Planning by Contract?
Negotiated Regulation in Urban Development

by

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Negotiated Regulation in Urban Development  
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Abstract:  
At the turn of the twenty-first century, a new term entered the lexicon of urban redevelopment:  
the community benefits agreement (CBA). Although the term has been applied to a variety  
of arrangements, it frequently refers to a set of written commitments between a developer and  
organizations claiming to represent residents who would be affected by a development project. In  
return for political support from such organizations, developers offer assurances  
regarding benefits such as affordable housing, jobs, amenities, and environmental quality.  
Despite limited evidence, CBAs have attracted widespread attention, both positive and negative.  
My dissertation details the emergence and use of CBAs in Los Angeles and New York City, the  
two cities where these tools have been most extensively deployed. My findings indicate that  
many claims concerning the CBAs as mechanisms of redistribution and political mobilization  
have been overstated. This analysis suggests that even widely praised CBAs can exacerbate the  
opacity of the legal and financial arrangements undergirding urban development. Planners  
should be alert to the potentially deleterious consequences of such opacity for  
democracy and resource distribution.  

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Introduction

At the turn of the twenty-first century, as large-scale projects proliferated in the largest U.S. cities, a new term entered the lexicon of urban redevelopment: the community benefits agreement (CBA). Although the term has been applied to a variety of arrangements, it frequently refers to a set of written commitments between a developer and organizations claiming to represent residents who would be affected by a development project (Wolf-Powers 2010, 141). Such groups can block or delay projects via litigation or by raising objections during local approvals processes. In return for the support of such groups, developers offer assurances regarding the provision of benefits such as affordable housing, jobs, amenities, and environmental quality. Despite limited relevant evidence, CBAs have attracted widespread attention—both positive and negative.

According to their proponents, CBAs promise to improve on conventional land-use regulation, circumventing governmental bureaucracy by enabling residents and developers to negotiate directly with each other (e.g., Gross, LeRoy, and Janis-Aparicio 2005). While the normal land-use approvals process frequently funnels citizen participation through pro forma public hearings, CBAs open the possibility of face-to-face dialogue between developers and residents. If government officials are unable (or unwilling) to condition development on the provision of affordable housing, jobs paying more than the minimum wage, or open space, then CBAs may provide a mechanism for other groups to make such demands. Even when government officials obtain assurances that developers will mitigate project impacts, moreover, implementation of the relevant agreements may be lax. CBAs could provide groups directly affected by development with the power to enforce and oversee certain mitigation requirements.

In the lore of contemporary urban planning, the CBA negotiated by a coalition of non-profit organizations and the developer of a mixed-use entertainment, retail, and hotel project in downtown Los Angeles represents this optimistic view (cf. Leavitt 2006; Saito 2012). On May 3,
2000, the developer of the Staples Center sports arena announced plans to transform the adjacent property "into a shopping, dining and theater area, capped by a four-star, 40-story, 1,200-room hotel" (Newton 2000). Shortly after this announcement, organizers associated with labor unions and community groups sought to provide an avenue for neighborhood residents to influence the project (Saito 2012, 139–140). The coalition that emerged included, at its largest, twenty-nine organizations and roughly 300 individuals living close to arena (Cummings 2008, 62). Drawing leverage from its association with organized labor and a threat to challenge the project under California's environmental review law, the coalition entered formal negotiations with the developer.

The resulting agreement is widely regarded as the first CBA (cf. Been 2010, 8; Salkin and Lavine 2008a, 301), and it was incorporated into a contractual agreement between the City of Los Angeles and the developer.¹ Under the CBA, the developer provided guarantees concerning funding for nearby parks and recreational facilities, assistance in implementing a residential parking permit program, community consultation concerning mitigation of ongoing project impacts and tenant selection, wages exceeding state and local requirements, a local hiring program, and an affordable housing program. After signing this agreement, the developer obtained the necessary land-use approvals from the city council,² which also ultimately provided subsidies for the project worth an estimated $82 million.³

Some scholars and practitioners, however, regard CBAs with skepticism, worrying that they may exacerbate existing pathologies of land-use regulation (e.g., Been et al. 2010; Camacho 2013). Despite its opacity, the conventional land-use approvals process imposes more requirements on the public dissemination of information than the unregulated process of CBA

¹ Development Agreement by and among the City of Los Angeles, the L.A. Arena Company, Inc., and Flower Holdings, LLC (2001), appendix 4.
² See Los Angeles City Council, File No. 00-0813.
³ See Fujioka and Miller (2005, 2–3); Los Angeles City Council, File No. 04-2566-S3.
negotiation. Moreover, while developer concessions negotiated through conventional approvals processes must be publicly documented, there is no corollary requirement for CBAs, giving rise to worries about corruption. CBAs may also privilege parochial concerns over citywide or regional problems, and the groups responsible for enforcing them may cease to exist or lack expertise, impeding implementation. Reliance on CBAs may reflect their participants' mistrust of urban government, and such ad hoc contractual mechanisms could further undermine representative institutions, perpetuating a vicious cycle of institutional decline.

Commentators citing these concerns commonly invoke the example of Yankee Stadium in the Bronx, a borough of New York City. On June 15, 2005, after three years of behind-the-scenes preparation, the Mayor of New York announced an agreement including the city and the New York Yankees baseball team, under which the team would build a new stadium on parkland donated by the city (Bagli 2005). Several groups of Bronx residents opposed the proposal, claiming that it failed to mitigate the harm resulting from razing the existing parks and that the project would increase traffic congestion (Been et al. 2010, 13; Sanderson 2005). A community board with advisory authority granted by the City Charter recommended that the proposal be rejected. But the Bronx borough president, an elected official who also has advisory power in the land-use approvals process, recommended approval of the project and the City Planning Commission unanimously approved the plan over vociferous protest from neighborhood groups. (Six months later, the Bronx borough president removed all of the community board members who had voted against the stadium, leaving twenty-one of the board's fifty seats vacant (T. Williams 2006; Wolf 2006).)

In April 2006, on the eve of a city council vote concerning the land-use approvals, the

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4 See Barrett (2002); deMause (2006); Lefkowitz (2005); Tishman Speyer Properties (n.d.).
6 Ibid., pp. 18-21.
borough president and two city council members signed an agreement with the Yankees' president. Although the agreement is not publicly available, a purported draft indicates that the Yankees pledged to fund various "community benefits," the most substantial of which was an $800,000-per-year fund (for forty years) to be administered by an individual appointed by "the Yankees, the Bronx Borough President and other Bronx elected officials."7 The city council approved the project, which entailed substantial capital contributions from the city and various tax exemptions. In 2009, the city's Independent Budget Office estimated the net cost to the city at $362.4 million, excluding the value of the donated parkland and the revenue foregone due to the stadium's exemption from the city's property tax (City of New York, Independent Budget Office 2009). The community benefits fund has been dogged by allegations of inept (or corrupt) administration (T. Williams 2008).

**

Ambiguity clouds the debate about CBAs. The criteria for evaluation are vague – rarely do proponents or critics explain what they mean by concepts such as "representativeness," "legitimacy," or "corruption." There are, moreover, multiple relevant bases for comparison. One could, for example, compare CBAs to each other, to existing alternatives, or to hypothetical alternatives. But few commentators have explicitly articulated a basis for comparison. Nearly all analysis, moreover, focuses narrowly on the contents of individual agreements, instead of assessing CBAs as components of a broader policy landscape.

This dissertation provides a corrective to these deficiencies, drawing on detailed case studies of seven development projects: four in Los Angeles (including two involving CBAs) and three in New York (all involving CBAs). The four cases from Los Angeles (where CBAs emerged) permit comparison of CBAs to other existing mechanisms for representation,

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participation, and resource distribution. Comparison of cases in Los Angeles with cases in New York (where CBAs spread soon after their appearance in Los Angeles) permits limited inference concerning the relationship of CBAs to state and local policy.

Without greater refinement, however, even this more careful approach would assume that CBAs constitute a conceptually coherent category. This assumption is not obviously warranted. Planning scholars have described CBAs as "a new form of public-private development deal" (Wolf-Powers 2010, 141) and "a significant force in the current politics of urban development" (Sagalyn 2007, 12). But although there is growing consensus that CBAs are increasingly important, the very meaning of the term remains contentious. In particular, scholars and practitioners disagree about whether agreements including public entities as parties qualify as CBAs. Proponents of "private" CBAs suggest that such agreements are generally more representative of low-income communities and less likely to bear the taint of corruption (see, e.g., Gross 2008). Others suggest the opposite – that greater government oversight will improve representation and reduce self-dealing (see, e.g., Been 2010).

The public/private distinction carries both rhetorical and legal significance. Yet, discussions of urban development commonly disregard its ambiguity, and it has not received careful scrutiny in connection with CBAs. Meaningfully differentiating private parties from public parties is often impossible. Entities involved in CBAs, such as non-profit corporations, redevelopment agencies, business improvement districts, political parties, and labor unions have "private" and "public" attributes, in both the legal and colloquial senses of the words. Even municipalities have both public and private qualities, as is especially evident in the economic development context.

Part One therefore begins by discussing the role of the public/private distinction in urban governance. Chapters One and Two address the inherent instability of this distinction, drawing
on two bodies of theory with distinct conceptions of group activity: public choice and communitarianism. Each suggests a different role for local government in promoting association, distributing resources, and shaping the built environment. Each implies different contours of the "public" and "private" spheres, and each suggests different criteria for evaluating law and policy. Chapter Three addresses these criteria in detail. It presents the research questions and discusses relevant conceptual and methodological impediments to the evaluation of transparency, accountability, corruption, enforceability, representativeness, the creation and distribution of value, and perceptions of legitimacy and empowerment. It also presents strategies for measuring these variables in connection with CBAs.

Part Two applies these criteria to development projects in Los Angeles and in New York City. Chapter Four discusses the historical and institutional context of CBAs in both cities. Chapter Five then presents detailed case studies of development projects in Los Angeles. These cases permit comparison of CBAs to other existing mechanisms for representation, participation, and resource distribution. Chapter Six compares CBAs in Los Angeles with those negotiated in New York, to make limited inferences concerning the relationship of CBAs to state and local policy. In response to claims that CBAs are cures for certain pathologies of land-use regulation, I suggest strategies to make CBAs more representative and enforceable. But, because CBAs may be symptoms of these pathologies, I also discuss broader changes to the practice of planning that could mitigate the impetus for CBAs.
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Overview of Part One

Community benefits agreements (CBAs) have engendered much controversy, in part because there is little agreement about what they are. The definitional debate largely concerns the "public" or "private" nature of CBAs. In order to provide some substantive meaning for the concepts of "public" and "private," while clarifying the limitations of these labels, I draw on two divergent bodies of theory, public choice (Chapter One) and communitarianism (Chapter Two). I illustrate the descriptive and normative slant of each by reference to examples of existing governance arrangements that may be relevant to CBAs. These include electoral mechanisms, special purpose governments, non-profit corporations, contracts, and the configuration of urban form. I explore how each body of theory frames these arrangements as mechanisms of "public" or "private" power, and I discuss the implications for empirical analysis of CBAs as components of urban governance. Based on the discussion in Chapters One and Two, Chapter Three elaborates the research questions and methods.

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The public/private distinction undergirds virtually every discussion of CBAs. Patricia Salkin and Amy Lavine (2008a, 292–293) explain that CBAs are "[u]sually framed as private agreements" concerning "public benefits." Alejandro Camacho (2013, 374–375) suggests, "CBAs are not wholly private, as they obligate stakeholders to support or acquiesce in development applications that are before public decision makers. Yet they are not public agreements either, as they are typically negotiated without the involvement of public authorities and entered into only by private parties." David Marcello (2007, 660–661) contends that a "CBA
differs significantly from ... a Public-Private Partnership," because CBAs do not entail the direct involvement government officials.

Claims such as Marcello's have prompted debate concerning the role of government officials in CBAs. Laura Wolf-Powers (2010, 141; 2012, 218) defines a CBA as "a documented bargain outlining a set of programmatic and material commitments that a private developer has made to win political support from the residents of a development area and others claiming a stake in its future." But Julian Gross (2012, 229) finds this definition excessively broad and would reserve the term for "a standalone, legally enforceable contract between multiple community groups and a private developer, requiring community benefits from the developer in exchange for the community groups' support of (or non-opposition to) [a] project." Murtaza Baxamusa (2008, 263) would similarly confine the CBA label to a "private agreement between a community coalition and [a] developer."

Clearly, in the CBA context, the terms "public" and "private" refer to the parties to an agreement. A "public" CBA would include at least one government entity as a party. A "private" CBA would not. Gross (2008; 2012) contends that "public" CBAs are susceptible to problems that have long plagued the land-use approvals process in large cities: a lack of accountability for government officials and real estate developers, the absence of a forum to meaningfully discuss proposed projects, and unresponsiveness to the concerns of residents historically excluded from land-use decision-making because of their income, race, ethnicity, or nationality. Vicki Been (2010), by contrast, suggests that a paucity of formal safeguards in the CBA negotiation process may further diminish the representativeness of the land-use approvals process by privileging potentially parochial concerns and hampering policies of citywide importance. She worries,
moreover, that inexperience, lack of resources, or conflicts of interest may hamper community representatives' ability to negotiate even on behalf of those whom they purport to represent.

The formal, legalistic distinction between "public" and "private" CBAs undergirding this debate may obscure more than it reveals (cf. Dewey 1927; C. A. Reich 1964; McConnell 1966; Pitkin 1981). As described below in Chapters One and Two, formal public control of an entity or process may belie substantive direction by formally private groups, and government officials may play critical roles in formally private organizations. Moreover, some entities involved in CBAs (such as redevelopment agencies) are not consistently formally identifiable as "public" or "private." Indeed, as a legal matter, even municipalities sometimes act as (or on behalf of) formally private entities (Sax 1964, 62–67), although courts have struggled to characterize the purpose of such actions as "public" or "private." As these examples suggest, formal distinctions between "public" and "private" parties may not adequately account for differences or similarities

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1 Examples from tort law, eminent domain, and local public finance are illustrative:
- Common law tort doctrine attempts to accommodate local government's hybrid status, subjecting municipalities to liability in connection with proprietary (i.e., "private") purposes, but immunizing them from liability for governmental (i.e., "public") purposes. Courts have devised a number of tests to differentiate between the two categories, including whether the purpose has historically been associated with government, whether the government derives a profit from the associated activity, and whether state law compels the municipality to engage in the activity (Harper, Gray, and James 1986, vol. 5, § 26.9). As U.S. Supreme Court Justice William Brennan explained, however, judicial efforts to draw the line between proprietary and governmental functions have resulted in "highly artificial and elusive distinctions ... [with] ... the result ... that the very same activity might be considered 'governmental' in one jurisdiction and 'proprietary' in another," Owen v. City of Independence, 445 U.S. 622, 644 n. 26 (1980) (internal citations omitted).
- Although the Fourth Amendment Due Process Clause of the U.S. Constitution forbids any government entity from taking private property for private use, it does not prohibit the taking of private property for public use. (The Fifth Amendment requires the payment of "just compensation" for the latter sort of takings.) The definition of "public use" in the context of eminent domain, however, remains the subject of intense controversy, particularly when property is condemned by a local government or redevelopment agency and then sold to a business firm in order to promote economic development. In Kelo v. City of New London, 545 U.S. 469 (2005), the U.S. Supreme Court reaffirmed earlier precedent indicating that such an action can promote a "public purpose" and can therefore qualify as a "public use." The Kelo decision served as a flashpoint for debate concerning the meaning of "public use" and "public purpose."
- State constitutions and judicial doctrine impose superficially stringent "public purpose" constraints on financial support by local government for private businesses (Briffault 2003, 910). But, in practice, many such limitations are exceptionally porous, enabling local governments to undertake a variety of programs involving direct financial assistance to specific business firms (Briffault 2003, 913–925).
among CBAs, and the substantive outcomes could have little to do with the associated formal procedural mechanisms.

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In order to bring some clarity to the debate over the public or private nature of CBAs, I draw on two distinct bodies of theory concerning group action and the distribution of regulatory authority. I label these "public choice" and "communitarianism." (Some of the theorists whom I describe as "communitarian" might not identify themselves as such, and communitarian theory is – despite some consistent themes – conspicuously diffuse.) I do not develop the contrast between public choice and communitarianism to adjudicate between the two bodies of theory, to resolve the inherent ambiguity of the public/private distinction, or to avoid discussing that distinction in terms of related – and equally problematic – dualities (e.g., political/economic, coerced/voluntary, state/society, equity/efficiency) (cf. D. Kennedy 1982). Instead, I hope to explain what might be at stake in drawing the distinction and, in the process, to describe a number of existing institutions that may be relevant to CBAs. This inquiry motivates the research questions elaborated in Chapter Three.

Both public choice and communitarian theory militate in favor of decentralizing decision-making authority. But they suggest different criteria for evaluating governance mechanisms, which I define broadly to encompass any formal or informal means of regulating the use of resources. (Under this definition, governance mechanisms range from legal rules to urban form.) I select two descriptively and normatively divergent bodies of theory, in part, because our analysis of what is invariably informs our assessment of what ought to be. Indeed, the descriptive/prescriptive distinction may be as inherently ambiguous as the other dualities noted above (cf. H. Putnam 2002, chap. 3). Moreover, understanding the commitments undergirding
public choice and communitarianism (and the tensions within and between these sets of commitments) should bring into clearer focus the choices confronting the denizens of metropolitan areas. It should also shed light on the role that planners can play in the process of making these choices.

Grounded in microeconomic consumer theory, public choice is closely related to methods of policy analysis influential in urban planning (cf. O'Hare, Bacow, and Sanderson 1983; Stokey and Zeckhauser 1978). The underlying utilitarianism, moreover, is the dominant theoretical framework for analysis of land-use regulation among lawyers and legal scholars (cf. Dukeminier et al. 2006, 46). Within the field of urban planning, leading scholars of land-use regulation have deployed utilitarianism (cf. O'Hare, Bacow, and Sanderson 1983; Kayden 1992), which provides the rationale for activities central to the contemporary practice of urban planning, such as cost-benefit analysis and fiscal impact analysis.

