of the term 'chaotic' to a phenomenon raised a very important theoretical problem as it implied the absence of an explanatory theory to account for that state of affairs and an inability to determine the measure in which the reality corresponds to theoretical conditions. Elucidating the problem of polycentricity and chaos (defined as lack of order or perceived order) is thus central in the effort of defining the tasks and advancing the agenda."[3] In studying metropolitan America, the Bloomington School was notable for its multi-disciplinary blending of the full range of the social sciences, drawing as appropriate upon insights from economics, politics, anthropology, and sociology. It also showed an unusual awareness of the strong implicit value assumptions and other powerful "framing" mechanisms that controlled—and often limited—disciplinary discourse in the social sciences.[4]

There is such a thing as "controlled chaos" which encompasses the workings of social institutions such as the marketplace and also the system of interaction among many local government units in metropolitan areas. It is not a system of "feudal" rigidity, as the critics might label it, but—assuming higher level governments do not overly restrict it—of spontaneity and creativity in which the very absence of central control and other constraints is a key driving force. The centralization sought by national planners embodies a modernist ideal; the informal workings of metropolitan governance can be said, by contrast, to reflect a post-modern approach.

Perhaps surprising to some people, the law profession has produced much of the best writing on the workings of the local government system. Law is by nature an interdisciplinary subject. The application of law in the United States is also grounded in political and economic realities; as practitioners, lawyers see the real workings of the American system up close. Legal writers are often more comfortable with anecdotal detail, case studies, and field investigations, approaches required for the study of local government. Finally, and probably not least, the presence of hundreds of law reviews—one or more for almost every law school—has provided outlets for many writings exploring the details of almost every aspect of American public life, including the local government system. (This having been said, it should also be acknowledged that many law review articles make little contribution—but in this case it only takes a limited percentage to have a big effect.)

Sublocal Governance

The title for this paper was in fact borrowed from a 1998 law review article, "The Rise of Sublocal Structures of Urban Governance" by Richard Briffault, a professor at Columbia Law School and perhaps the leading legal scholar of municipal law in the United States.[5] As Briffault argued, center city and other large municipal governments normally provide uniform taxing and service levels. Inevitably, there is a wide range of demands and abilities to pay across neighborhoods that a large city government can not accommodate. The rise of sublocal structures of governance is an attempt to respond to this problem by introducing an element of decentralization and diversity.

In sublocal government, smaller geographic areas remain within the general authority of the wider jurisdiction but are authorized to set their own neighborhood policies in certain limited respects. They might, for example, employ novel regulatory methods outside the scope of the usual local techniques throughout the city. Or they might determine some of their own neighborhood service levels and assess the taxes on property owners to pay for them. In essence, the rise of sublocal governance permits greater territorial variance in governance within larger cities. It is an extension to large local jurisdictions on a limited scale of the more fragmented and decentralized patterns of governance found in the suburbs where one or a few neighborhoods can have their own independent municipal government.

Business Improvement Districts (BIDs) emerged in the United States in the 1970s and have spread rapidly since. There are now an estimated 1,500 BIDs in North America. A typical BID is an area of neighborhood size in which the business owners there are seeking a means of upgrading services such as street cleaning, security, treatment of the homeless, holding of special events, and potentially many others. Operating under city or state authorizing legislation, the business owners can approve (by majority or supermajority) the creation of a BID. The BID is then governed by a board of directors of neighborhood property owners and has the authority to impose its own limited taxes within its neighborhood boundaries. BIDs have been successful in improving the ambiance and environmental quality of many neighborhood districts throughout the United States—one of the few urban policies that has met with such wide approval.[6]

Historic districts are another important form of sublocal governance. Unlike a BID, a historic district alters the citywide regulatory framework within neighborhood boundaries. Historic districts provide much tighter controls over changes in street and neighborhood properties than standard zoning affords. Although the first historic district in the United States was created in Charleston, South Carolina in 1931, the rapid spread of historic districts is more recent. At present, there are 2,300 historic districts in the United States. Some districts of actual minimal historic significance nevertheless seek historic status as a means of obtaining a system of tighter regulatory controls. In many cases, the creation of historic districts has improved neighborhood environmental quality and increased property values. Indeed, the extent of the change has sometimes generated criticism that historic districts promote gentrification and the displacement of lower income groups.[7]

Another and more recent form of sublocal governance is charter schools. A charter school differs from a BID or historic district in that the students are not necessarily drawn from a common geographic area. However, it is similar in that it transfers governance from the citywide system to an individual school with its own board of directors. Although it remains a part of the public sector, a charter school is allowed to depart in a number of important educational and governance respects from the operating procedures of a traditional public school system. There are today 4,500 charter schools in the United States serving 1.5 million students.

Other forms of sublocal governance include special zoning districts, tax increment finance districts, the private streets of St. Louis, and still others. In the Times Square zoning district in New York City, special rules encourage the creation of theaters in new buildings receiving zoning approval. In a tax increment finance district, the city government receives a guarantee of a certain level of property taxes from the district in future years. Construction of district infrastructure is then financed through the issuance of bonds. Assuming that the goal of stimulating new development is achieved, the bond payments are covered by the increased property tax collections. In St. Louis, there is a long history of transferring ownership of certain local streets over to the surrounding residents living on the street. Several studies over the years have documented major benefits for street security and general environmental ambiance, as compared with other nearby streets not similarly privately owned.

Private Community Associations

By far the largest number of sublocal governments, however, are found in the form of private community associations. It is possible in concept for a community association to be in multiple local governments, but the great majority are within a single local jurisdiction. Some regulations and services will be the responsibility of the private community association, while others will be assumed by the wider public jurisdiction. There are three types of community associations: homeowners associations (about 55 percent of all community associations), condominiums (about 40 percent), and cooperatives (about 5 percent). Each has its own distinct legal status as authorized by state law. In terms of their actual mode of operation, homeowners associations and condominiums are similar, following in many respects after the governance model of a private business corporation. A cooperative functions more like the residential equivalent of a law firm or other private business partnership.

The legal form of the condominium did not exist in the United States until the early 1960s (it has a much longer history in Europe and Latin America). The first United States condominium was created for the Greystoke development in 1962 in Salt Lake City. As recently as 1970, there were only around 10,000 private community associations in the United States. By 2009, however, this number had climbed very rapidly to 300,000. A mere 1 percent of Americans lived in a community association in 1970, but in 2009 fully 60 million Americans—almost 20 percent of the population—did. From 1980 to 2000, around half of all the new housing built in the United States was subject to the governance of a private community association. In many parts of the United States, virtually all new development on any scale is today being governed by a community association.

Transforming Local Government

Indeed, the rapid spread of private community associations is working a transformation in the character of local government in the United States.[8] The private community association is replacing the traditional small suburban municipality. Local governments in the public sector are still necessary for services such as water and sewer that are best provided on a regional scale. But community associations are increasingly taking over the services that can be provided at a neighborhood scale. Community associations are also becoming the principal means of regulating interactions among property owners within the same limited area, replacing the traditional role of municipal zoning.

As table 1 shows, center cities in the older parts of the United States are typically surrounded by hundreds of public municipalities and townships, many of them with populations of a few thousand or less. In more recently developed areas of the South and West, however, community associations are now performing the role of the small municipality. The remaining local public governments are mostly counties or large municipalities, many fewer in total. Illustrating the former pattern of governance, the Chicago metropolitan area has 569 general-purpose local governments. At the other extreme, the Las Vegas metropolitan area has a mere 13 general-purpose governments.

This does not mean that local governance patterns are more decentralized in Chicago. Rather, there are hundreds of private community associations in the Las Vegas metropolitan area. Indeed, the typical community association in Las Vegas is probably smaller than the typical municipal suburb of Chicago. If community associations are factored into the picture, local governance is probably more decentralized in Las Vegas than in Chicago. (Unfortunately, although the U.S. Census of Governments provides much information on local public government in the United States, it provides no data at all on private community associations—regarding them not as a new kind of local government but as a form of private property ownership.)