Communitarianism, by contrast, combines aspects of neo-Aristotelian virtue ethics, civic republicanism, and critical theory. The associated bodies of literature have been influential in the theory and practice of urban planning and in legal scholarship concerning urban governance, but they have had little impact on the legal analysis of land-use regulation. Critical theory and neo-Aristotelian virtue ethics have been embraced by scholars of negotiation, which has become an increasingly important component of planning practice in the past three decades (cf. Forester 1993; Susskind 2009; Innes and Booher 2010). Aspects of communitarian theory resonate in the work of urban design theorists including Jane Jacobs (1961) and Margaret Crawford (2008), and communitarian aspirations are evident in the work of planning and design practitioners ranging from Frederick Law Olmsted (1870) to Peter Calthorpe (1993). Civic republicanism and critical theory, moreover, have influenced important legal scholarship concerning local governance (e.g.,
Michelman 1977; G. E. Frug 1999). But, with a few exceptions (e.g., Peñalver 2008), communitarian theory is largely absent from legal analysis of land-use regulation.

The theories that I label "communitarian" are perhaps most clearly defined in contrast to public choice theory. They all reject a central descriptive tenet of public choice: a "purely individualist conception of the collectivity" (Buchanan and Tullock 1962, 13). Moreover, they frequently eschew the consequentialist utilitarianism that underlies normative public choice analysis. Instead of focusing exclusively on the consequences of actions as a basis for prescription, much communitarian theory addresses the nature of (and conditions for) virtuous action.

In both its descriptive and normative modes, public choice theory (detailed in Chapter One) proceeds from the assumption that group action occurs when individuals autonomously decide to act collectively in order to advance their individual goals. Public choice theory assesses virtually all groups—whether business firms, civil society organizations, or polities—as purely voluntary associations. (Family is the sole consistent exception, and some scholars associated with public choice might not exclude even family from the list of voluntaristic associations (cf. Becker 1991).) The government serves a purpose identical to the business firm, providing the mechanism for coordination of individual action (Buchanan and Tullock 1962, 49–62).

Much modern communitarian theory (detailed in Chapter Two) is skeptical of this vision, questioning whether the autonomous individual exists, while rejecting as equally implausible an organic unity of individual and community. Michael Sandel (1998, 150), for example, describes a "constitutive conception" of community, in which "community describes not just what [members of a society] have as fellow citizens, but also what they are, not a relationship they choose (as in a voluntary association) but an attachment they discover, not merely an attribute
but a constituent of their identity" (emphasis original). As a descriptive matter, communitarian theory therefore posits a public sphere and, as a normative matter, is largely concerned with extending its radius.
Chapter One

Public Choice, Urban Governance, & Community Benefits Agreements

Public choice applies microeconomic consumer theory to the analysis of governance institutions. Section I briefly describes the set of ontological and ethical commitments that this approach entails, along with the associated descriptive assumptions. Section II discusses public choice scholars' descriptive and normative claims concerning the organization of metropolitan areas. This section also outlines three prominent critiques of the normative claims. Section III explains public choice theory's general analysis of urban politics, and section IV details the application of public choice theory to specific institutions of urban governance relevant to CBAs: electoral mechanisms, special-purpose government entities, contracts, and the physical configuration of the built environment.

I. The ontological, ethical, and descriptive assumptions of public choice theory

By dint of its methodological and ethical commitments, public choice theory gives individual preferences a position of paramount importance. "Preference" has the standard microeconomic meaning, defined in terms of consumption bundles of goods and services. In the simple choice problem, a consumption bundle consists of two goods; \(x\) indicates the amount of one good in a bundle and \(y\) the amount of the other. (In this context, the term "goods" encompasses services; frequently, good \(x\) is the good of interest and good \(y\) is conceived as "all other goods in the economy.")

The set of formal assumptions underlying microeconomic consumer theory also undergirds public choice (cf. Mueller 2003, 2–6). Each individual is assumed to be capable of ranking any two consumption bundles \((x_A, y_A), (x_B, y_B)\) according to that individual's evaluation of those bundles. Preferences are complete, meaning that the consumer can deem one bundle
superior to the other, or the consumer can be indifferent between the two bundles. Preferences are also transitive – if a consumer prefers Bundle A to Bundle B and Bundle B to Bundle C, then that consumer also prefers Bundle A to Bundle C. (An additional assumption, involving the continuity of preferences, is necessary for the mathematical derivation of utility functions.) Public choice analysis typically also assumes that individuals place a positive value on additional consumption of goods and that the marginal rate at which a consumer is willing to trade good x for good y decreases as the quantity of x consumed increases. Finally, public choice analysis assumes that individuals seek to maximize expected utility (Arrow 1951, 3; R. D. Luce and Raiffa 1957, 50), although there is substantial disagreement among public choice theorists about the nature of this maximand and how (or whether) to measure it (see D. P. Green and Shapiro 1994, 17–32). Notably, these assumptions, along with their descriptive and normative applications, have received extensive criticism from a variety of disciplinary and epistemological perspectives (cf. Kahneman, Slovic, and Tversky 1982; D. P. Green and Shapiro 1994; Rubin 1998; 2002; Elster 2007).

The normative goal of public choice theory is allocative efficiency. One standard for allocative efficiency, the Pareto criterion, defines a given distribution of goods as efficient if no person can be made better off without making at least one other person worse off. (A commonly substituted alternative standard is the Kaldor-Hicks criterion, under which a Pareto-efficient exchange could occur, but may not.) According to James Buchanan and Gordon Tullock (1962, 303), the rationale for the Pareto criterion in public choice is that it embodies "the overriding ethical principle for Western liberal society" (cf. Mueller 2003, chap. 27).1 This principle,

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1 In Buchanan and Tullock's invocation of "Western liberal society," "liberal" refers not to the opposite of conservative, but to the philosophical tradition typically traced from Hobbes, Locke, and Mill, among others. Buchanan and Tullock's aphorism summarizes one variant of liberalism. But, this diffuse body of theory...
Buchanan and Tullock indicate, is "Love thy neighbor, but also let him alone when he desires to be let alone." This rationale is a linchpin of normative public choice theories concerning local governance, which the following subsection describes.

II. Decentralization as privatization

"Privatization" is a loaded term. Although it can be invoked either in praise or condemnation, it is rarely deployed neutrally. Moreover, its meaning is ambiguous (Starr 1988), although it perhaps most commonly describes the assignment of historically governmental tasks to business firms.\(^2\) I intend a somewhat broader meaning, and I attempt to use the term for heuristic rather than rhetorical purposes.

In the following pages, "privatization" describes the reconfiguration of institutions with the explicit goal of fostering allocative efficiency. For public choice theorists, certain forms of decentralization are central to this project. (These forms frequently include the assignment of historically governmental tasks to business firms, but they are not limited to this activity.) Section II.A describes the rationale for decentralization in public choice theory and the role of land-use regulation in this decentralizing project. Section II.B discusses three critiques, one internal to the logic of microeconomics, a second based on macroeconomic analysis, and a third concerning the normative validity of the Pareto criterion.
A. The logic of decentralization in public choice theory

In their analysis of the "logical foundations of constitutional democracy," Buchanan and Tullock (1962) endorse the Pareto criterion for the adoption of rules governing decision-making, which they describe as "constitutional." As a normative matter, a constitutional rule constitutes an "improvement" only when it "can be shown to be in the interest of all parties" – that is, when all parties would voluntarily adopt it (Buchanan and Tullock 1962, 14). Subsequent "operational" rules that accord with a constitution can constitute "improvements" without unanimous approval (Buchanan and Tullock 1962, 250–253).

Buchanan & Tullock's normative allegiance to the Pareto criterion leads them to a signal prescription: "where possible, collective activity should be organized in small rather than large political units" (Buchanan and Tullock 1962, 114–115; cf., Tiebout 1956; V. Ostrom, Tiebout, and Warren 1961; Bish 1971; Bish and Ostrom 1973). Such decentralization, they suggest, minimizes two kinds of costs for the individual. The first consists of "the external costs imposed on the individual by collective action" (Buchanan and Tullock 1962, 89) (emphasis original). For a member of a wealthy minority, operational rules redistributing resources to a poorer majority could impose such an external cost. If so, decentralization could reduce this external cost by dividing a heterogeneous population into homogeneous political units. The second asserted benefit of such decentralization is that it reduces the costs of decision-making, because relatively homogeneous preferences will facilitate the adoption of both constitutional and operational rules (Buchanan and Tullock 1962, 114–115). Consistent with public choice theorists' commitment to casting public power in private terms, Buchanan and Tullock (1962, 114) suggest that "[t]he decentralization of collective activity ... introduces elements into the political process that are not unlike those found in the operating of competitive markets."
The market metaphor is central to Charles Tiebout's (1956) analysis of the public goods problem, which also militates in favor of jurisdictional fragmentation. In microeconomics, a public good is non-rival, meaning that one person's use of the good does not interfere with another's, and non-excludable, meaning that no individual can be excluded from using the good. A classic example is national defense. (Goods labeled "public," such as public roads and public schools, that are excludable and somewhat rivalrous might be more precisely labeled "club goods" (cf. Buchanan 1965).) Paul Samuelson (1954) had suggested that the lack of a market mechanism for public goods impedes the Pareto-efficient production of such goods. "Seemingly," Tiebout (1956, 416) wrote in response, "we are faced with the problem of having a rather large portion of our national income allocated in a 'non-optimal' way when compared with the private sector."

Samuelson focused on free-riding as the source of this problem, contending that individuals generally would not reveal their true preferences for public goods. For private goods, he assumed, purchase prices indicate individual preferences. But this revelation mechanism is unavailable for public goods, because (by definition) anyone can reap the benefits of individual contributions to the supply of public goods. If payments for public goods were based on individuals' reports of their willingness to pay, then individuals would have an incentive to under-report their actual willingness to pay (Samuelson 1954, 389). This, Samuelson contended, inhibits the revelation of true preferences concerning public goods.

Tiebout's essential insight, which relied on a set of strong assumptions,³ was that jurisdictional fragmentation could facilitate the creation of many different bundles of public

³ The assumptions are:
1. Consumer-voters are fully mobile and will move to that community where their preference patterns, which are set, are best satisfied.
goods. Jurisdictions could compete to attract "consumer-voters" who would select their residential community based on their preferences for public goods. By shopping for their jurisdiction, consumer-voters would reveal their preferences for public goods that could be provided by local government. Under this view, fragmentation is desirable, because "[t]he greater the number of communities and the greater the variance among them, the closer the consumer will come to fully realizing his preference position" (Tiebout 1956, 418).

An immense body of literature subsequently emerged, modifying the Tiebout model to increase the plausibility of its assumptions, testing the modified model empirically, and assessing its normative implications. Wallace Oates (1969) provides empirical support for the Tiebout model by demonstrating that, consistent with the model, local government taxation and spending policies affect housing prices. James Buchanan and Charles Goetz (1972) cast doubt on the descriptive power of the model, noting that it fails to explain how relatively wealthy communities could exclude relatively poor entrants. Such prospective entrants might hope to benefit from better services and lower taxes, but would dilute the tax base that funded the services, sending the richer residents in search of another jurisdiction. In response, Bruce

2. Consumer-voters are assumed to have full knowledge of differences among revenue and expenditure patterns and to react to these differences.
3. There are a large number of communities in which the consumer-voters may choose to live.
4. Restrictions due to employment opportunities are not considered. It may be assumed that persons are living on dividend income.
5. [Locally provided] public services exhibit no external economies or diseconomies between communities....
6. For every pattern community services set by, say, a city manager who follows the preferences of the older residents of the community, there is an optimal community size. This optimum is defined in terms of the number of residents for which this bundle of services can be produced at the lowest average cost....
7.... [C]ommunities below the optimum size seek to attract new residents to lower average costs. Those above optimum size do just the opposite. Those at an optimum try to keep their populations constant. (Tiebout 1956, 419)

Hamilton (1975) suggests that local governments could drive housing costs beyond the means of relatively poor prospective entrants by deploying land-use controls, such as large-lot zoning.

Drawing on this intellectual lineage, William Fischel (2001, 19-38) takes Buchanan and Tullock's (and Tiebout's) privatizing commitment to its logical conclusion, analogizing municipalities to business firms. Both municipal corporations and business corporations, he suggests, can serve to increase the wealth of certain constituents – shareholders in the case of businesses, homeowners in the case of municipalities. While business corporations accomplish this goal by maximizing profit, municipal corporations do so by maximizing the value of owner-occupied housing. Although acknowledging that this role for local government contributes to the spread-out form of metropolitan areas, Fischel contends that it has generally salutary social welfare effects, enhancing civic participation, increasing voter turnout, and improving environmental protection.

Both Fischel (1978; 1985) and Robert Nelson (1977) analyze zoning as a collectively held, albeit constrained, private property right. Fischel (1978, 66) describes three aspects of property rights: "(1) the right to exclude others from resources (control), (2) the right to enjoy the income from the use of the resources (leasing), and (3) the right to transfer these resources (selling)." Fischel suggests that the leasing of zoning could provide existing homeowners with some insurance of their home's monetary value and that the sale of zoning could compensate municipalities for the marginal cost of new entrants, which may exceed the marginal property tax revenue. (Other scholars working in the public choice vein are less sympathetic to municipal land-use controls, focusing on the negative externalities stemming from such controls (cf. Ellickson 1973; 1977; 1980; Siegan 1970; 1972).)
Local governments have extensive control rights over zoning, Fischel suggests, but fewer leasing and selling rights. Municipalities control land use by virtue of state legislation giving them the right to enact and amend zoning ordinances. Subject to judicial and state legislative constraints, municipalities exercise leasing power via the sort of fiscal (or exclusionary) zoning described by Hamilton (1975). Local governments may also be able to "sell" zoning (in Fischel's sense) by requiring exactions (i.e., direct contributions from developers), by enacting incentive zoning provisions allowing additional density in exchange for specified commitments from a developer (Kayden 1991), or by entering into development agreements, which exempt a project from future regulation in exchange for negotiated benefits from a developer (Wegner 1987; Callies, Curtin, and Tappendorf 2003). CBAs, arguably, are another mechanism for the "sale" of zoning (cf. Schleicher 2013, 1728).

Nelson (1999) takes the analogy to business corporations a step further. Expanding on Robert Ellickson's (1982) suggestion that courts should give greater legal autonomy to private homeowners associations, Nelson calls for such associations to replace municipal corporations. Fischel, however, believes that the analogy should remain just that. Converting municipal governments to private corporations would sacrifice local control over zoning, eminent domain, public safety, and taxation to state governments or their administrative subdivisions (such as counties). Such centralization, Fischel (2001, 36–38) suggests, could hamper allocative efficiency. Despite this difference, Ellickson, Nelson, and Fischel agree that, in general, greater allocative efficiency results when votes are apportioned based on economic criteria (such as property ownership), rather than citizenship and residency.5

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5 Although Fischel (2001, 32–34) embraces the apportionment of municipal voting rights to each resident, he does so because most residents are homeowners and – unlike corporate stockholders – they are unable to diversify their housing asset as a hedge against bad corporate (i.e., municipal) management.
Ellickson summarizes the reason for this, tying together the concepts of allocative efficiency, Tiebout mobility, and voluntariness: "The initial members of a homeowners association, by their voluntary acts of joining, unanimously consent to the provisions in the association's original governing documents. In the language of Buchanan and Tullock, this unanimous ratification elevates those documents to the legal status of a private 'constitution'" (Ellickson 1982, 1526–1527). Ellickson (1982, 1527, n. 28) explicitly assumes that – unlike a municipality – membership in a homeowners association is the product of "a fair contracting process – that is, one not tainted by fraud, duress, gross inequality of bargaining power, and so on." (Although Ellickson contends that membership in a municipality is more likely to be coerced than membership in a homeowners association, he seems to suggest that such coercion will be most powerful in relatively large cities, as discussed below in section III.)

A key distinction between Ellickson's and Fischel's analyses of land-use regulation points to the significance of the public/private distinction in public choice theory. Unlike Ellickson, but consistent with the Tiebout model, Fischel treats suburban municipalities as essentially voluntary associations. As a result, Fischel advocates the use of zoning to capture economic rents from homeownership. (An economic rent is the excess payment for a factor of production (i.e., an existing asset), over the minimum amount required for the supply of that factor.) In Fischel's view, this rent-capture function is allocatively efficient because zoning ordinances serve as private (voluntary) corporate by-laws rather than public regulation. Ellickson, by contrast, condemns municipal zoning as a public (coercive) seizure of economic rents, but advocates mechanisms for developer control of private homeowners associations, which he deems more

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6 This is not a consensus position. For example, as Nancy Rosenblum (1998, 135) notes, "Inasmuch as membership is mandatory with ownership, [homeowners associations] are involuntary associations[.]"
voluntary. This example suggests that, from a public choice perspective, the legitimacy of
distributive decision-making may hinge on an arbitrary demarcation between public and private.

B. Critiques of decentralization as privatization

Although a vast empirical literature attests to the predictive power of the Tiebout sorting
model as supplemented by Hamilton's (1975) theory of fiscal zoning (see Dowding, John, and
Biggs 1994), the model's normative implications are far more contentious. The following
subsections review three lines of normative critique. The first critique, based on microeconomic
theory, questions the allocative efficiency of inter-local migration. The second critique, based
largely on macroeconomic concerns, suggests that – given transaction costs and imperfect
information – allocative efficiency alone does not necessarily facilitate (and may impede)
economic development. The third critique questions the theory of distributive justice underlying
the normative embrace of Pareto efficiency. (Chapter Two describes critiques stemming from
communitarian theory.)

1. Microeconomic critiques

As Tiebout himself acknowledged (1956, 423), several of the assumptions underlying his
model are implausible. These include the assumptions that "[c]onsumer-voters are fully mobile
and will move to that community where their preference patterns ... are best satisfied"; that there
are no "[r]estrictions [on mobility] due to employment opportunities"; and that "public services
exhibit no external economies or diseconomies between communities" (Tiebout 1956, 419). The
implausibility of these assumptions gives rise to a critique based on microeconomic premises,
because it suggests that negative externalities due to inter-local migration – such as concentrated
poverty and spread-out, leap-frogging development ("sprawl") – may vitiate the promise of
allocative efficiency (Howell-Moroney 2008).
Concentrated poverty results when relatively wealthy individuals depart a municipality, and it is exacerbated because these departures diminish the local per capita tax-base. The migrating individuals may receive a larger direct benefit from their local tax payments as a result of moving. But the consequent diminution of the local tax-base in the municipality that they leave behind will make relatively poor people who remain worse off, resulting in Pareto inefficiency.

The development patterns that attend inter-local migration may also produce negative externalities. Development in municipalities that are relatively remote from the new residents' places of employment imposes longer commute times and increased risk of accidents on all intervening commuters, with no offsetting compensation (Brueckner 2000). Spread-out development can also impair the functioning of eco-systems, potentially resulting in largely uncompensated harms (Johnson and Klemens 2005). It may also result in Pareto-inefficient increases in air pollution, although the extent of the problem is somewhat disputed (cf. Ewing, Pendall, and Chen 2002; Glaeser and Kahn 2004). (Section IV.C.1, below, discusses an additional critique on efficiency grounds: That a municipality's marginal costs due to new development may exceed its marginal revenue.)

While many public choice theorists are not oblivious to these problems, some of their proposed solutions are difficult to reconcile with their normative commitments. Fischel (2001, 260–289), for example, suggests a number of reforms to reduce the exclusionary incentives of home-owners. These include home-value insurance, land-value taxation (instead of property taxation), school-finance reform, and more vigorous judicial enforcement of doctrines prohibiting stringent land-use regulation. Even if these reforms could be implemented, they would diminish precisely the incentives for homeowners to monitor local decision-making that
Fischel lauds (R. Schragger 2003, 1854). Some, such as more vigorous judicial policing of land-use control, could undercut the putative benefits of the "sale" of zoning. Moreover, if public choice theorists' normative embrace of the Tiebout model is influential, it could make Fischel's politically challenging reform proposals even more difficult to implement, by exalting local government as a coordinating mechanism for purely voluntary association, thereby delegitimitizing the claims of those who are involuntarily excluded (cf. Fennell 2002, 663).

2. Macroeconomic critiques

A second line of critique involves the macroeconomic implications of privileging allocative efficiency above other economic concerns. Much of the macroeconomic critique is inapplicable to questions of urban governance in the U.S., because state and local governments have no direct influence on monetary policy and very limited authority over capital controls, two principal concerns of macroeconomic theory. To the extent that the macroeconomic critique involves government industrial policy, however, it is directly relevant to U.S. state and local governments, which have long taken an active role in promoting economic development by allocating economic rents (Hartz 1948; Handlin and Handlin 1969; Scheiber 1987; Sbragia 1996).

Public choice theorists generally deplore efforts to influence the creation or protection of economic rents via regulation, labeling this activity as "rent-seeking" (Krueger 1974; Mueller 2003, 333–358; cf. Tullock 1967). In public choice theory, rent-seeking is normatively undesirable and frequently synonymous with corruption. But, despite its superficial clarity, the concept of rent-seeking is an imprecise heuristic for normative analysis, in part because economic rents themselves are not inherently normatively undesirable from a public choice perspective. Indeed, the pursuit of economic rents is the reason that individuals engage in economically productive activity.
One public choice argument against rent-seeking indicates that it impedes economic growth, thwarting allocatively efficient exchange by destabilizing property rights and distorting producer incentives. Under conditions of perfect information and zero transaction costs, conditioning the distribution of entitlements on allocative efficiency would be a sure route to economic development. The winners would compensate the losers and could guarantee future payments, secure in the knowledge that the distribution would produce economic growth (cf. Coase 1960). But, because even the smoothest transactions have costs and even the most accurate information concerning the present (let alone the future) is invariably imperfect (Coase 1960, 15), some allocatively inefficient distributions may facilitate economic growth more effectively than allocatively efficient ones (Amsden 2001, 289–290).

To be sure, commentators of strikingly varied theoretical and ideological orientations cite the relative stability of a property rights regime as a prerequisite for economic development (cf. Amsden 2001, 286–287; de Soto 2000). And successful rent-seeking is intrinsically linked with unstable property rights, because it either allocates new property rights or reallocates existing property rights. But, a given property rights regime need not be perfectly stable to attract investment – it must only be more stable (in ways that matter to investors) than the regimes of competing economies. (Even such relative stability is no guarantee of economic development, because the kinds of stability that matter to lenders may not be the same kinds of stability that promote long-term economic growth (Amsden 2001, 252–255).)

The macroeconomic critique of public choice suggests that incremental institutional change via the kind of entitlement re-allocations conducive to rent-seeking may promote economic growth. This growth occurs because the re-allocations induce other institutional shifts or technological advances, which in turn influence subsequent re-allocations (Davis and North
1971; cf. P. M. Romer 1994). (As the communitarian theories described in Chapter Two emphasize, economic growth under these conditions may have tragic and incommensurable collateral consequences.) Illustrative re-allocations range from the enclosure of cropland in pre-industrial England (McCloskey 1972; 1991; M. Turner 1986; cf. R. C. Allen 1982), to the development of eighteenth century Manhattan via the disposition of publicly owned property to certain citizens in exchange for the construction of streets and docks (Hartog 1983), to the Homestead Act of 1862, which facilitated the U.S. government's conquest of the West by enlisting individual farmers to enforce its territorial claims (D. W. Allen 1991), to the creation of state-run industrial development banks in post-World War II Brazil and South Korea (Amsden 2001, 132–135).

Few (if any) proponents of the macroeconomic critique are insensitive to the distinct possibility that rent-seeking may have deplorable consequences. In addition to its potentially harmful destabilization of property rights, successful rent-seeking can skew the incentives of producers by substituting the preferences of bureaucrats (who frequently need not internalize the economic consequences of their actions) for those of consumers (cf. Posner 2003, 278–281; D. Kennedy 2012, 213). Moreover, rent-seeking fosters relationships of dependency between firms and government officials that can impede inherently and instrumentally desirable democratic participation (cf. C. A. Reich 1964, 768–771; Hirschman 1970, chap. 3; Sen 1999, chap. 6). Nevertheless, the macroeconomic critique of public choice points to examples of rent-seeking that appear to have been economically productive, catalyzing previously unimaginined forms of

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7 The rent-seeking process may, however, also be an inevitable by-product of economically productive political development. Because the process of constructing, implementing, and adapting a legal regime consists largely in the allocation (and re-allocation) of economic rents, it gives rise to rent-seeking. Katharina Pistor (2002) indicates that the experience of developing and maintaining a legal system is crucial for enforcement and adaptation. If this is the case, then there may be a tradeoff between the economic loss due to the activity rent-seeking (regardless of its success) and the economic gains from political development, which rent-seeking invariably attends.
development. This critique thus suggests that — although such examples may be vastly outnumbered by less salutary instances of rent-seeking (and may have terrible non-economic consequences) — a more contingent theory of economic development than public choice offers would be necessary to predict when rent-seeking will have net positive or negative consequences for economic development.

3. The distributive justice critique

A third line of critique addresses the (frequently tacit) theory of distributive justice underlying the normative predilection for the Pareto criterion. Buchanan and Tullock address this issue, in part, by adopting two axioms — one explicit and another implicit. The explicit axiom, noted above, is that "the overriding ethical principle for Western liberal society" is "Love thy neighbor, but also let him alone when he desires to be let alone" (Buchanan and Tullock 1962, 303). The implicit axiom, which communitarian theory calls into question, is that the ethical principles underlying (or said to underlie) Western liberal society are the sole valid normative basis for governance arrangements.

Although Buchanan and Tullock (1962, 189–199) indicate that Pareto-inefficient majority decisions concerning redistribution may be normatively valid, the Pareto criterion is central to their rationale. They posit the Pareto efficiency of "constitutional" rules governing decision-making, and they assume that an individual agrees to constitutional rules "not knowing with accuracy his own particular role in the chain of collective decisions that may be anticipated to be carried out in the future" (Buchanan and Tullock 1962, 92). Because of this uncertainty, they contend, individuals are likely to prefer certain forms of social insurance ex ante, although they may not directly benefit from such insurance ex post (cf. Mueller 2003, chap. 26).
As a basis for both description and prescription, this version of contractarianism presents several problems. First, it is not clear how to discern empirically which rules are "constitutional." Some such rules may not be enshrined in a written constitution and, in any case, decisions concerning a written constitution hinge on rules that are chronologically prior to the written constitution. Second, if—as an empirical matter—"constitutional" rules were not Pareto-efficient, then subsequent decisions must be normatively suspect. Third, the degree of individual uncertainty concerning future circumstances at the time of "constitutional" rule adoption is an empirical issue with important consequences for the normative validity of such rules. Fourth, even if "constitutional" rules were Pareto-efficient when adopted (and were adopted behind a veil of substantial uncertainty), the relevance of these facts to subsequent generations who were not party to the adoption is ambiguous.

These objections cast doubt on the normative significance of Ellickson's (1982, 1526–1527) observation: "In the language of Buchanan and Tullock, the unanimous ratification [of a homeowners association's original governing documents] elevates those documents to the legal status of a private 'constitution.'" As Harold Hochman (1972, 359–360) observes:

Interpreted as a model of "club" formation, the Tiebout mechanism can assure that the rules under which individuals live and the rules that govern constitutional change are acceptable to all, provided one begins de novo or assumes a world in which incomes are equal and only tastes differ. But in the real world, with its pre-existing environment, this is not very useful, for it is tautological, an argument that reality is uniquely optimal because it would not have materialized were it not. While individuals, by relocating, can mitigate their dissatisfaction, their clustering cannot undo the dependence of their claims on initial endowments of physical and human capital. The existence of such endowments is enough to assure the normative insufficiency of the Tiebout mechanism.

Under this view, it is normatively irrelevant whether the formation of a homeowners association results from a contracting process untainted by "fraud, duress, gross inequality of bargaining power, and so on" (Ellickson 1982, 1527, n. 28). If earlier "constitutional" decisions were not
made under a "fair contracting process," and those earlier decisions influence later "constitutional" decisions, then it is not obvious why Pareto efficiency is the appropriate criterion for the subsequent decisions. Instead, Pareto efficiency, along with the associated preference for privatization, may be a guise for domination. This concern animates the communitarian critique of contract, discussed below in Chapter Two (section IV.C).

III. Urban governance in public choice theory

Based on their descriptive claims and normative predilections, public choice theorists have advanced a policy agenda with significant implications for the governance of large cities. Because many public choice theorists' descriptive claims about the impact of city size on allocative efficiency largely track the Tiebout model, described above in section II.A, this section discusses the issue only briefly. It focuses primarily on public choice theorists' assessments of urban political institutions, concluding with a discussion of the implications for CBAs.

Public choice theory suggests that, in many instances, the size and heterogeneity of large cities militate against allocative efficiency. Consistent with Tiebout (1956), Vincent Ostrom et al. (1961) contend that the relative heterogeneity of preferences in large cities will generally result in inefficient provision of many local government services. This claim is essentially equivalent to Buchanan and Tullock's (1962, 89) argument that small jurisdictions minimize "the external costs imposed on the individual by collective action" (emphasis original).

Echoing Buchanan and Tullock's (1962, 114–115) concern with decision-making costs, other public choice adherents focus on the efficiency implications of big-city political

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8 For many (if not all) of the authors discussed in this subsection, the criteria for distinguishing large cities are unclear. Without specific explanation, Fischel (2001, 92–93) draws the line at a population of roughly 100,000. Vincent Ostrom et al. (1961) specify no criteria. Ellickson (1982, 1559 n. 164) contends that "the best test of a political unit's 'smallness' is the presence of good substitutes, [but] this test is not readily applied." As an alternative, Ellickson recommends "population or land area, or a combination of the two." But, apart from the example of New York City, Ellickson does not indicate what population or land area would qualify a city as large.
institutions. Some public choice scholars suggest that, while the political institutions of smaller local governments tend to be relatively majoritarian, interest group models more accurately characterize the politics of large cities (cf. Ellickson 1977, 405–410; Fischel 2001, 87–93). According to such models, political outcomes depend on the ability and incentives of different groups to provide campaign assistance and monitor political decision-making (c.f. Olson 1971; Stigler 1971; 1976; Peltzman 1976; Becker 1983). The resulting policies are unlikely to result in allocative efficiency. (Sociologist Harvey Molotch (1976) claims that interest group dominance produces a pro-development bias in large cities, although Vicki Been et al. (2013) provide some recent evidence to the contrary.)

In addition to a large population, big cities tend to have relatively complicated mechanisms of formal governance. Because the government is relatively complex, residents may have more difficulty monitoring it. (As discussed below, however, the direction of causality is ambiguous.) Moreover, according to Mancur Olson (1971, 35), the amount of a public good provided will fall increasingly short of the optimal quantity as group size grows. Monitoring of elected officials on behalf of constituents without a substantial stake in a given decision is a public good: All such constituents benefit equally from such monitoring (to the extent that their interests align), regardless of whether they participate. Olson (1971, 35) asserts that, because individual members of the group do not reap the full benefits of their actions (which are dispersed among all similarly situated members), they will generally undertake such actions at a suboptimal level, if at all. Because the benefits of citizen monitoring are spread over an increasing number of members as the population of a jurisdiction grows, the incentive for any expected-utility-maximizing individual to undertake such monitoring varies inversely with population. Thus, public choice theory suggests that larger cities would have less of such
monitoring per capita, even if their governments were not more complex (cf. Downs 1957, 214–218, 253–258).

Nevertheless, public choice theory also suggests that some groups will have strong incentives both to monitor big-city politics and to increase the complexity of city government. Because big-city budgets are relatively large, groups that could benefit from municipal expenditures and exclude free riders may expect a correspondingly sizable return on any investment intended to influence political decision-making. Residential renters, who Fischel suggests have weaker incentives to monitor local government than homeowners, are disproportionately located in central cities (U.S. Census Bureau 2001, 30, Fig. 7-1). This may give additional leeway to other interest groups. (Interests may be more heterogeneous in a large city than in a small municipality, where, according to Fischel, the dominant interest will be that of homeowners seeking to maintain the value of their homes.)

Ellickson (1998, 89) contends that the convergence of these factors renders governments in big cities "more vulnerable to being captured by rent-seeking groups such as political machines, municipal unions, public works lobbies, and downtown business interests." According to Ellickson, such groups seek windfalls from city policy, and in order to hide these benefits from voters, "these interest groups push for cumbersomely indirect systems for the delivery of favors. Vulnerability to rent-seeking thus leads to substantive city policies that are inherently wasteful" (Ellickson 1998, 89). David Schleicher (2013, 1729 n. 213) characterizes CBAs in this vein, contending that they are "loaded down with all sorts of requirements that have nothing to do with the direct effect of development on neighbors, but serve the goals of local power players."
Some public choice scholars argue that the asserted pathologies of big-city politics are exacerbated by the power that large cities exercise over residents and businesses. Ellickson (1982, 1533), for example, claims that "a community with unique attributes or considerable territorial size usually has a degree of monopoly power." Ellickson does not describe the source of this power in greater detail, and Paul Peterson's (1981, 36) influential account of big-city political economy contradicts Ellickson's claim, suggesting that city policy must cater to the average taxpayer, *i.e.*, "the entity – person, business, corporation, and so on – for whom the benefit/tax ratio falls at the mean." Schleicher (2007, 431–433 nn. 44 & 49) criticizes Peterson's account (and lends credence to Ellickson's), contending that some large cities wield unusual power by fostering agglomeration. Benefits from agglomeration include lower transportation costs, greater information spillovers, and increased market size. In other words, agglomeration reduces transaction and information costs, precisely the function that Coase (1937) posited for the business firm.

If cities exercise monopoly power over residents, then they damage the competitive market posited by the Tiebout model. In the Tiebout model, different bundles of government services are the main source of variation among municipalities. Consistent with the Tiebout model, many people do appear to select among suburban jurisdictions based largely on public school quality and property tax rates (Dowding, John, and Biggs 1994; Bickers and Stein 1998; Bickers, Salucci, and Stein 2006). But these are generally not the reasons that people cite for moving to (or staying in) a place such as New York City, which attracts people precisely because of its agglomeration benefits.

Such benefits may be less attributable to government policy than are the benefits commonly associated with suburbia. To the extent that relatively wealthy denizens of big cities
do not base their residential location decisions on government policy, governments in such cities may have more policy-making latitude than their suburban counterparts (Schleicher 2011, 278–284). According to Ellickson, such relative autonomy (i.e., "monopoly power") enables large cities to engage in forms of coercive redistribution that are impossible for smaller jurisdictions. (As an example, Ellickson (1982, 1559) notes that "New York City tried a tuition-free city university; Scarsdale never did.")

The public choice perspective on urban governance suggests one theory concerning the rise of CBAs. Under this view, interest groups seek "windfalls" from city policy. If the city is a uniquely appealing location for development, by dint of agglomeration economies, then interest groups with influence over local legislators will be able to extract concessions from to developers (cf. Schleicher 2013, 1729 n. 213). Under this view, CBAs may be a means for such groups to obtain economic rents without direct government intervention, which may be undesirable (from their perspective) either due to increased transaction costs or to legal constraints on state action (see Chapter Two, sec. IV.C. 2.b).

IV. Public choice governance mechanisms for large cities

The logic of public choice theory militates in favor of two urban governance strategies for accomplishing the goal of allocative efficiency: functional disaggregation and geographic decentralization. Both mechanisms blur the formal boundaries of public and private action. In order to discern one set of normative criteria for CBAs, this section describes the public choice approach to four mechanisms of urban governance: electoral systems, special-purpose government entities, contractual agreements, and the form of the built environment. Because CBAs function either as a supplement or alternative to electoral politics, subsection A addresses electoral systems, focusing on the public choice critique of local legislatures and the public
choice defense of direct legislation mechanisms such as the ballot initiative and referendum. Because some proponents of CBAs view such agreements as mechanisms for the provision of public goods (or club goods), subsection B describes three kinds of special purpose entities that combine attributes of governments and business corporations: special districts, business improvement districts, and redevelopment agencies. (Public choice theorists have extolled the business improvement district and the special district, but have shown little enthusiasm for the redevelopment agency.) In order to generate hypotheses concerning CBAs, subsection C applies the logic of public choice to two kinds of contractual arrangements: development agreements and CBAs. Subsection D addresses the implications of public choice theory for urban form.

A. Electoral systems

The pathologies indicated by the interest group model make some public choice scholars suspicious of urban legislatures. Subsection A.1 describes the reasons for this suspicion. Subsection A.2 discusses forms of direct legislation, such as ballot initiatives and referendums, which public choice scholars have embraced as an alternative to representative democracy. The criteria that public choice scholars have applied to urban legislation mechanisms indicate one possible set of metrics for evaluating CBAs, and the absence of certain metrics from the public choice approach suggests the value of alternative theoretical perspectives.