Table 1

Older Metropolitan Areas	Number of Local Governments
Buffalo (1.2 million population)	65
Chicago (9.2 million)	569
Cincinnati (2.0 million)	233
Cleveland (2.9 million)	243
Detroit (5.5 million)	335
Milwaukee (1.7 million)	113
Minneapolis (3.0 million)	318
Philadelphia (5.1 million)	442
Pittsburgh (2.4 million)	418
St. Louis (2.6 million)	314
Newer Metropolitan Areas	**Number of Local Governments**
Austin (1.2 million population)	49
Las Vegas (1.6 million)	13
Orlando (1.6 million)	40
Miami (3.9 million)	62
Raleigh-Durham (1.2 million)	30
Phoenix (3.3 million)	34
San Diego (2.8 million)	19
Tampa (2.4 million)	39

Sublocal Constitutions

Like other forms of sublocal government, private community associations allow for greater territorial specialization in the forms of local governance. A typical community association has multiple buildings and exterior common areas but a population of no more than a thousand or so residents (although a few such as Reston, Virginia have 50,000 or more residents). Each association has its own set of rules as spelled out in the "covenants, conditions, and restrictions" (CC&Rs). The developer creates these governance rules as part of the community marketing plan, just as he chooses a set of housing designs that he thinks will sell well in the market.

Any new resident is required as a condition of purchase to agree to comply with the rules of the association. There are also formal procedures set out in advance for changing the rules. Although legally these rules are established and enforced through a set of covenants, the rules structure of a community association amounts in practice to a local constitution. This constitution could in principle be significantly different from one community association to another (in practice, developers so far have been rather unimaginative in utilizing this potential flexibility). As with other forms of sublocal government, community associations thus can

facilitate varying governing systems—by neighborhood or other geographic area—within the boundaries of a single local public jurisdiction.

Most community associations use their sublocal authority to assert tighter regulatory controls over land uses than their municipal counterparts, somewhat in the manner of an historic district. Community associations thus commonly control the color of house paint, the exact placement of fences and shrubbery, parking in streets and driveways, the use of signs, and many other details of neighborhood property structures and use. The tight regulatory control often sets off disagreements within community associations, sometimes erupting into angry disputes and lawsuits. But homeowners seem to prefer such tight controls in seeking a new neighborhood, even as they may later resent limitations placed on their own actions. (Or, as some have argued, perhaps many new residents moving into community associations are not fully aware of the extent of the regulations, and feel trapped when they discover how much their own individual use of their property is subject to collective determination.)

Community associations also provide common services such as clubhouses, golf courses, swimming pools, and various kinds of community social and educational events that again can vary considerably from association to association. These services are paid by private taxes (technically, "assessments" in the language of community associations). They also perform more mundane tasks such as maintaining private security patrols, collecting the garbage, cleaning the streets, snow removal, and many others. A community association has substantial ability to select the regulatory regime and the levels of services that correspond to the collective preferences and ability to pay of its residents.

The private status of a community association also facilitates greater efficiency in administering regulations and in collective service provision. Some community associations are self managed, but normally a community association of any size will look to a private management firm to administer its affairs. The management firm in effect substitutes for the public bureaucracy of a municipality. It is much easier, however, for a community association to dismiss an ineffective management firm than for a public municipality to dismiss an inefficient civil service.

A community association is a form of nonprofit private corporation. Much like private business corporations, community associations operate under the corporate governance rules of the state in which they are located. In states such as California and Florida, given the large numbers and relative newness of community associations, the state legislature is still routinely reviewing and modifying the state legal framework. The overall trend has been towards increasing state oversight, now leaving many elements of community association governance and operation subject to state control. In Nevada, for example, new state laws in 1997, 1999, and 2003 made homeowners associations subject to the following controls:

- Fines associations can levy are capped at $100.
- Association boards must receive approval from their residents before starting litigation.
- Board elections must be held every two years and proxy votes during board elections are prohibited.