1. Local legislatures

Although some public choice scholars have suggested that vote-trading among legislators can increase allocative efficiency, the potential for such legislative logrolling exacerbates other

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9 Following the New Oxford American Dictionary (3rd ed.) and the convention of political science literature, I use "referendums" instead of "referenda" as the plural of "referendum."

10 Buchanan and Tullock (1962, 122–145), for example, suggest that the outcomes of vote trading reflect the intensity of legislators' preferences, mimicking a market for private goods. (For this reason, Fischel (2001, 95) suggests that logrolling in big-city legislatures may increase allocative efficiency.) Buchanan and Tullock note,
commentators' concerns about interest group domination in big cities. A local legislator (such as a city council member) with relatively weak preferences concerning one issue can vote according to the wishes of a colleague with stronger preferences. In exchange, the colleague will supply her vote when the roles are reversed. A substantial body of literature provides theoretical and empirical support for this hypothesis, suggesting that legislative logrolling can result in socially undesirable levels of government spending. This outcome may be particularly likely when partisan cleavages do not dictate legislators' policy preferences, as is the case in many city councils (Schleicher 2007). Land-use regulation is arguably a form of spending, insofar as it imposes costs in the form of negative externalities (Hills and Schleicher 2011, 87).

For public choice adherents, the combination of interest group domination and legislative logrolling raises suspicion of urban development regulation. As Ellickson (1977, 408 n. 60) contends, "[i]n some large cities land-use decisions are determined by a system of 'councilmanic courtesy': all members of the elected governing body informally agree to follow the decision of the member from the district where the land-use problem has arisen." Although Ellickson (1977) is arguably agnostic about the policy implications of this phenomenon, Roderick Hills and David Schleicher (2011) claim that it inhibits urban densification. The consequences, they suggest, are higher housing costs and foregone benefits from agglomeration.

\[\text{however, that the costs incurred by non-traders could exceed the benefits to the traders. Riker and Brams (1973) indicate that this outcome may occur more frequently than Buchanan and Tullock anticipate.}\]
\[\text{Baqir (2002, 1321–1323) reviews the relevant literature.}\]
\[\text{Gamm and Kousser (2010, 4–8) review the relevant literature.}\]
\[\text{Ellickson (1977, 435 n. 134) suggests that "[a]s the unit of government becomes larger and more complex, its decisionmakers tend to become more vulnerable to the influence of land-development interests." But, he also indicates that "[o]ne cannot be certain, a priori, if this system of 'councilmanic courtesy' promotes [domination by development interests]... On the one hand, it reduces homeowners' organization costs by, in effect, reducing the size of the political unit; on the other hand, it lowers the administrative cost to developers of acquiring influence by limiting the number of political decisionmakers who must be approached" (Ellickson 1977, 408 n. 60).}\]
\[\text{To the extent that Hills and Schleicher's would privilege agglomerative efficiency over allocative efficiency, their normative view may be somewhat at odds with conventional public choice analysis. They do not, however, provide clear criteria for preferring one form of efficiency over the other.}\]
Hills and Schleicher (2011, 92) invoke Olson's (1971, 33–36) argument that small, closely connected groups expecting large payoffs from a legislative decision are most capable of political mobilization. Because residents live close together, they can easily organize. They have an incentive to do so if they oppose denser development. (Consistent with Fischel's analysis, Hills and Schleicher focus on residents who own their own homes.) With the exception of developers, who may be reluctant to invest resources adequate to overcome entrenched neighborhood opposition, the potential beneficiaries of development are diffuse. If residents can always convince at least one city council member to support their position, and if universal logrolling prevails in the council, then residents' preferences will consistently dominate. This, Hills and Schleicher contend, will result in reductions in allowable density and concomitant housing shortages.¹⁵ (Schleicher (2013, 1728–1729) claims that CBAs represent a partial solution to this problem, to the extent that they appease constituents with political clout.)

Both Ellickson (1977, 408 n. 60) and Hills and Schleicher (2011) focus on logrolling in city councils to which members are elected by district.¹⁶ (In the alternative at-large form of representation, legislators are elected by a citywide constituency.) Although the empirical evidence is ambiguous, some research suggests that local legislative logrolling is more likely when legislators are elected by district.¹⁷ Empirical research consistently indicates, however, that

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¹⁵ The limited empirical evidence provides mixed support for Hills and Schleicher's hypothesis that homeowner opposition consistently stymies development in large cities (c.f. Armstrong et al. 2010; Kogan and Burnett 2012; Been, Madar, and McDonnell 2013).

¹⁶ For the same reason that Hills and Schleicher express concern about district representation in large cities, Fischel (2001, 94) favors it, arguing that "in many ways [it] turns the cities into collections of small towns, and homeowners become more influential." But, Fischel does not devote much attention to this issue, contending that "big cities are not all that important" (Fischel 2001, 92).

¹⁷ Banfield and Wilson (1963, 89–96) present a classic formulation of this hypothesis. Langbein et al. (1996, 275) collect citations of more recent research consistent with this hypothesis, but they note that some scholarship finds no difference between the expenditure levels of district and at-large city councils. Their theoretical argument and empirical evidence suggest that, for generally desired albeit divisible policies (such as expenditures on parks), the distinction between district and at-large elections makes no difference, holding all else equal. They indicate, however, that logrolling concerning locally undesirable land uses will be more influential in district city councils.
district electoral systems can increase the number of minority officials as compared with at-large systems. This difference has implications for land use. For example, after Atlanta's transition from an at-large to district election system, the incidence of locally unwanted land uses in minority neighborhoods declined (Hinds and Ordway 1986).

18 Marschall et al. (2010) review the relevant literature. These benefits may be confined to cities with large, concentrated minority populations (Trounstine and Valdini 2008).

19 Unlike earlier proponents of urban legislative reform (cf. Bridges 1997), Hills and Schleicher do not advocate at-large elections. Instead, they recommend mandatory annual changes in allowable density (presumably increases), pegged to a target quantity of housing determined by the city planning commission. (Developers, they suggest, could overcome collective action problems for the legislative lobbying effort necessary to enact such a mandate.) Unless the city reached its target, any local downzonings would have to be more than offset by simultaneous upzonings elsewhere. Once the city reached its target, any loss of allowable density due to a downzoning would have to be offset by a concurrent upzoning. The local legislature would vote on such bundled upzonings and downzonings, and amendments would be prohibited (Hills and Schleicher 2011, 125).

Although Hills and Schleicher do not address whether the requisite upzonings would disproportionately burden residents of color, several pieces of evidence suggest that they might. Such an outcome seems particularly plausible in light of evidence such as Hinds and Ordway's, given that Hills and Schleicher's procedure is specifically designed to reduce the influence of district legislators. As Hills and Schleicher (2011, 127) note, planning commission members "typically are appointed by mayors sensitive to the various real estate constituencies in the city." But, Hills and Schleicher are silent with respect to planning commission members' sensitivity to other interests. They suggest that any resulting bias will be minimized, because "[p]lanning commissions typically must hold hearings before approving any proposals for zoning map amendments, and these hearings are generally well attended when they affect the neighborhoods of persons having an equity interest in their homes or businesses" (Hills and Schleicher 2011, 127). Such persons are disproportionately non-Hispanic whites. (In 2012, 73.5% of non-Hispanic white householders owned their own home, compared with 43.9% of black householders and 55% of all other races (U.S. Census Bureau 2013a); In 2007, 74.2% of all business firms were owned by non-Hispanic whites, who accounted for about 65.8% of the population (cf. U.S. Census Bureau 2007a; U.S. Census Bureau 2009.) Hills and Schleicher (2011, 128) cite New York City's land-use review processes as an exemplar insofar as the requisite hearings ensure that "politically attentive residents will register their protests." But, the limited empirical data from New York City suggest that the efficacy of such protests hinges on the protestors' race, ethnicity, and economic status (Pecorella 1994, 138–150).

As Hills and Schleicher emphasize, their proposal is similar to New Jersey's "fair share" procedures for affordable housing production and New York City's siting procedures for locally undesirable land uses (such as homeless shelters and waste transfer facilities). The distributive consequences of these programs have received little empirical attention, although the available evidence suggests that they are not neutral with respect to race, ethnicity, or income. As of 1996, black applicants for affordable housing created through New Jersey's "fair share" program had been only half as successful as white applicants, and Latino applicants had been one-third as successful as white applicants (Wish and Eisdorfer 1997, 1303–1304). Moreover, wealthy municipalities were long able to fulfill many of their obligations under the law by paying a fee to other municipalities that were willing to accept affordable housing (Norwood 2006). Even less information is available concerning New York City's siting program for locally undesirable land uses. There is substantial evidence that communities of color in New York City are disproportionately exposed to environmentally harmful land uses (cf. Corburn, Osleeb, and Porter 2006). Critics contend that the city's siting program bears substantial responsibility for this outcome, noting loopholes in the program (cf. Conte 2011; Goldstein 2011). (Such loopholes include exemptions for privately owned firms that provide city services by contract and opportunities for public agencies to circumvent the siting process.) Hills and
2. Direct legislation

Concerns about legislative logrolling animate some public choice scholars' advocacy of an alternative to representative democracy: direct legislation. Direct legislation mechanisms such as the initiative and the referendum delegate law-making power to voters, rather than elected representatives. Referendums allow citizens to vote on laws or constitutional amendments that the government has proposed; initiatives allow citizens to submit proposed laws or constitutional amendments for popular vote (Lupia and Matsusaka 2004, 465). In the U.S., direct legislation is widely available at the state and local levels. Every state permits its legislature to submit a measure to voters, and all states (except Delaware) require voter approval for amendments to the state constitution (Initiative and Referendum Institute 2013). As of 2013, twenty-seven states allowed voter-sponsored initiatives or referendums (Initiative and Referendum Institute 2013). Roughly 40% of municipal governments permitted initiatives (Matsusaka 2013), and approximately 90% allowed some form of referendum (Renner 2013).

Public choice scholars have advanced at least three justifications for direct legislation. First, because direct legislation precludes vote trading and allows citizens to vote on individual issues, it may be more likely than representative democracy to yield outcomes consistent with the preferences of a hypothesized median voter (Matsusaka 1995, 588; cf. Weingast, Shepsle, and Johnsen 1981; Weingast and Marshall 1988). Second, bureaucrats may seek to maximize expenditures and – in the absence of direct legislation – may also be able to determine the

Schleicher's neglect of their proposal's potentially disparate impact arguably underscores the absence of any notion of distributive justice (other than allocative efficiency) in normative public choice theory (cf. Fennell 2002; R. Schragger 2003).

20 The median voter construct involves the following assumptions (cf. Downs 1957, 115–116): First, policy preferences can be ordered along an axis. (For example, preferences for abolition of the death penalty would be at one end of the axis, and preferences for all crimes to be punishable by death would be at the other end of the axis.) Second, each voter has a single preferred outcome. Third, each voter votes for the alternative closest to that outcome.
legislative agenda, resulting in government spending exceeding the Pareto-optimal level (T. Romer and Rosenthal 1979; see also Niskanen 1971; 1975). Third, information asymmetries between elected officials and their constituents may enable elected officials to vote contrary to constituent interests without fear of repercussion (Kalt and Zupan 1984; 1990), and direct legislation could remedy this problem (Matsusaka 1995, 589).

For these reasons, public choice scholars tend to favor the use of local direct legislation in cities large and small. Fischel (2001, 93) lauds local direct legislation as a "device by which large cities are made more responsive to their resident shareholders" (i.e., homeowners). Based on a study of San Diego, Elisabeth Gerber and Justin Phillips (2003, 637) suggest that direct legislation can help to resolve conflicts over development. Based on analysis of multiple California municipalities, they contend that direct legislation results in outcomes that are more consistent with voter preferences than representative legislation, and that it forces developers to internalize negative externalities (Gerber and Phillips 2004; 2005). Clayton Gillette (1988, 984) suggests that courts can guarantee the fairness of direct legislation used for zoning, by distinguishing between land use changes that affect an entire municipality and those that impose costs on a small subset of residents. (He contends that local initiatives and referendums with adverse regional implications, such as restrictive zoning, reflect problems of local decision-making unrelated to direct legislation.)

Scholars less attached to public choice theory have also advocated the limited use of direct legislation. Consistent with Thomas Romer and Howard Rosenthal's (1979) hypothesis, Alan Altshuler and David Luberoff (2003, 293) contend that "in the specific arena of local capital investment public amenities tend to increase and – where public-private partnership are involved – public subsidies to diminish when direct voter approval is required." They caution,
however, that "[r]eferendum democracy is itself highly vulnerable to dominance by narrow interests ... and it may significantly undermine representative democracy."

Other commentators view direct legislation with far less enthusiasm. Perhaps the most famous contrary view is James Madison's warning, in *Federalist No. 10*, that "a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction." Invoking Madison's argument against government by plebiscite, Derrick Bell (1978) cautions that direct legislation facilitates bias against minority groups by vitiating the moderating forces of representative government.\(^1\) In a study of California municipalities, Mai Thi Nguyen (2007) finds that, controlling for other plausibly relevant variables, land-use regulations adopted by direct legislation correlate with greater socio-spatial segregation than do comparable regulations adopted by representative institutions.\(^2\) (Notably, Gerber and Phillips' (2005) findings are not inconsistent with Nguyen's.)

Although the anecdotal evidence concerning the effect of direct legislation on land use is somewhat mixed, much of it comports with Nguyen's finding. For example, a 1986 local ballot initiative drastically reduced the amount of development permitted in the City of Los Angeles, contributing to the shortage of affordable housing in the city (*cf.* Los Angeles Housing Crisis Task Force 2000). The initiative did not draw support from most city council members (M. Purcell 2000, 91), suggesting that the use of direct legislation may have been decisive. The 1976 U.S. Supreme Court case *City of Eastlake v. Forest City Enterprises* concerned a developer that had obtained approval from the local planning commission and city council to construct

\(^1\) Hainmueller and Hangartner (2012) summarize recent empirical research, and their analysis of data concerning naturalization requests from immigrants to Switzerland supports Bell's claim. (Naturalization decisions in Switzerland had been uniformly made by local referendum until federal judicial decisions transferred responsibility to representatives in roughly 600 municipalities. Hainmueller and Hangartner find that, all else equal, the use of representative democracy increased naturalization rates by approximately 50%.)

\(^2\) Gordon's (2004) study of local initiatives in California suggests that such initiatives generally do not impair minority rights, but does not assess the regional impact of land-use regulations.
apartment housing. During this approvals process, local voters "amended the city charter to require that any changes in land use agreed to by the Council be approved by a 55% vote in a referendum," thwarting the development. In *Arnel Development Co. v. City of Costa Mesa* (1981), a California appeals court decision invalidated a local ordinance that, according to the court, had been adopted by initiative "for the sole and specific purpose of precluding any future development that would include moderate income apartments." (The initiative would have effectively repealed a plan amendment and rezoning that the city council had adopted months earlier to facilitate the development of such apartments.)

3. **Implications for analysis of CBAs**

CBAs may be empirically evaluated by comparison with each other or existing alternatives. Public choice theorists and their critics suggest mechanisms for evaluating these alternatives and, by extension, CBAs. In comparing CBAs to local legislatures and direct legislation, we might ask whether CBAs:

- Promote the rights of racial or ethnic minorities;
- Reduce information asymmetries between residents and government officials;
- More closely approximate the preferences of a hypothetical median voter;
- Result in more particularistic resource-allocations;
- Increase amenities;
- Reduce public costs.

We might also ask whether the involvement of legislators as formal parties to a CBA materially alters the results, compared with other CBAs.

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26 For a description of the median voter construct, see note 20.
B. Special purpose entities

The espousal of allocative efficiency has led public choice theorists to embrace certain entities that combine attributes of governments and business corporations. Like CBAs, special districts and business improvement districts privatize the provision of public goods (or club goods). Because CBAs are not alternatives to special districts or business improvement districts, these entities do not provide an appropriate basis for comparison. But, because CBAs mimic certain attributes of both entities, I apply the relevant evaluation criteria when comparing CBAs to representative democracy and direct legislation.

Like special districts and business improvement districts, redevelopment agencies also merge attributes of stereotypically public and private entities. But, unlike special districts and business improvement districts, redevelopment agencies are typically associated with greater government involvement in the provision of private goods. As a result, while many public choice theorists view special districts and business improvement districts favorably, they have no such affection for redevelopment agencies. In several instances, redevelopment agencies have played a role in CBA negotiations, and they have been important participants in all of the projects discussed in Part Two.

1. Special districts

Special districts, which are local government units that typically serve a much more limited range of functions than municipalities, disaggregate the bundle of services provided by local governments. They commonly span municipal boundaries and are responsible for building and operating much of the sewer, water supply, and public transit infrastructure in the U.S. Although special districts are technically local government entities, they have attributes more
commonly associated with business firms. Advocates for special districts, moreover, have long invoked the application of corporate management techniques to the tasks of government (Doig 1983).

The public choice argument for special districts is threefold. First, special districts facilitate jurisdictional fragmentation (V. Ostrom, Tiebout, and Warren 1961). Individuals demand public services, such as sewer and water supply, that entail significant scale economies. Small municipalities cannot produce such services independently. But regionally organized special districts may be able to achieve the necessary economies of scale, leaving small municipalities to attend to zoning and, potentially, other less scale-intensive activities (Tullock 1969). (A profusion of special districts in the early twentieth century facilitated the political independence of burgeoning suburbs from central cities (Foster 1997, 16–18; Teaford 1979, 79–81).) Second, a large number of special districts could enable residents to match their preferences to public service providers (E. Ostrom 1972). Third, numerous special districts could increase competition among service providers, thwarting self-serving bureaucrats and lowering the cost of public services (Dilorenzo 1981; see also Brennan and Buchanan 1977). (These rationales also militate in favor of permissive state laws governing secession from municipal government (Buchanan and Faith 1987).)

As Briffault (1990, 376–377) explains, many special districts lack the power to impose ad valorem taxes or issue general obligation debt, funding themselves instead with user fees and bonds backed by such fees. (Unlike the bonds of business corporations, however, special district bonds are tax-exempt.) Special districts' governing boards are frequently selected by appointment rather than election, and their staffs often do not enjoy civil service protection. While many municipalities must obtain voter approval to issue bonds, special districts often face no such constraint. With the exception of the tax-exemption for bonds (and the power of eminent domain, which many special districts possess), these financing and governance arrangements are more closely associated with business corporations than government entities. As a result, some special districts are exempt from the one-person, one-vote rule otherwise guaranteed by the U.S. Constitution. Salzer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973); Ball v. James, 451 U.S. 355 (1981).
Other commentators are less sanguine about special districts. Richard Briffault (1990, 375–378) and Gerald Frug (2002, 1784) suggest that special districts are undesirable precisely because they facilitate jurisdictional fragmentation and enable local governments to avoid engagement with regional problems. Kathryn Foster (1997, 148–214) provides evidence suggesting that the benefits of preference-satisfaction and cost-reduction asserted by public choice scholars are illusory. Because special districts are insulated from public control and exalt technical expertise, Foster (1997, 229) worries that they may squelch democratic debate and delegitimize public participation. Foster (1997, 230) indicates, moreover, that a multiplicity of single-purpose special districts thwarts coordinated service delivery.

2. Business improvement districts

Business improvement districts are typically geographical subdivisions of a single municipality, within which property owners or businesses pay a special assessment (Briffault 1999, 368–369). The resulting revenues fund improvements and services inside the district, along with the associated administrative costs. Such districts usually require authorization from the municipal government, and they supplement existing government functions such as public safety and street maintenance. But the district's members, rather than elected officials, govern expenditure of its funds and direct its provision of services and improvements. Business improvement districts apportion voting rights according to property ownership rather than residency. As a purely formal matter, then, the public or private nature of business improvement districts is ambiguous.

As with special districts, the impact of business improvement districts on urban governance is contested. Some proponents suggest that, for large cities, business improvement

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districts provide opportunities for Tiebout-like sorting by increasing the variety of collective goods bundles provided within a single municipal jurisdiction (cf. Brooks 2008). Others claim that business improvement districts increase the resources available for public goods in cities, by guaranteeing contributors some measure of control (cf. Donahue and Zeckhauser 2011). Critics contend that such districts exacerbate inequality and give property and businesses owners undue influence over the built environment, potentially homogenizing public space and making it more exclusive (Briffault 1999, n. 21–22; Loukaitou-Sideris, Blumenberg, and Ehrenfeucht 2005).

3. Redevelopment agencies

Redevelopment agencies, also called redevelopment authorities, share similar formal attributes and rationales with special districts. In some cases, redevelopment agencies have participated in CBAs, and in others they have provided material support for CBA negotiations. Like special districts, redevelopment agencies are legally independent corporate entities empowered to contend with a statutorily defined special purpose, and they can typically issue tax-exempt bonds without voter approval (Haar and Wolf 1989, 968–969). Because redevelopment agencies have a mandate to facilitate private development, they commonly use proceeds from these bonds are to acquire land, build public facilities and infrastructure, and provide subsidies to developers. Such agencies also frequently help developers to navigate (or expedite) the public approvals process. Many have the power of eminent domain, but some do not. (After a redevelopment agency exercises its power of eminent domain, it commonly sells the site thus acquired to a private developer, subject to the provisions of a disposition and

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29 Outside of specific statutes, the terms "redevelopment authority" and "redevelopment agency" are commonly used interchangeably (e.g., Davidson 1979, 410; H. J. Gans 1959, 21; D. L. A. Gordon 1997).
30 The terms "special district" and "public authority" are frequently used interchangeably (see, e.g., G. E. Frug, Ford, and Barron 2006, 538). Redevelopment authorities are a form of public authority (cf. Aronson 1963).
development agreement, or enters into a long-term ground lease with a developer (cf. Beatty et al. 2004, 149–174; Sagalyn 1993).

As with special districts, rationales for redevelopment agencies often involve a comparison to the private sector. For example, Charles Haar and Michael Wolf (1989, 968) contend that redevelopment agencies, by virtue of their legal status, have "the ability and resources to attract top-flight managers from the private sector and are able to adopt the efficient practices and techniques of corporate business[]." Such arguments are typically not associated public choice theory; they are closer to valedictions of expert administration in the mode of Woodrow Wilson (cf. Doig 1983).

Indeed, while many public choice scholars laud special districts, they typically harbor no such enthusiasm for redevelopment agencies (see, e.g., Kochan 1998). As noted above, public choice theory indicates that bureaucrats seek to maximize their agency's expenditures and can largely bend the legislature to their will (Niskanen 1971; 1975; Mueller 2003, chap. 16). (In many cities, the city council serves as the redevelopment agency's board of directors, although in New York State, a statewide authority consisting of gubernatorial appointees is empowered to provide subsidies and override local land-use decisions.4) While the specter of direct legislation may reduce this risk (T. Romer and Rosenthal 1979), the actions of redevelopment agencies are

33 Cf. Or. Rev. Stat. Ann. § 457.010(7) (West 2013) (defining the "governing body of a[n] [Oregon] municipality" as, "in the case of a city, the common council or other legislative body thereof"); Or. Rev. Stat. Ann. § 457.045 (West 2013) ("The governing body of a municipality [may] ... elect to have the powers of an urban renewal agency ... exercised ... by the governing body, itself, provided, however, that any act of the governing body acting as the urban renewal agency shall be, and shall be considered, the act of the urban renewal agency only and not of the governing body."); Fulton and Shigley (2005, 263) ("In most [California] cities, there is little difference between the city government and its redevelopment agency. Except in Los Angeles, San Francisco, and a few other large cities, the city council also serves as the board of directors of a redevelopment agency. The city manager or an assistant city manager usually serves as executive director of the redevelopment agency, and often a portion of his or her salary is paid for by redevelopment funds."). (As discussed in Part Two, all California redevelopment agencies were abolished by state law in 2012.)

often not subject to initiative or referendum (Selmi 2001, 302–303 n. 38; Altshuler and Luberoff 2003, 292).

In addition, redevelopment agencies could be particularly susceptible to the form of interest-group domination described by Mancur Olson (1971). Unlike special districts, redevelopment agencies do not directly serve a broad swath of the public. Instead, their expenditures are typically justified as catalysts for the creation of jobs and housing by business firms (see Beatty et al. 2004, 12–16). Whether or not such expenditures indirectly benefit the local economy, they directly benefit certain developers and other commercial interests, providing an incentive for members of these groups to closely monitor the relevant decision-making processes. Taxpayers finance redevelopment agency expenditures, either directly or through foregone government revenue. But the burden imposed on any individual taxpayer is relatively small, and monitoring redevelopment agencies is difficult, as these institutions are generally complex and opaque. As a result, taxpayers qua taxpayers may have little reason to pay attention to the relevant decision-making processes, potentially resulting in government expenditures on redevelopment projects that are not Pareto-efficient (see Downs 1957, 214–218, 253–258; Olson 1971). To the extent that it facilitates access to public funds with limited oversight, formal authority over redevelopment may confer substantial power. As Part Two describes, such authority was more dispersed in Los Angeles than in New York during the period of this study.

35 Apart from the direct and indirect subsidies provided by local taxpayers, a redevelopment agency may also receive subsidies from taxpayers outside of its jurisdiction. Some of the bonds used for redevelopment are exempt from federal income taxation, resulting in foregone revenue to the U.S. Treasury (cf. R. C. Fisher 2007, 244, 525–562; L. E. Gans 2010). Tax-increment financing can prevent funds from flowing into the coffers of county governments and special districts (cf. Fulton and Shigley 2005, 263), which typically extend beyond the boundaries of a municipality.
C. Contracts

Although public choice theorists generally accord a paramount position to contracts, they are more ambivalent with respect to contracts involving municipalities. The basic public choice argument for contract is that it promotes Pareto-efficient exchange (see Tullock 1971, 35). At a minimum, this claim hinges on the assumption that each contracting party behaves rationally to maximize its expected utility.36 (As discussed above in section I, public choice theorists have adopted various definitions of rationality and expected utility.) While this logic applies to individuals and, to a lesser extent, to business firms, public choice theorists generally do not extend it to government.

A comparison of closely held business firms with joint-stock firms, whose shares are traded on a public stock exchange, helps to illustrate the reason. Neo-classical economic theory suggests that the actions of closely held business firms generally align with the owners' interests. In joint-stock firms, however, the interests of managers are more likely to diverge from those of the stockholders, casting the Pareto-efficiency of such firms' contracts into doubt (Berle and Means 1932; cf. Jensen and Meckling 1976). As discussed above, public choice theorists generally view representative government as even more prone to such principal-agent problems than joint-stock firms, and they see the problem exacerbated as governmental jurisdictions expand and resources increase (cf. Mueller 2003, 333–405). To the extent that they view local governments as analogs of closely held firms, some public choice theorists would apparently embrace municipal participation in contracts, as discussed in the following subsections.

But, insofar as municipalities fall prey to the pathologies described in the preceding pages, they could play at least three roles in contract negotiation that would be problematic from

36 Kennedy and Michelman (1980, 739–748) argue that even this assumption does not guarantee the Pareto efficiency of contract.
the public choice perspective. First, government officials could use contracts intentionally to maximize their own expected utility at the expense of residents' expected utility. Second, due to a lack of information, government officials might enter into contracts that they incorrectly believe will maximize expected utility. Third, to the extent that a municipality can reallocate legal entitlements, it can influence contract negotiations between other parties. If the resulting uncertainty stifles trade and results in foregone gains, it may be inherently inefficient from a neoclassical economic perspective (cf. Posner 2003, 93–98).37

The following subsections describe two forms of contract from the public choice perspective. The first subsection concerns development agreements, under which local governments promise to refrain from imposing additional regulations on specified property in exchange for payments or in-kind contributions from a developer. The second subsection addresses CBAs.

1. Development agreements

Development agreements are bilateral contracts between a local government and a developer, explicitly allowed under state legislation. Such agreements typically apply to large-scale, multi-stage projects, including central city redevelopment and suburban subdivisions. Under a development agreement, a local government exempts specified property from subsequent regulatory change in exchange for amenities or fiscal contributions from a developer. Because such agreements result from a putatively voluntary exchange between a government and a developer, at least one federal court has held that they are not subject to federal constitutional

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37 Kennedy and Michelman (1980, 744) contest such claims.
constraints on development exactions, which are mandatory in-kind or monetary contributions that local governments impose on developers.\textsuperscript{38}

Nevertheless, a brief discussion of exactions will help to explain the public choice analysis of development agreements. Because new development places additional demands on local public services, it typically imposes fiscal burdens on municipalities. These costs may exceed the local tax revenue from the new development (Been 2005, 143). To the extent that exactions make up the difference, even critics such as Ellickson (1977, 439) view them as efficient.\textsuperscript{39} In addition to advocating such exchanges, scholars such as Fischel (1987), who understand zoning as a collective property right, also endorse exactions exceeding the municipal costs of new development net of expected tax revenue. Under this view, exactions are generally efficient when they make the median voter indifferent to new development, regardless of the marginal financial burden imposed on the municipality. In either case, exactions may facilitate development that local governments would otherwise prohibit (Gyourko 1991), moving both the median local voter and the owner of developable land closer to the Pareto frontier.

To the extent that development agreements facilitate such exchanges, public choice adherents cautiously embrace them. For example, while Fischel (2005, 401) generally endorses mechanisms to facilitate the sale of zoning, including development agreements, he suggests that such agreements "can be cumbersome to negotiate ... and they have the disadvantage for a developer of obliging her to provide public benefits on a timetable that might turn out to be

\textsuperscript{38} Leroy Land Dev. v. Tahoe Reg'l Planning Agency, 939 F.2d 696 (9th Cir. 1991); see also Callies & Tappendorf (2001); Barclay (2011, 310).

\textsuperscript{39} Although acknowledging the efficiency potential of exactions, Ellickson deplores exactions that exceed the shortfall between the tax revenue generated by new development and the additional cost to the municipality. He contends that such exactions violate norms of horizontal equity by imposing costs on owners of undeveloped land for the benefit of current homeowners (Ellickson 1977, 438–440, 450–467). The homeowners association, Ellickson's preferred alternative to the municipality, poses no such risk to a non-resident landowner (who, in this case, will typically be the developer) (Ellickson 1982, 1544). But it is equally capable of imposing negative externalities on other outsiders.
unrealizable because of unanticipated future market conditions." (Fischel does not explain why uncertainty for the developer is inherently worse than uncertainty for the municipality, which the development agreement presumably reduces in direct proportion to the increase in the developer's uncertainty *(cf. D. Kennedy and Michelman 1980, 744).*)

More generally, public choice adherents worry that both exactions and development agreements could create incentives for a government to increase restrictions on development solely in order to improve its bargaining position (Fischel 2000, 412; *cf. Ellickson and Been 2005, 335.* (This concern has explicitly motivated Supreme Court decisions concerning exactions,40 which are discussed in Chapter Two (section IV.C.2.b.).) Notably, California adopted the first law explicitly permitting development agreements largely in response to developers' concerns that governments could increase the stringency of relevant regulations after a project had commenced (Holliman 1981, 45).41 (The ability of local governments to make such changes

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40 See, e.g., *Nollan v. California Coastal Commission*, 483 U.S. 825, 837-838 n. 5 (1987) ("One would expect that a regime in which this kind of leveraging of the police power is allowed would produce stringent land-use regulation which the State then waives to accomplish other purposes, leading to lesser realization of the land-use goals purportedly sought to be served than would result from more lenient (but nontradeable) development restrictions.")

varies depending on state law (cf. Ellickson and Been 2005, 202–209, 430–435; G. E. Frug and Barron 2008, 102, 212–213; Mandelker et al. 2011, 586–598). To the extent that increased regulatory restrictiveness results in foregone gains from trade, it is presumably undesirable from the public choice perspective.

Development agreements may also facilitate exchanges that do not advance residents' interests. An empirical study of development agreements in California suggests that, in some cases, when elected officials have been aware of residents' opposition to a project, they have used a development agreement specifically to stymie such opposition (Cowart and Kesmodel 1987, 42–44). (The two examples described by Cowart and Kesmodel involve county governments, which public choice theory predicts would be less responsive to voters than local governments, due to their larger size.) Another concern, less consistent with public choice theory, is that asymmetries in information or negotiating skill between developers and local government officials will result in deals that are detrimental to residents or that confer the lion's share of the resulting economic rent on developers (cf. Camacho 2005a, 50–53). (The economic rent in such cases would generally be the difference between the maximum that the developer would be willing to pay under the development agreement and the minimum that the government would accept.)

2. Community benefits agreements

Despite superficial consistency with the policy preferences of many public choice scholars, CBAs seem unlikely to appeal to most public choice adherents. Schleicher (2013, 1728) contends that CBAs resemble exactions and developments agreements, because they "allow authorize development agreements in urban areas, see, e.g., Va. Code Ann. § 15.2-2303.1 (West 2011) (authorizing development agreements only for New Kent County).

42 Although this concern is consistent with public choice theory, I have found no mention of it by public choice scholars.
neighborhoods or cities to effectively 'sell' the right to develop, as suggested in the work of Fischel and Nelson." To the extent that CBAs facilitate Pareto-optimizing transactions, they are clearly consistent with the normative goals of public choice. But, echoing Ellickson's (1977; 1980) concern about the negative externalities of exactions, Schleicher (2013, 1728) suggests that because the parties to a CBA "do not consider the full range of benefits and costs to the city or to society at large," the resulting agreement is "not necessarily efficient at the regional or citywide level."

This skepticism regarding the efficiency of CBAs may be exacerbated by concerns about representation. Such concerns stem from the interest group model of local politics, described above in sections III and IV.A. Schleicher (2013, 1729 n. 213), for example, expresses doubt that CBAs faithfully represent community concerns. Because developers enter CBAs in order to overcome legal or political opposition, Schleicher argues, the parties representing a community must be able to credibly threaten effective opposition. Such groups, he suggests, "track the underlying influence of interest groups in a city," and as a result, "CBAs have become loaded down with all sorts of requirements that have nothing to do with the direct effect of development on neighbors, but serve the goals of local power players" (Schleicher 2013, 1729 n. 213).

Another potential concern for public choice adherents is that many putative beneficiaries of CBAs are not property owners. In predominantly residential municipalities, homeowners will generally be the primary beneficiaries of exactions and development agreements. By contrast, homeownership rates in many areas surrounding large-scale urban redevelopment projects are far below the national average.43 In keeping with the postulates of neo-classical economics, public

43 As of 2000, 69% of all year-round housing units in suburban areas were owner occupied, compared with 45% in central cities (U.S. Census Bureau 2001, 30). Owner-occupancy rates in the Census tracts surrounding many of the projects described in Part Two are substantially lower than the overall rates for central cities. - 62 -
choice theorists generally assume that ownership of land is more conducive to responsible stewardship than other forms of tenure (cf. Ellickson 1993, 1327; Fischel 2001, 4–12). Harold Demsetz (1967, 355) succinctly summarizes the basic argument: "If a single person owns land, he will attempt to maximize its present value by taking into account alternative future time streams of benefits and costs and selecting that one which he believes will maximize the present value of his privately-owned land rights."

If this is accurate, then (consistent with Fischel's claims), one expects the provisions of a development agreement in a predominantly residential municipality to promote that municipality's long-term fiscal health. But, one would not necessarily have a similar expectation for a CBA in a large city. Notably, Schleicher's proposed alternative to CBAs relies on property tax rebates, which (as he acknowledges) would have little appeal for most renters (Schleicher 2013, 1725–1732). (As a result, he suggests that CBAs may be necessary to secure regulatory approvals when renters constitute an important constituency (Schleicher 2013, 1730).)

D. The built environment

Public choice entails a largely latent and somewhat conflicted theory of urban form. To the extent that public choice adherents explicitly address urban form, their goal is generally to reduce government's role in regulating it (cf. Ellickson 1977; Schleicher 2013, 1690 n. 69). But some of their preferred institutional mechanisms, such as business improvement districts, have morphological correlates. (Whether homeowners associations have consistently identifiable physical attributes is a more complicated question.) Public choice scholars rehearse the efficiency benefits of the jurisdictional fragmentation that begets geographic dispersal (cf. V. Ostrom, Tiebout, and Warren 1961; Bish 1971; Ellickson 1982, 1547–1554; Fischel 2001, 72–97), but also emphasize positive effect of density on agglomerative efficiency (cf. Ellickson
Thus, while public choice does not explicitly dictate urban form, its normative predilections imply particular visions of the built environment. These predilections also suggest an alternative framework for assessing the "public" or "private" nature of a CBA. To the extent that projects associated with CBAs correspond to the morphology of public choice, the underlying agreement may have a "private" valence, regardless of the identities of the formal parties.