- Foreclosure based on nonpayment of fines is banned.
- Education for property managers is required.
- Annual meetings with announced agendas are required.
- A mechanism for recalling association board members must be in place.
- New home buyers must be informed of the CC&Rs and sign off on their surrender of rights before closing.

What is Public, What is Private?

The increasing state supervision of community associations works to erode the boundary between public and private. Indeed, on closer inspection the clear distinction between "private" and "public"—as in a "private" community association and a "public" municipality—is difficult to maintain. The suggestion is often made that living according to the rules of a private community association is a voluntary choice, while the rules of a public municipality are coercively asserted. Yet, living in a public municipality is equally as voluntary an act as living in a private community association. In both cases, there is an initial decision to move into the public or private jurisdiction, based in part on knowledge of the governing rules structure (the implicit local constitution) found there. In both cases, it is possible to escape the governance rules by moving out.

When comparing the degree of coercion for those who have agreed to live by the governing rules, the private community association, ironically, typically imposes a more stringent set of regulations than its municipal counterpart. Thus, it is normally the "private" government which is most coercive, and the "public" government that is less coercive. Indeed, libertarian theorists commonly experience a deep ambivalence in thinking about the rise of private community associations. From one perspective, a community association is a serious infringement on individual rights – compared even with the typical public municipality. From another perspective, the residents of the community association have voluntarily agreed to accept such a serious curtailment of their rights, reflecting an expanded domain of individual choice.

Zoning as a Collective Property Right

While community associations have many "public" aspects, it has also frequently been observed that the small public municipalities in the suburbs, while nominally part of the public sector, actually function as a de facto "private" system. The schools of a rich suburb of a few thousand residents are the functional equivalent of private schools. As I argued in 1977 in my book *Zoning and Property Rights*, and William Fischel further developed the argument in 1985 in *The Economics of Zoning Laws: A Property Rights Approach to American Land Use Controls*, the actual functioning of public zoning in the American suburbs amounts to a de facto "collective property right."[9] Zoning is not a public regulation in the normal sense but a set of exclusionary rules that work much like ordinary property right powers of exclusion, serving to defend a given set of neighborhood property owners from potential invasion by other "predatory" property owners. Like the workings of property rights in general, zoning protections both encourage productive activity (the creation of high-quality neighborhoods) and yield a market-like distribution of the benefits of neighborhood environments.

In a classic article in 1956 in the *Journal of Political Economy*, Charles Tiebout omitted some of the key details but succeeded in capturing the privatized essence of the system of local municipal governance in the suburbs. [10] Tiebout saw the small suburban municipality as analogous to a private club. It offers a certain level of services and collects the revenues from its members (the property owners) to pay for the services. Given the large number of small suburban municipalities, they must all compete with one another for residents, the competition taking the form of types of regulation and levels of service provision and tax levels. If one municipality offers a more desirable combination, it will attract new residents. Less attractive municipalities will lose residents. If the final purchases must be made on a collective scale, it is otherwise much like going shopping at a supermarket, each "buyer" rejecting some "municipal products" and choosing to buy others.

Economic analysis typically proceeds by making extreme assumptions that serve to illuminate some important issue. Tiebout assumed for the purposes of his analysis that moving and other transaction costs were zero; that home buyers were perfectly informed; that municipal boundaries, regulations, service levels, and taxes could be reconfigured at will; and that economies of scale were not significant. Under such admittedly extreme assumptions, the metropolitan system of large numbers of small suburban municipalities will be one of perfect governmental competition, much like the perfect competition that economists normally find in ordinary markets. Indeed, as Tiebout wrote, "the allocation of [municipal] resources will be the same as it would be if normal market forces operated" in shaping the workings of the suburban governance system.[11]

Alternative Rules Regimes

How, then, should we distinguish between "private" and "public" in the American system of local governance? The above considerations suggest the following approach. Each local—or sublocal—form of government is characterized by a set of rules that will control its manner of governance and operation. A "public" government will have a set of rules that generally exhibit "public" characteristics, while a "private" government will have rules that generally exhibit "private" characteristics. Within the broader public and private categories, to be sure, there is room for considerable variation.

The public and private distinction is most important for legal purposes. If public rules and private rules were both considered equally as types of local government, judges might be inclined to insist that they be harmonized. For example, they might decide that private governments must also follow a rule of one person/one vote (as community associations do not). The idea of two much different and competing sets of governing rules—constitutional orders—for local government is not easily accommodated in American legal thought. It has thus required a legal fiction of "public" municipal government and "private" community association government to sustain judicial approval for the existing competition among local rules regimes.

The potentially large differences in constitutional rules are illustrated by the different ways in which a public municipality and a private community association are initially created. A municipality is established through procedures for municipal incorporation that vary from state to state. If the residents of an area decide that they would like to incorporate, they typically must

submit a petition of some kind. If higher authorities approve, a vote on municipal incorporation will then typically be held, usually requiring a simple majority in favor. By contrast, a community association government is created by the developer before any residents have moved in. The developer incorporates the governing rules in the initial private covenants of the development.

As a result of this large rules difference, the incoming residents of an unincorporated area without a community association will face considerable uncertainty concerning its manner of future local governance. But they also can know that they will have more direct ability to shape the evolving character of local governance. The incoming residents of an unincorporated area with a community association, however, will have less ability to shape their future local governance (the developer has already made the key decisions) but more certainty concerning the future character of that governance.

Public municipalities and private community associations also typically differ significantly in other aspects of their governing rules regimes. Municipalities can normally change the zoning by a simple majority vote, while community associations normally require a large supermajority to change the covenants (closely equivalent to a zoning change). Voting in community associations is normally by shares of property ownership, while each legal resident in a municipality has one vote.

Among the important constitutional consequences of the latter feature, unlike municipalities, people without U.S. citizenship can vote in community associations. It is also possible for a single property owner to vote for multiple sets of governing officials in all the community associations to which they belong. A person can thus live under a private local government in New York in the summer and in Florida in the winter and vote in both places.

The governing structure of a community association, as noted above, is basically that of a business corporation. There is an elected board of directors that holds the final governing authority for the association. Unlike many town councils, separate election districts are rare in community associations; all board members are generally elected association-wide. Unlike the mayor of a town, the president of a community association (along with the other officers) is not directly elected by the residents of the association; rather, he or she is selected by the other board members. As noted above, the "civil service" of a community association is often composed of the private employees of an association management firm.

Competitive Choice of Governing Rules

In light of all this, the practical effect is that there is a competition taking place in the American suburbs between alternative sets of local constitutional rules. Competition is a healthy thing in most areas of society and local governance is no exception. Indeed, it would be desirable to adopt policies to expand the degree of competition. At present, two circumstances work to limit competition. Owing to the manner of its creation, a private community association is only possible when it is a part of the initial process of development. Hence, the local constitutional rules of a community association are precluded over the large parts of the United

States that have already been developed without an association—including most of the metropolitan areas of the Northeast and Midwest.

As I have suggested elsewhere, it would be possible to establish new legal authority that allows the "retrofitting" of a community association in an existing neighborhood.[12] The process might be somewhat similar to the current procedures for municipal incorporation but probably with a considerably higher supermajority vote required.[13] Prior to the vote, the proposed private community association and the public jurisdiction within which it is located would have to negotiate a proposed division of regulatory and service responsibilities within the boundaries of the association. It is a potential means of greatly expanding the scope for sublocal governance in the United States.

Competition between the governing forms of a municipality and a community association is now often inhibited in another way. In newly developing areas, many local public governments have discovered that they can avoid a considerable portion of the financial burden of service delivery by mandating the existence of a private community association. Thus, either formally or informally, developers are now often being required by public governments to create community associations in conjunction with any new projects. But some new residents might prefer the constitutional rules of a municipality—for example, they might prefer to have an elected mayor or to have the less strict set of regulatory restrictions of the typical municipality. State laws might be passed that would prohibit local governments from requiring a new community association as a condition of development project approval.