The ideal metropolitan scale of public choice would appear to resemble existing U.S. metropolitan areas, although at somewhat higher densities (particularly in central cities). Public choice scholars' preference for decentralized governance militates in favor of a multiplicity of jurisdictions, as described above in sections II and IV.B.1, mirroring the legally fragmented metropolitan areas that currently exist in the U.S. Nevertheless, the enthusiasm of some public choice scholars for agglomerative efficiency militates in favor of somewhat denser suburbs and substantially denser central cities. (Suburbs do not necessarily vitiate metropolitan benefits of agglomeration (cf. Ellickson 1977, 443), but may do so if commute times exceed a certain threshold (Glaeser and Kohlhase 2003, 224–225).)

Although public choice scholars have offered few specific prescriptions concerning density, some of their claims are suggestive. Fischel (1999, 161), for example, indicates that "efficient suburban densities" range from roughly 4,000 to 7,000 persons per square mile. (As a point of reference for readers familiar with the Boston area, the 2010 density of Newton, Massachusetts was 4,774 persons per square mile (U.S. Census Bureau 2013b).) Efficient central city densities may be much higher. Hills and Schleicher (2011), for example, argue that New York City is insufficiently dense to maximize benefits from agglomeration, but they do not indicate an optimal level of density. Heller and Hills (2008, 1469) claim that "across America
today, urban land is often broken up into unusably small parcels," but they do not indicate the range of sizes (or allowable densities) of "usable" parcels. Schleicher (2013) also provides no specific prescription concerning density, but contends that "[e]stimates of the effect of doubling density on productivity have been all positive" (Schleicher 2013, 1691).

Other institutional arrangements consistent with the normative aspects of public choice can influence the form and function of urban open space. Where business improvement districts are partially responsible for the maintenance of sidewalks and public parks, observers suggest that increased security sanitizes these spaces in a manner that appeals to some users by excluding others (Loukaitou-Sideris and Ehrenfeucht 2009, 253; Donahue and Zeckhauser 2011, 176–185). Like business improvement districts, certain amenities required in exchange for density bonuses under incentive zoning regulations give landowners substantial control over the management of spaces open to the public. (Unlike business improvement districts, such arrangements confer substantial design control on the owners of the associated buildings, who also typically hold title to the relevant spaces.) Analyses of such privately owned public spaces in multiple cities suggest that they routinely exclude members of the public by dint of their design or management (Kayden 2000; Loukaitou-Sideris 1993; Loukaitou-Sideris and Banerjee 1993).44

The private homeowners association, championed by public choice scholars such as Ellickson and Nelson as an alternative to public government, presents a more ambiguous case. Although the demographic data concerning homeowners associations are quite limited, a 2007

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44 Loukaitou-Sideris et al. (2005, 152) indicate that such spaces are commonly oriented away from sidewalks and achieve additional separation through design features such as "enclosing walls, blank facades, distancing from the sidewalk, de-emphasis of street-level accesses, and entrances through parking structures." Kayden (2000, 54–55) indicates that such spaces in New York City have avoided many of these design problems following regulatory reforms in the mid-1970s, although property owners may manage even the post-reform spaces "in ways that [obscure their] 'publicness.'" Another study of such spaces in New York City finds that, although the spaces developed following the reforms are more "complex, aesthetically pleasing and amenity-filled ..., they also tend to be more restrictive of access to the space and acceptable behavior within the space, than their pre-reform counterparts" (Schmidt, Nemeth, and Botsford 2011, 271).
survey commissioned by an industry trade association suggests that homeowners association residents in the U.S. are more demographically homogenous than the national population as a whole.\footnote{The survey indicates that 18-26\% of homeowners association residents over the age of 18 were at least 65 years old, compared with 16.6\% of the national population; 85-93\% of homeowners association residents identified as White, compared with 75.7\% of the national population; and 53\%-61\% of households in homeowners associations had an annual income of at least $75,000, compared with 31.1\% of all households nationally (\textit{cf.} Vanno 2007, 3--5; U.S. Census Bureau 2007b; U.S. Census Bureau 2007c).} (Such a finding is consistent with differences between the national population and the subpopulation of homeowners (U.S. Census Bureau 2013a).)

Homeowners associations nevertheless provide opportunities for innovation in urban (or suburban) design (Ben-Joseph 2004), despite their anecdotal connection with stifling aesthetic uniformity (\textit{cf.} Blakely and Snyder 1997). For example, homeowners associations contain some of the most well known "New Urbanist" communities, which feature mixed-use development, sophisticated traffic-calming interventions, and urban design intended to promote civic engagement. As described in Chapter Two (section IV.D), New Urbanism has been cited with approval by communitarians such as Michael Sandel. (Ironically, although Sandel (1996, 332) laments "the secession of the affluent from the public sphere," he commends New Urbanist homeowners associations such as Seaside, Florida and Laguna West, California as examples of laudable civic aspirations (Sandel 1996, 335--336).)
Chapter Two
Communitarianism, Urban Governance, & Community Benefits Agreements

While public choice theory largely favors special purpose governments and small, homogenous polities serving functions analogous to private corporations, communitarian theorists deplore this ideal. Michael Sandel (1996, 332), for example, suggests that "[a]s affluent Americans increasingly buy their way out of reliance on public services, the formative, civic resources of American life diminish." Although the theories that I label "communitarian" are far from unified (and are often indistinguishable from civic republican political theory and neo-Aristotelian virtue ethics), they share important commonalities. Section I briefly describes several underlying ontological and ethical commitments, along with some epistemological correlates. Section II limns the communitarian vision of decentralization and discusses three critiques. Section III addresses communitarians' views of urban politics, and section IV details the application of communitarian theory to specific institutions of urban governance, including sub-local government, tax-exempt organizations, contracts, and the built environment.

I. The ontological, ethical, and epistemological assumptions of communitarian theory

Unlike public choice adherents, communitarians generally view politics as formative of morality, and they contend that the process of formation requires mixing of people on a basis other than voluntarism. For Sandel, this process is essential because rights – the foundation of liberal political theory – cannot "be identified and justified in a way that does not presuppose any particular conception of the good life" (Sandel 1998, x). Such a contingent conception of rights

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1 Buchanan and Tullock (1962, 303) arguably acknowledge as much, claiming that their embrace of the Pareto criterion flows from "the overriding ethical principle for Western liberal society," which – as noted in Chapter One – they identify as, "Love thy neighbor, but also let him alone when he desires to be let alone."
distinguishes communitarianism from many variants of classic liberal thought, including public choice theory.

This conception of rights is linked with a second distinguishing feature of communitarian thought - the inter-subjectivity of individuals. Sandel (1998, 150) describes the associated "constitutive conception" of community, in which "community describes not just what [members of a society] have as fellow citizens, but also what they are, not a relationship they choose (as in a voluntary association) but an attachment they discover, not merely an attribute but a constituent of their identity" (emphasis original). This ontology does not dictate a set of moral prescriptions, but it does require "some way of identifying those among whom the assets I bear are properly regarded as common, some way of seeing ourselves as mutually indebted and morally engaged to begin with" (Sandel 1984a, 90) (emphasis original). In this respect, Sandel suggests, communitarian ontology differs from the ontology of liberalism, under which all debts are voluntarily acquired.

A central problem of communitarian thought involves the claim to primacy for any particular conception of the good life and the associated set of rights. Michael Walzer (1983) suggests that, even in the U.S. (which he depicts as relatively conflictual), views concerning the appropriate distribution of work, prestige, and health care are widely shared. These "shared meanings," Walzer argues, delineate an emergent morality, albeit one that inevitably falls short of existing social practice. Instead of relying on efficiency criteria, Walzer (1983, 6) suggests that "different social goods ought to be distributed for different reasons, in accordance with different procedures, by different agents; and that all these differences derive from different

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2 See Chapter One, p. 23 n. 1.
understandings of the social goods themselves – the inevitable product of historical and cultural particularism."

Under this view, an efficiency standard such as the Pareto criterion may prescribe the distribution of some goods, in some places, at some times. But, Walzer suggests, such a standard does not have the universal validity sometimes implied by public choice theory. Indeed, it cannot, because the notion of voluntariness underlying the concept of allocative efficiency is itself historically and culturally contingent (cf. Walzer 1983, 10). (The contingency of communitarian conceptions of the good life also militates against an embrace of the kind of deontological social contract posited by John Rawls (Sandel 1998, 104–132; Walzer 1983, 79; cf. Rawls 1971, chap. 2–3.).)

The communitarian objection to efficiency standards has a close corollary in critical theorists' concern with reification. The process of reification transforms "the products of an organic process within a community (as for example in a village community) [into] ... on the one hand, ... abstract members of a species identical by definition with its other members and, on the other hand, ... isolated objects the possession or non-possession of which depends on rational calculations" (Lukács 1971, 91). In the absence of unique communal meaning, uniform efficiency standards such as the Pareto criterion become necessary for ordering these "abstract members" and assigning possession to these "isolated objects." But this process of abstraction and isolation produces alienation and anomie. Lukács suggests that reification is pervasive, resulting in the objectification not only of physical entities, but of concepts as well. The public/private distinction, viewed through this lens, is just such a reified abstraction (cf. G. E. Frug 1980; Gabel 1980).

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3 Sandel (1998, xi), notably, deems this principle "insufficient," contending instead that "rights depend for their justification on the moral importance of the ends they serve."
Because of their commitment to cultural contingency, communitarian theorists tend to abjure descriptive assumptions, frequently preferring instead something akin to anthropological holism (cf. Taylor 1985, 15–57). Despite these more or less explicit epistemological and methodological commitments, much communitarian thought does seem to entail at least one assumption, albeit one that resists categorization as descriptive or prescriptive. This assumption is that greater equalization of decision-making power is generally desirable. (It is the subject of the public choice critique of communitarianism, described below in section II.B.2.) For some communitarians, such as Michael Sandel, this assumption seems directly tied to ontology, inasmuch as such equalization would bring the outer world into closer alignment with our inner life.

II. Decentralization as reconstruction of the public realm

Like public choice theorists, communitarians tend to valorize the decentralization of political power. But their reasons and mechanisms for doing so differ substantially from those of public choice adherents. For communitarians, open dialogue is essential to the ongoing project of defining the good life or the public interest (cf. Walzer 1983, 300; Sandel 1996, 321–324). Such dialogue both depends on existing communal ties and facilitates individual development of a coherent sense of self (cf. Walzer 1983, 17–30; Sandel 1996, 317–321).4 These concerns, rather than the voluntarism of the Pareto standard, are paramount for many communitarians.

The communitarian project might be described as a reconstruction of the public realm. It entails the reconfiguration of institutions with the explicit goal of combating alienation and anomie by fostering participation and collaboration in decision-making. Like public choice theorists, communitarians tend to favor decentralization, although for reasons and through

4 In these respects, and in its ontological assertion of inter-subjectivity, much communitarian theory partially overlaps with the political theory of Jürgen Habermas (cf. Benhabib 1992, 68–88; Habermas 1994).
mechanisms largely inimical to public choice theory. Section II.A describes the rationale for decentralization in communitarian theory and the role of land-use regulation in this decentralizing project. Section II.B discusses critiques based on feminist and public choice theory.

A. The logic of decentralization in communitarian theory

The communitarian reconstruction of the public realm is closely connected with decentralization. Local government could be uniquely suited to formative political engagement, by dint of its relatively small scale, coupled with its capacity to foster connections on non-economic grounds (and for reasons other than elective affinity) (cf. Walzer 1983, 300; Sandel 1996, 117, 314; G. E. Frug 1999, 20–21, 115–117). Alienation and anomie are the primary concerns of much communitarian thought. In order to combat these pathologies, a number of communitarian theorists advocate the cultivation of alternatives to hierarchy and bureaucracy. The model forum is more reminiscent of the Aristotelian polis or the Tocquevillian town meeting than the contemporary U.S. municipality (cf. G. E. Frug 1980, 1068 n. 33, 1073 n. 60; Sandel 1996, 319–320).

As Sandel (1984b, 17) explains, "communitarians worry about the concentration of power in both the corporate economy and the bureaucratic state, and the erosion of those intermediate forms of community that have at times sustained a more vital public life." As a result of this concentration of power:

[W]e find ourselves implicated willy-nilly in a formidable array of dependencies and expectations we did not choose and increasingly reject. In our public life, we are ... less liberated than disempowered, entangled in a network of obligations and involvements unassociated with any act of will, and yet unmmediated by those common identifications or expansive self-definitions that would make them tolerable. As the scale of social and political organization has become more comprehensive, the terms of our collective identity have become more fragmented,
and the forms of political life have outrun the common purpose needed to sustain them. (Sandel 1984a, 94–95)

From a communitarian perspective, institutions fostering greater public participation in decision-making are highly desirable, but such participation will occur only if it can affect issues of importance to potential participants. (The latter requirement is a necessary, rather than a sufficient condition.) Decentralization, in this view, entails giving some power to every individual who stands to be affected by a given decision. (In this respect, communitarianism overlaps with approaches to negotiation influential in contemporary urban planning (cf. Susskind and Cruikshank 1987; Forester 1989; Innes and Booher 2010).)

This perspective denies the desirability of decentralization in the Tiebout mode, which effectively disenfranchises those who reside outside a municipality and cannot afford to enter. Citing the decline of urban public schools and the growth of private security services, Sandel (1996, 332) laments that "market forces, under conditions of inequality, erode those aspects of community life that bring rich and poor together in public places and pursuits." As Frug (1999, 170–171) observes, the Tiebout conception of city services facilitates this erosion even without formal assignment of government tasks to business firms: "the current feel of a prosperous suburban high school more closely resembles that of a private school than that of a central-city high school. Its 'exclusive' quality is simply maintained through zoning rather than an admissions office. Similarly, many suburban police forces perform work more like that of security guards than like that of a major city's police department."

This aversion to Tiebout ordering militates in favor of institutional forms that undermine the equation of local political participation with property ownership. Whether or not this equation improves intra-municipal political participation (as Fischel suggests), Walzer (1983, 295) contends that ownership is not "an acceptable basis for political power within cities and
towns." This is because residential proximity creates a political community, which "the power of property" undermines (Walzer 1983, 300). Such a community need not be the mechanism for efficient collective action posited by public choice, but must be "a common enterprise, a public place where we argue together over the public interest, where we decide on goals and debate acceptable risks" (Walzer 1983, 300). Walzer argues that allocating voice according to property will result in exclusion that is inimical to such an enterprise.5

In order to foster the creation of places to "argue together," communitarian theorists have embraced a variety of decentralizing institutions, described below in sections III and IV. Invoking Tocqueville and echoing Hannah Arendt (1958, 52–53), Sandel (1996, 320) applauds "institutions that gather people together in various capacities that both separate and relate them." It is possible to interpret this valediction as advocating the kind of Tieboutian institutions that Sandel clearly deplores. After all, the stereotypical affluent residential suburb gathers people together in shared pursuit of home-value maximization (in Fischel's view), frequently resulting in collaboration around education and, perhaps, other civic projects. It separates residents from each other (by virtue of large lots and, sometimes, gates) and from residents of surrounding municipalities (via the legal boundaries central to the Tiebout model). But these versions of togetherness and separation are anathema to Sandel.

Unlike the Tiebout institutions that produce separation and relation based on the ability to pay for the former, Sandel seeks institutions that entail some form of what a public choice adherent would likely call coercion. (From a communitarian perspective, the Tiebout model may be no less coercive, inasmuch as it imposes uncompensated negative externalities on some

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5 Although it is not entirely clear, Walzer seems to focus on intra-local, rather than inter-local, politics. Tiebout mobility does not eliminate the possibility of significant intra-local income heterogeneity, particularly in growing central cities, in part because of the agglomeration economies discussed above in Chapter One (section III).
residents of a metropolitan area and may compel all to behave as individualistic consumers of
institutions of separation and relation could contribute to "civic education," by enabling people
"of all classes [to] mix and learn the habits of democratic citizenship." For Sandel (1996, 320),
"civic education" entails the "cultivat[ion] not only [of] commonality but also the independence
and judgment to deliberate well about the common good." This process of defining the self and
society via political action also resonates in Hannah Arendt's (1963, 118–140) invocation of
"public freedom" (cf. G. E. Frug 1999, 20–21). (Unlike Arendt, many communitarian theorists
do not emphasize the agonistic aspects of this process, although none would likely deny that
conflict inheres in political action.) For communitarians, reconstruction of the public realm via
decentralization entails the cultivation of individual and social definition through political action.

B. Critiques of decentralization as reconstruction of the public realm

Just as public choice theory has been subject to vigorous criticism, so too has the corpus
of communitarian thought. The following subsections limn three prominent critiques. The first
critique, based on feminist theory, suggests that communitarianism may perpetuate longstanding
forms of oppression and domination. The second critique, based on the value-monism
undergirding most utilitarian theory, suggests that the value-pluralism of communitarian theory
results in a form of indeterminacy that is incompatible with normative ethical theory. The third
critique, based on public choice theory, suggests that communitarian institutions will skew
individual incentives, producing political tyranny and economic stagnation.

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6 Michael Walzer (1985, 33–34) seems to have something similar in mind when he suggests that the most effective
social criticism comes from "the connected critic, who earns his authority, or fails to do so, by arguing with his
fellows .... Perhaps he has traveled and studied abroad, but his appeal is to local or localized principles; if he has
picked up new ideas on his travels, he tries to connect them to the local culture, building on his own intimate
knowledge; he is not intellectually detached. Nor is he emotionally detached; he doesn't wish the natives well, he
seeks the success of their common enterprise."
1. Feminist critiques

Feminist critiques of communitarian theory suggest that concepts such as "civic virtue" draw on traditions and mechanisms of oppression. Amy Gutmann (1985, 318–319) expounds a variant of these critiques, citing Sandel's (1984b, 17) contention that because "intolerance flourishes most where forms of life are dislocated, roots unsettled, traditions undone ... our most pressing moral and political project is to revitalize those civic republican possibilities implicit in our tradition but fading in our time." Gutmann assumes that Sandel is not advocating a return to "the mainstream of our tradition that excluded women and minorities, and repressed most significant deviations from white, Protestant morality in the name of the common good." But she suggests that the enforcement of liberal rights – the wellspring of alienation in Sandel's view – is the sole bulwark against such exclusion. Sections III and IV, below, describe institutional arrangements that seem, at least in part, intended to assuage this concern.

2. The value-monist critique

The value-monist critique of communitarian theories suggests that such theories cannot provide a basis for policy prescription because they acknowledge plural values. "Commonsensically," Elinor Mason (2011) explains, "we talk about lots of different values –

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7 Iris Young advances a different variant, indicating that just as the public/private distinction can serve as a mechanism of domination, so too can the conceptual bifurcation of individual and community. Young contends that – far from undermining liberalism – communitarianism reinforces it. "The opposition between individualism and community," she argues, "is homologous with and often implies the oppositions masculine/feminine, public/private, calculative/affective, instrumental/aesthetic, which ... arise from and belong to bourgeois culture ... [and] capitalist patriarchal society" (Young 1986, 7). Contemporary communitarian thought, however, generally denies this dualism. Sandel (1998, 150), for example, contends that members of a society are "defined to some extent by the community of which they are part" (emphasis added). This is hardly a strong defense of a community/individual dichotomy. Indeed, Sandel's ontology is irreconcilable with the public/private distinction itself, because "[a]llowing constitutive possibilities where 'private' ends are at stake would seem unavoidably to allow at least the possibility that 'public' ends could be constitutive as well" (Sandel 1998, 182).

8 In a similar vein, Iris Young (1986, 12–13) notes, "Racism, ethnic chauvinism, and class devaluation ... grow partly from a desire for community; that is, from the desire to understand others as they understand themselves and from the desire to be understood by I understand myself. Practically speaking, such mutual understanding can be approximated only within a homogeneous group that defines itself by common attributes. Such common identification, however, entails reference also to those excluded."
happiness, liberty, friendship, and so on. The question about pluralism in moral theory is whether these apparently different values are all reducible to one super value, or whether we should think that there are several distinct values." As described in Chapter One (section I), utilitarian theory typically posits one "super value" – utility. Utilitarian theories thus commonly prescribe policies that maximize welfare (defined as the sum of utilities), although problems including the interpersonal incommensurability of utility make this approach theoretically indefensible as an ideal (M. D. Adler and Posner 2006, 9–24). Communitarian theories, by contrast, generally acknowledge the possibility of multiple, incommensurable values (e.g., Taylor 1985, 230–247), leaving such theories open to the critique that they provide no decision procedure for choosing among different policies.

When communitarian theorists address this critique, they typically acknowledge its accuracy but suggest that – as a practical matter – utilitarianism does not fare any better in this regard. The utilitarian commitment to value-monism, Bernard Williams (1973, 137) argues, places "enormous demands on supposed empirical information, about peoples' preferences, and that information is not only largely unavailable, but shrouded in conceptual difficulty." Utilitarianism, under this view, avoids moral ambiguity at the cost of technical difficulty (if not impossibility).

3. Public choice critiques

Public choice critiques suggest that political theories emphasizing democratic participation (such as communitarianism) generally fail to account for the incentive and information problems that public choice emphasizes (cf. Posner 2005, 199 n. 101; Fischel 2009, 119; O'Hare, Bacow, and Sanderson 1983, 28). These problems, detailed in Chapter One,

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9 Nevertheless, utilitarian theory may not be intrinsically value-monist (Mason 2011, n. 3).
include the creation of monopolies or oligopolies by regulatory fiat, domination by interest
groups with the incentives and resources to monitor government decision-making, and the
ostensible propensity of bureaucracies to consume increasing resources regardless of the
marginal impact on social welfare. Public choice theorists such as James Buchanan (1999, 216–
221) contend that, without the safeguards of property and contract, such problems invariably lead
to forms of domination that many communitarians would likely deplore.

Michael Walzer articulates one response, suggesting that communitarian thinking can
provide a valuable corrective to liberalism (including its more libertarian variants, such as public
choice), precisely because liberal values are predominant. Walzer (1990, 15) argues that the
communitarian critique can teach the "separated, rights-bearing, voluntarily associating, freely
speaking, liberal" individuals who populate the modern world "to know themselves as social
beings, the historical products of, and in part the embodiments of, liberal values." The
"communitarian correction of liberalism," he contends, "cannot be anything other than a selective
reinforcement of those same values" (Walzer 1990, 15).

William Simon advances a related response, suggesting that communitarian institutions
can soften some of the harsh consequences of liberalism without inevitably devolving into
tyranny:

The liberal public sphere is in principle a realm of equality and participation; the
liberal private sphere is in principle a realm of contract in which people with
unequal endowments exchange productive efforts for consumption benefits....
[T]his structure subverts democracy in two ways. The wealthy can translate the
resources acquired in the private sphere into power in the public sphere in ways
that undermine equality and participation. At the same time, in the private sphere
of work (and to a more ambiguous extent, the sphere of consumption) the
nonwealthy are forced into experiences of dependence ... and alienation ... that
preclude personal and political autonomy. (W. H. Simon 1991, 1339)
Simon (1991, 1388) concedes that institutions fostering equality and participation typically thwart Pareto-efficient exchange. He suggests, however, that unmediated negative liberty of the sort espoused by Buchanan and Tullock can hamper productivity and can conflict with other important forms of freedom. This claim resonates with the "capabilities" approach to development articulated by Amartya Sen (1985; 1992; 1999; 2005) and Martha Nussbaum (2000; 2006; 2011), which focuses on the opportunities available to people and the conditions necessary for fostering such opportunities (cf. Dewey 1927). For reasons discussed in Chapter One (section II.B), negative liberties alone may be generally inadequate to such a task. But, as discussed in the following subsection, the communitarian response largely neglects the concerns about incentives and information that undergird much public choice analysis.

III. Urban governance in communitarian theory

Much communitarian thought is tinged by nostalgia for the Aristotelian polis or the Tocquevillian town meeting; it deplores the institutional arrangements associated with the de facto segregation of metropolitan areas, while expressing (measured) optimism concerning the future. Although many accounts indicate that the forces of urbanization undermined earlier approximations of the communitarian ideal, theorists with communitarian aspirations commonly valorize large cities. Instead of denying this irony, such scholars suggest that it helps to explain the challenge of promoting forms of governance more consistent with communitarian ideals.

The ideal of the Athenian polis looms large in communitarian thought. Sandel (1996, 7), for example, quotes Aristotle's description of the polis to support his claim that "only as participants in political association [can we] realize our nature and fulfill our highest ends." Benjamin Barber (2003, 118) suggests that his communitarian vision of "[s]trong democracy has
a good deal in common with the classical democratic theory of the ancient Greek polis, but it is in no sense identical with that theory[,] [and it] also shares much with ... liberal democracy."

Barber's invocation of liberal democracy points to another lodestar of communitarian thought – the New England town meeting as described by Tocqueville. Sandel (1996, 27) (quoting Tocqueville), contends that this institution brought liberty "within the people's reach, [by] teach[ing] men how to use and how to enjoy it." According to Sandel, the town meeting embodied a republican ideal of decentralization mediated by institutions. This ideal, he suggests, has been supplanted by the radical individualism of rights-based negative liberty. Empirical accounts suggest that, far from serving as exemplars of Sandel's civic aspirations, contemporary New England town meetings are sparsely attended events, where participation routinely devolves into petty squabbles. 10 Equally significantly, from the communitarian perspective, the contemporary town meeting can accommodate only the residents of a town, reflecting the exclusion associated with jurisdictional fragmentation. As a result, even if town meetings could be reconstituted to approximate the Tocquevillian ideal (or Sandel's interpretation of that ideal), few could serve as sites of socio-economic mixing. In the Boston area, for example, municipalities with the town meeting form of government are relatively small and – on average – relatively wealthy. 11

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10 Based on her study of a rural Vermont town, Jane Mansbridge (1983, 126–135) suggests that technological change, migration, and state encroachments on local legal power have largely eroded the educative value of the town meeting. Morris Fiorina (1999) describes the sparse attendance and acrimony of town meetings in suburban Massachusetts, attributing this state of affairs to the high opportunity costs of participation for most residents. William Fischel's (2001, 9–12) account of zoning politics in a New Hampshire town largely echoes Fiorina's tale. Fischel, however, is more sanguine, precisely because he views both the rancor and paucity of participants as evidence of the market forces that he celebrates, but which Sandel and other communitarians bemoan.

11 In a sample of 144 Boston-area municipalities (excluding Boston itself), the 2000 mean population for the 112 jurisdictions with a town meeting form of government was 16,934. The mean of the median household incomes for these jurisdictions was $75,201. For the other 32 jurisdictions in the sample, the mean population was 50,190 and the mean of the median household incomes was $51,208. (For a more detailed description of the sample, see Fisher (2013).)
At least superficially, it is not clear why the central city should constitute a viable alternative. The changes in social and geographic mobility that, according to Jane Mansbridge (1983), undermined small-scale forms of governance such as the town meeting also contributed to the rise of the central city. In the formulation of early urban sociologists such as Georg Simmel (1950, 409–424) and Louis Wirth (1938), the modern city combines physical proximity with social distance. Contemporary empirical studies of political participation and social interaction in central cities are somewhat consistent with these accounts. J. Eric Oliver (2000), for example, indicates that civic involvement decreases as jurisdictional size increases, due both to the effects of density on social relations and the psychological orientation of central city residents.

Nevertheless, scholars with communitarian inclinations generally view central cities as potentially promising sites for the reconstruction of the public realm. Michael Walzer (1986, 470) indicates that this is the case, in part, because communitarian politics requires "public spaces in which a common life can be enacted – and such spaces are available only in cities." Although Walzer does not explain why such spaces are confined to cities, part of the answer seems to be that the largest central cities are far more demographically heterogeneous than most municipalities in the U.S. Such diversity is a prerequisite for the kind of simultaneous separation and relation that Sandel (1996, 320) valorizes (cf. G. E. Frug 1999, 126–129).

Economic heterogeneity, moreover, is essential for the redistributive agenda associated with much contemporary communitarian thought. To the extent that large central cities acquire unique advantages by dint of agglomeration economies, they are less subject to the threat of exit than other municipalities and can advance redistributive agendas (cf. Been 1991; Gillette 2007; R. C. Schragger 2009; 2010). While central cities are large in comparison with other
municipalities, they are small in comparison with the national government, which is the primary locus of redistributive policy in the U.S. (Peterson 1995, 67–69). Moreover, the connection between property ownership and political voice may be relatively attenuated in large central cities, where renters generally constitute a larger share of the population (U.S. Census Bureau 2001, 30, Fig. 7–1). Dissolving this bond is crucial for the functioning of Walzer's (1983, 300) "common enterprise" and the cultivation of Sandel's (1996, 329–333) "civic virtue."

Notwithstanding these features, few (if any) communitarians would defend central cities as currently constituted. The most optimistic assessments, such as Sandel's (1996, 333), identify only "gestures" towards the cultivation of communitarian ideals in central cities. The following section describes some of the institutions that communitarian theorists have embraced and, in the process, it articulates some questions about CBAs that communitarian theory raises.

Before describing such institutions in detail, however, it is important to highlight three related aspects of communitarian theory that limit its contribution to clear hypotheses concerning urban governance and militate against application of the scientific method to social problems. (Chapter Three returns to this issue in greater detail.) First, the social-scientific dimension of communitarian thought entails an epistemology that eschews the formation and testing of falsifiable hypotheses in favor of less formal interpretive approaches (cf. Taylor 1985, 15–57; Barber 2003, 46–66). Second, communitarian theorists rarely detail how their preferred institutional arrangements would avoid devolution into what (from a liberal perspective) appears to be tyranny or corruption, relying instead on hope that the virtue instilled by communitarian institutions will obviate negative liberties while combating alienation and anomie (cf. Barber 2003, 158–160; Sandel 1996, 349–351). Third, the epistemological aversion to causal claims or
theories contributes to definitional problems, perhaps most clearly illustrated by reference to the concept of corruption.

Despite its pivotal position in debates about the governance of central cities, corruption has no clear meaning or position in communitarian thought. Although this omission parallels the ambiguous nature of rent-seeking in public choice theory, described in Chapter One (section II.B.2), it derives from a very different source, as it reflects a suspicion of utilitarian analysis and an ambivalence towards economic activity that are foundational to communitarianism. The depersonalization inherent in market exchange constitutes a core communitarian concern, and it is one reason that communitarians are not necessarily disturbed by impediments to allocative efficiency. But, none of the communitarian theorists discussed here advocate a complete rejection of markets, although they all view non-market redistribution as an essential component of widely shared economic security. (Such security is itself a prerequisite for a functioning common enterprise, the cultivation of civic virtue, or the exercise of public freedom.) Nor would any of these theorists likely deny that individuals frequently pursue economic rents to the detriment of others, whether or not markets are legally permitted.

By virtue of their ontological or epistemological orientation, however, these theorists have provided no clear criteria or mechanism for distinguishing the politically productive redistribution of resources from corrupt rent-seeking. Walzer (1983, 120), for example, concedes that "communal provision can encroach upon the market ... at least sometimes; certainly there are real conflicts here. And hard practical choices: for if the constraints and limits are too severe, productivity may fall, and then there will be less room for the social recognition of needs." But,
apart from the ambiguous reference to "productivity," he does not suggest how to evaluate the economic effects of the "constraints and limits" on exchange and accumulation.\textsuperscript{12}

Regulating the distribution of economic rents is a fundamental attribute of governance wherever exchange relations exist, and communitarian institutions would maintain some exchange relations. Communitarian theorists, however, do not provide a clear alternative to economic theory for analyzing the likely consequences of the distribution of economic rents under their proposed institutions. To the extent that communitarian thought is intended as a critique or a means of resistance, rather than a positive program for institutional design, this lacuna may be unproblematic. But, as the following section explains, the ambiguous position of incentives in communitarian thought clouds the positive program of communitarian urban governance, suggesting that the kind of empirical analysis presented in Part Two may be valuable in assessing the prospects for incremental implementation of institutions intended to advance communitarian goals.

IV. Communitarian governance mechanisms for large cities

Communitarian governance mechanisms typically attempt to promote resource redistribution, socio-economic integration, participation, and economic development. This section describes the relationship to the communitarian agenda of four urban governance mechanisms: sublocal government; tax-exempt organizations (including political parties, community development corporations, community organizing groups, and labor unions); contractual agreements; and the form of the built environment. All of these governance

\textsuperscript{12} Notably, although economic theory and statistical analysis provide a means for assessing the relationship between productivity and constraints on accumulation and exchange, they do not offer a definitive answer (cf. Diamond and Saez 2011; Mankiw 2013).
mechanisms fit uneasily in communitarian theory, as they represent attempts to harness liberal institutions in pursuit of communitarian ideals.

A. Sublocal government

From a communitarian perspective, sublocal government has obvious theoretical appeal. While state laws place extensive restrictions on the self-governance of central cities (G. E. Frug and Barron 2008), a number of cities have delegated some of this limited decision-making authority to neighborhood governments (Berry, Portney, and Thomson 1993). Such delegations might promote activities central to the communitarian project: character-forming collaboration and deliberation, the development of attachments and commitments, and the application of local knowledge to problems of community concern (cf. Kotler 1969; Morris and Hess 1975; Berry, Portney, and Thomson 1993; Fung 2004). But they could also fall prey to the same problems of parochialism, exclusion, and bureaucratization that have accompanied metropolitan fragmentation, or they could generate associations too pedestrian to foster enduring engagement (Yates 1973; Crenson 1983). New York City and Los Angeles, the two cities discussed in Part Two, have both attempted to decentralize some decisions to formally organized sublocal government entities.

New York City is divided in to fifty-nine community districts, each with an appointed community board. Since 1975, the community boards have been responsible for articulating budget priorities, monitoring the administration of city services, and providing recommendations concerning discretionary land-use approvals (Pecorella 1994, 126–136). Of these three responsibilities, this last may confer the most power on community boards (Fowler 1980; S. S. Fainstein and Fainstein 1991; Pecorella 1994, 138–150). Despite the potential for community

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13 N.Y. City Charter §§ 196, 197-c.
control to foster democratic participation, however, the degree of empowerment appears to
depend on socio-economic variables and the exercise of power often does not resemble an
expression of communitarian civic virtue.

Robert Pecorella's (1994) study of the community boards indicates that, in many
instances, the boards' advisory votes on land-use matters may give them substantial power.
Pecorella documents, however, that their efficacy and their members' sense of empowerment
with respect to land-use decisions varies depending on race and income (Pecorella 1994, 138–
150, 170–179).14 According to a 1988 report to the Mayor by the New York City Bar
Association, community boards had been able to secure amenities from developers only "in
Manhattan and to some extent in Queens" (The Special Committee on the Role of Amenities in
the Land Use Process 1988, 12). Jason Corburn et al. (2006) provide evidence of the continuing
disproportionate exposure to environmentally harmful land uses borne by communities of color
in New York City. Pecorella (1994, 150) notes that some projects circumvent community board
review through the use of non-profit entities exempt from the city's Uniform Land-Use Review
Procedure. Similar practices have continued for the siting of both economic development
projects and environmentally hazardous facilities (cf. Been et al. 2010, 7–8; Conte 2011;
Goldstein 2011).

In 1999, voters in the City of Los Angeles approved a new charter, creating advisory
neighborhood councils for self-defined subdivisions of the city (Sonenshein 2006, 169–175). As
of 2004, the city had certified eighty-five councils covering over three quarters of the population

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14 Pecorella conducted a survey of community board members addressing their attitudes concerning community
empowerment. On the relevant scale, a score of zero indicates "complete acceptance of the current system," and a
score of one indicates "total rejection of that system." African American respondents, on average, gave the land-use
approvals system a score of 0.79; White respondents, on average, gave that system a score of 0.54 (Pecorella 1994,
178, Table 7.3).
Although the Los Angeles neighborhood government system was informed by its New York City counterpart (Sonenshein 2004, 131-146), the neighborhood councils of Los Angeles have a more ambiguous set of responsibilities than New York's community boards. Based on a ten-year longitudinal study, Juliet Musso et al. (2011) indicate that this murky mandate, combined with resistance from city officials, has impaired the functioning of the neighborhood councils. Government officials have routinely disregarded the products of neighborhood council deliberations, and a survey indicated that mid-level departmental administrators viewed homeowner groups as more important sources of information and priorities (Musso et al. 2011, 105).