Towards Free Local Choice

While there are a number of local constitutional rules regimes available across the full institutional range of local (and sublocal) public and private jurisdictions at present, there are yet many more possibilities. In the future, the introduction of still further sets of possible local constitutional rules could significantly expand the scope of competition among alternative rules regimes. There might be some official procedure established whereby alternative local constitutional rules are reviewed and certified at a higher level of government authority—or perhaps the discipline of the marketplace would be sufficient in and of itself.

By definition, a sublocal form of governance assumes that the sublocal jurisdiction remains a part of a wider jurisdiction. A Business Improvement District or a private community association remain ultimately subject to existing county and municipal (if the area is incorporated) control. A more radical way of creating greater rules competition would be to permit outright secession of sublocal areas.[14] Admittedly, it would no longer be a "sublocal" form of government but a new, smaller independent local government. The seceding area would thereby obtain wider authority to determine its own constitutional rules.

Secession is now possible in concept under most state laws. The process of secession, however, typically poses so many hurdles that few examples of local secession have been seen in recent years. Staten Island in New York State and the San Fernando Valley in California, for example, sought to secede from New York City and Los Angeles City within the past 20 years but were both blocked at higher levels of government. Another effective way to introduce freer

choice into the metropolitan governance system would be to revisit the existing state procedures for secession of one local jurisdiction from another, facilitating a new collective freedom of exit.

Conclusion

Local government has always been much closer in the United States to a form of business than the administration of state and national affairs. Until the nineteenth century, a municipal incorporation and a business incorporation were typically accomplished under the same set of authorizing rules. Yet, in the business world today there is a much greater freedom of business organization and much greater competition to devise the most effective business forms. Businesses routinely become larger or smaller through processes of acquisition, merger, and divestiture. While subject to state oversight, there are a wide range of stocks and voting rules by which shareholders can collectively exercise their governing responsibilities. A similar organizational flexibility should be introduced into the local government sector of the U.S. economy, replacing the current hidebound rules and rigidities.

For the system of local government, the ways of changing jurisdictional boundaries are annexation, consolidation, and secession. The fact of a common geographic area for local jurisdictions admittedly complicates any process for local government competition and reorganization. But an even greater obstacle is the current traditional rules that limit changes in local government boundaries and innovation in local constitutional rules.

It is time to loosen these restrictions and move towards a system of much freer local competition in the metropolitan governance system of the United States.

Endnotes

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[5] Richard Briffault, "The Rise of Sublocal Structures of Urban Governance," *Minnesota Law Review* 82 (December 1997).
[6] See Robert H. Nelson, Kyle R. McKenzie, and Eileen Norcross, *Lessons from Business Improvement Districts: Building on Past Successes*, Mercatus Policy Series, Policy Primer No. 5 (June 2008).
[7] Carol Rose article
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[9] Robert H. Nelson, Zoning and Property Rights (Cambridge, MA: MIT Press, 1977); William A Fischel, *The Economics of Zoning Laws: A Property Rights Approach to American Land Use Controls* (Baltimore, MD: Johns Hopkins University Press, 1985).
[10] Charles Tiebout, "A Pure Theory of Local Expenditure," *Journal of Political Economy*, Vol. 64 no. 5 (October 1956) 416-424.
[11] Ibid., p. 421 .
[12] See Nelson, *Private Neighborhoods and the Transformation of Local Government*, Part IV.
[13] See also Eileen Norcross, Kyle McKenzie and Robert H. Nelson, *From BIDs to RIDs: Creating Residential Improvement Districts*, Mercatus Center, Policy Comment No. 20 (May 12, 2008).
[14] See Robert H. Nelson, *Private Neighborhoods and the Transformation of Local Government*, Chapter 20.