It is not clear, moreover, that city policy would change even if officials showed more solicitude for neighborhood councils than homeowners groups. The board members of the neighborhood councils "are disproportionately white, highly educated, and wealthy homeowners" (Musso et al. 2011, 106). Such compositional biases "clearly skew the substantive representativeness and the perceived legitimacy of neighborhood councils" (Musso et al. 2011, 106), suggesting that the priorities of neighborhood councils might be indistinguishable from those of homeowner groups. Given city officials' lack of solicitude for the neighborhood councils, it is perhaps unsurprising that the latter "appear to be developing more adversarial as opposed to deliberative relationships with the city [government]" (Musso et al. 2011, 107).

Both communitarian and public choice theory might predict such problems. From a communitarian perspective, the constraints that state and federal law impose on municipal
government may thwart efforts to foster self-governance at the local or sub-local level (G. E. Frug 1980). From a public choice perspective, the dominance of educated property owners may be unsurprising, inasmuch as such individuals have strong, clear incentives to monitor local decision-making, are geographically concentrated (facilitating collective action), and (by dint of wealth and education) have the resources to promote their interests (cf. Olson 1971; Fischel 2001).

B. Tax-exempt organizations

Although efforts to promote formal government decentralization have, at least in New York and Los Angeles, fallen short of communitarian goals, some communitarian theorists have pinned their hopes on a variety of non-governmental organizations. Perhaps because such mediating institutions may have the potential to promote desirable modes of association, they enjoy various forms of tax-exemption under state and federal law.\(^\text{16}\) Subsection B.1 discusses local political parties and other similar organizations. These groups are rarely exemplars of communitarian ideals, and they have received little attention in contemporary communitarian theory. But, as described in Part Two, they can play an important role in the negotiation of CBAs. Subsection B.2 discusses community development corporations. Such corporations have been involved in the negotiation and implementation of several CBAs discussed in Part Two, and they occupy a more ambiguous position than political organizations in contemporary communitarian thought. Subsection B.3 describes community organizing groups that have drawn inspiration from the work of Saul Alinsky (1946; 1965; 1971). These groups espouse a number of communitarian ideals, and their strategies (including CBAs) point to the challenges of pursuing communitarian goals through liberal political and economic institutions. Subsection B.4

\(^\text{16}\) See 26 U.S.C. § 501 (Exemption from tax on corporations, certain trusts, etc.); ibid., § 527 (Political organizations).
briefly discusses labor unions. These organizations have attracted substantial attention from both communitarian and public choice scholars, and they have played a significant role in the negotiation of CBAs.

1. Political organizations

Political parties and other organizations serving similar functions occupy an ambiguous place in communitarian theory. Although such organizations could play a crucial role in stimulating connection, commitment, and character formation, they are more typically associated with the pursuit of narrow self-interest. A distinction drawn by Alexis de Tocqueville helps to illustrate the theoretical promise and practical threat of political organizations to communitarian ideals. Although Tocqueville (1988, 174) contends that parties "are an evil inherent in free governments," he suggests that "they do not always have the same character and the same instincts." In Tocqueville's formulation, some political organizations may be more conducive to communitarian goals than others:

Great political parties ... are those more attached to principles than to consequences, to generalities rather than to particular cases, to ideas rather than to personalities. Such parties generally have nobler features, more generous passions, more real convictions, and a bolder and more open look than others. Private interest, which always plays the greatest part in political passions, is there more skillfully concealed beneath the veil of public interest; sometimes it even passes unobserved by those whom it prompts and stirs to action.

On the other hand, small parties are generally without political faith. As they are not elevated and sustained by lofty purposes, the selfishness of their character is openly displayed in all their actions. They glow with a factitious zeal; their language is violent, but their progress is timid and uncertain. (Tocqueville 1988, 175)

Tocqueville indicates that the "great political parties" had vanished from the U.S. by the middle of the nineteenth century, resulting in "a great gain in happiness but not in morality" (Tocqueville 1988, 175). Because they foster moral education and passionate conviction, even at
the expense of widespread happiness, the "great political parties" have much in common with the ideal institutions of communitarian theory.

Many contemporary urban political parties, however, may more closely resemble Tocqueville's "small parties." Depending on the size of the local budget and the levers of control over that budget, urban political office can provide substantial opportunities for patronage and individual enrichment. Parties may serve to allocate these opportunities. These are the political organizations of public choice, in which party members "act solely in order to attain the income, prestige, and power which come from being in office ... [and] treat policies purely as a means to the attainment of their private ends" (Downs 1957, 28).

In cities with partisan elections, a dominant political party can effectively decide most local elections during a primary election, resulting in uncompetitive general elections. In New York City, for example, only two of the 209 general election city council races from 1997 through 2007 were decided by a margin of less than 10%.17 Because Democrats continuously held forty-five of the council's fifty-one seats during this period, Democratic Party primary elections effectively determined the vast majority of council seats. Each of New York City's five boroughs has a president, whose authority is primarily advisory,18 and these borough presidencies have also frequently been determined by party primaries (J. H. Mollenkopf 1992, chap. 4-5).

In New York, the party nominating process can provide avenues of influence for the county party organizations over city council members and borough presidents (J. H. Mollenkopf 1992, 76–96, 121–122; J. H. Mollenkopf et al. 2008, 3). (Each borough is coextensive with a

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17 Calculated using data from New York City Board of Elections and Kraus (2006). The count of 209 includes "races" where only one city council candidate appeared on the general election ballot.

18 See N.Y. City Charter § 82.
For their preferred candidates, party organization leaders provide access to campaign donors, marshal endorsements, guide candidates through New York's relatively convoluted ballot access process, and help to challenge the ballot access petitions of other prospective primary candidates (New York State Commission on Government Integrity 1991, 311–312; Office of Attorney General Eliot Spitzer 2001, 21; Goldfeder 2012, 51). In exchange for this support, candidates may channel some of their campaign contributions back to party leaders (or their associates) in the form of consulting fees or appointed offices (Barrett 2003; Wolf 2004; T. Robbins 2006; 2008). When the mayor seeks support for specific policies in the city council or from a borough president, party leaders can provide assistance. In return, they may receive favorable decisions from the local executive branch concerning contracts, political appointments, and policy changes (J. H. Mollenkopf 1992, 97). Such decisions are the kind of currency that George Washington Plunkitt, a skilled trader in this coin, famously described as "honest graft" (Riordon 1905, 3–4). Part Two details the opportunities that CBAs have presented for such transactions.

In cities with non-partisan elections, by contrast, no similar role exists for local political parties. In the City of Los Angeles, for example, all candidates for an office compete in a single primary election, regardless of party affiliation. A candidate for city council who receives more than fifty percent of the votes in her district is elected to office, avoiding a general election contest. If no candidate receives a majority of the primary vote, the two candidates receiving the most votes advance to the general election.

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21 L.A. City Charter § 425(b) (Am. Leg. 2012); L.A. Elec. Code § 108(b) (2012). Assessing whether non-partisan elections have increased electoral competition in Los Angeles exceeds the scope of this dissertation, and evidence concerning local elections elsewhere indicates that non-partisan elections depress turnout and increase incumbency advantages (Schaffner, Streb, and Wright 2001). Nevertheless, the correlational evidence is somewhat suggestive.
Although there is no corollary to New York’s county party organizations in Los Angeles (J. H. Mollenkopf et al. 2008, 2), other individuals and organizations provide some similar services. Established politicians frequently help lower-profile candidates by mobilizing their fund-raising networks and providing endorsements (Masket 2009, 119–187). But, in part because there is no formal role for political parties, these activities are not restricted to politicians. Beginning in the mid-1990s, for example, the Los Angeles County Federation of Labor became a powerful force for candidate recruitment and support in the City of Los Angeles (Masket 2009, 125, 151–152; Frank and Wong 2004, 160). As Chapters Four and Five explain, this organization has played an important role in the development of CBAs. (Subsection 4, below, outlines the role of labor unions in communitarian theory.)

2. Community development corporations

Community development corporations (CDCs) are non-profit organizations that emerged in the 1960s with explicitly communitarian goals and have played a role in CBAs. As Senator Robert F. Kennedy, an early and influential proponent of CDCs explained, such entities could contribute to the transformation of "the ghetto [in]to ... a community – a functioning unit, its people acting together on matters of mutual concern, with the power and resources to affect the conditions of their own lives":

Data from sources cited in note 17 and City of Los Angeles, Office of the City Clerk, Election Division indicate that from 1997-2007, the proportion of competitive city council races was roughly six times as high in the City of Los Angeles as in New York City. (For this statistic, "competitive" races were decided by a margin of less than 10% or, in the case of Los Angeles primary races, resulted in a general election contest.) During the decade analyzed, 33.9% of primary and general election city council races in Los Angeles were competitive, compared with between roughly 4.3% and 5.6% in New York. Of the fifty-nine general election and primary races for Los Angeles City Council seats from 1997-2007, twenty (33.9%) were decided by a margin of less than 10%, or, in the case of primary races, resulted in a general election contest. Of the 324 general election and Democratic primary races for New York City Council seats from 1997 through 2007, 18 (5.6%) were decided by a margin of less than 10%. (Sixteen of these were primary races.) Arguably, the appropriate denominator to determine the percentage of competitive races in New York should include primaries that were not held for lack of an opponent. In that case, the percentage falls to around 4.3%.

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Community Development Corporations ... would carry out the work of construction, the hiring and training of workers, the provision of services, and encouragement of associated enterprises.... But a further and critical element in the structure, financial and otherwise, of these corporations should be the full and dominant participation by the residents of the community concerned.... At least for matters of immediate neighborhood concern, the Community Development Corporations might return us partway toward the ideals of community on a human scale which is so easily lost in [the] metropolis. (R. F. Kennedy 1966, 183)

Kennedy (1967, 55) viewed the CDC as "an experiment in politics, an experiment in self-government[,] ... [and] above all a chance to bring government back to the people of the neighborhood."

Some contemporary communitarian scholars have also embraced the CDC model. Michael Sandel (1996, 333), for example, suggests that CDCs have the potential to "defy the trend toward civic disengagement and ... contend with economic forces that disempower communities and undermine civic life." William Simon (2001) indicates that, in some instances, CDCs can combat alienation by fostering collaborative capacities, encouraging face-to-face interaction, and focusing on a limited geographical areas. Perhaps tacitly echoing Hannah Arendt's (1958, 52) paean to a public realm which "gathers us together and yet prevents our falling over each other," Simon (2001, 56) notes that the strategy animating CDCs does not "equate[] community with pervasive intimacy and spontaneity." Instead, the associated repertoire "includes tactics for maintaining social distance and imposing structure on relations."

CDCs are formally private entities with several distinctive characteristics. Corporate organization under state and federal law as a private non-profit entity is a defining attribute of every CDC (Vidal 1992, 51; Schill 1997, 754). A CDC's corporate structure, however, differs from that of many charitable nonprofits, because its governing board almost invariably includes
individuals from the beneficiary community (Vidal 1992, 39; W. H. Simon 2001, 119). Its corporate charter, moreover, will specify that the organization is committed to benefiting a specific, geographically bounded community, consisting disproportionately of low- or moderate-income individuals (W. H. Simon 2001, 119). Although CDCs undertake a variety of activities, virtually all such entities are engaged with the built environment through programs focusing on affordable housing development and rehabilitation, commercial real estate development, or support for community business enterprises (Vidal 1992, 65–73). By virtue of their geographic concentration and their focus on participation, CDCs may promote communitarian goals. Residents, for example, typically participate in managing apartment housing developed by CDCs (W. H. Simon 2001, 146). And while CDCs encourage homeownership through subsidized development, they bind residents to the community by restricting the transfer of the subsidized units (W. H. Simon 2001, 145–155).

Despite the rhetoric of proponents such as Kennedy, Sandel, and Simon, CDCs fit somewhat uncomfortably with the communitarian ethos, due in part to their organizational form. Many asserted benefits of CDCs, as compared with other organizational forms, have less to do with inherent attributes of private corporations than with problems of contemporary government. Simon (2001, 126), for example, suggests that flexibility is the key distinguishing characteristic, because CDCs can be "more decentralized, more specialized, and less procedurally restricted" than local government.

But centralization and procedural inflexibility are not inherent attributes of government, and specialization seems inimical to the communitarian project. As described above in section

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22 Vidal and Simon both indicate that community representation on the governing board is a defining characteristic of CDCs. Simon (2001, 3 n. 2), however, labels as a CDC the Bronx Overall Economic Development Corporation (BOEDC), which (at least as of 1998) included no community representatives on its board (Gittell and Schehl 1998, 43). Chapter Six discusses the role of the BOEDC in negotiating and implementing a CBA in New York City.
IV.A, local governments have decentralized some decision-making to sublocal governments and, as a legal matter, could confer more power on such entities. If this form of decentralization is desirable, then it is not clear why communitarians would focus on strengthening CDCs, rather than making local government itself more responsive and engaging. (Both Sandel and Simon gloss over potential conflicts between these two goals.) Indeed, splintering authority among voluntaristic corporations seems somewhat at odds with the communitarian ideals discussed above in sections I and II. A similar argument could be made with respect to the procedural limitations on local government (cf. Susskind 1985), because energy devoted to developing alternatives to government could be redirected to government itself (cf. J. Frug 1987). In addition, to the extent that CDCs specialize, they must engage in precisely the kind of bureaucratic routinization that is anathema to communitarians.

The limited empirical information concerning CDCs indicates, moreover, that in some cases, private corporate form may obscure substantive direction by government officials. Simon (2001, 128) contends that competition for financial support is a "powerful accountability device" for CDCs, but he acknowledges that "largest support sources [for CDCs] are governments and foundations that are often subject to weak accountability themselves." He notes that CDCs "often have strong connections to political actors and institutions," and that financial support for CDCs can hinge on "parochial political considerations" (W. H. Simon 2001, 128–129; cf. Smith and Lipsky 1993, 24–25, 120–146). Such considerations can produce relationships of dependency that stifle oppositional political mobilization among economically disadvantaged groups (C. V. Hamilton 1979; Dreier 1999, 180). Although CDCs are legally barred from most forms of direct participation in campaigns for political office (W. H. Simon 2001, 128), they can play a vital informal role in organizing beneficiaries on behalf of political patrons (Marwell 2007, 101–128).
CDCs have also been subject to divergent critiques from proponents of public choice and radical politics. Robert Ellickson (1998, 86–87) exemplifies the former, suggesting that CDCs are not sufficiently geographically focused to foster interaction and participation, that their governance structures are unwieldy, and that non-profit organizations are inherently inferior to small for-profit firms in providing private goods such as the core CDC products of commercial real estate services and housing development. (Ellickson does not address the argument that, inasmuch as CDCs privilege the generation of positive externalities when selecting projects, their products have attributes of public (or club) goods (cf. Schill 1997, 773).) Scott Cummings (2001) provides a contrasting radical critique of CDCs, suggesting that the underlying theories place excessive faith in the power of markets and personal narrative. The results, he contends, militate against political protest and structural reform, obstruct alliances among different racial and ethnic groups, and fail to alleviate poverty substantially.

3. Community organizing groups

Radical critics of CDCs, such as Cummings, have sought to combine those entities' development activities with a more oppositional form of community organizing that predates the emergence of CDCs and draws on the work of Industrial Areas Foundation (IAF) founder Saul Alinsky (1946; 1965; 1971; cf. Cummings 2001, 417–421; Stoecker 1997). Cummings (2001, 458–472) suggests that organizations such as the Association of Community Organizations for Reform Now (ACORN), the Los Angeles Alliance for a New Economy (LAANE), and Strategic Actions for a Just Economy (SAJE) embody this hybrid approach. As described in Part Two, these entities have participated in some of the most prominent CBAs.

Alinsky's manifesto, *Reveille for Radicals* (1946), anticipates key aspects of the modern communitarian program. Sandel's situated self belongs in Alinsky's democracy: "that system of
government and that economic and social organization in which the worth of the individual human being and the *multiple loyalties* of that individual are the most fully recognized and provided for" (Alinsky 1946, 85) (emphasis added). Recognizing the pull of attachments to different communities, Alinsky's first step in community organizing "is the understanding of the life of a community, not only in terms of the individual's experiences, habits, values and objectives, but also from the point of view of the collective habits, experiences, customs, controls and values of the whole group – the *community traditions*" (Alinsky 1946, 76) (emphasis original). Sandel (1996, 336), unsurprisingly, contends that Alinsky's model of community organizing is "one of the most promising expressions of the civic strand of freedom." He commends IAF organizers for using character-forming "mediating institutions such as families, neighborhoods, and churches ... [as] points of departure for political activity [and] ways of linking the moral resources of community life to the exercise of freedom" (Sandel 1996, 337).

But Sandel's paean to the contemporary IAF obscures both the frankly agonistic essence of Alinsky's radical community organizing vision and the complicated role that this vision entails for community in the public realm. Organizing, according to Alinsky (1946, 133–134), is "eternal war ... against poverty, misery, delinquency, disease, injustice, hopelessness, despair, and unhappiness.... A war is not an intellectual debate, and in the war against social evils there are no rules of fair play.... When you have war, it means that neither side can agree on anything ... [and] there can be no compromise." The purpose of this war is "the building of a new power group" (Alinsky 1946, 132).

For the concrete task of developing a political interest group, Alinsky eschews abstract aspirations (*e.g.*, alleviation of misery) in favor of relentless focus on tangible, local, shared interests. Such an approach suggests that Alinsky recognized characteristics of successful interest
groups that Mancur Olson (1971) would formalize roughly two decades later, as discussed in Chapter One. Although Alinsky (1946, 15–23) emphasizes the selflessness of radical organizers themselves, he suggests that "[o]nly a fool would step into a community dominated by materialistic standards and self-interest and begin to preach ideals" (Alinsky 1946, 92). Thus, while the goal of Alinsky's organizing tactics resembles the communitarian vision of a revitalized public sphere, the organizing process itself can be difficult to distinguish from the privatized version of politics articulated by public choice theorists (cf. Boyte 1989, 61).

Edward Chambers, Alinsky's successor as executive director of the IAF, gives a powerful sense of the complexity that the public/private distinction can entail for a community organizer. By insisting that "[t]he privateness/publicness of human life is both/and, not either/or" (Chambers 2003, 72), and that both public and private relations invariably entail some mixture of love and power (Chambers 2003, 73–74), Chambers underscores the affinities between the IAF's version of community organizing and Sandel's communitarianism. But, he also suggests that the public/private distinction has important instrumental value for community organizing, and that organizers should avoid "mixing up public and private" (Chambers 2003, 79). Some "habits and strengths of character," such as "the virtues of self-sacrificing love," Chambers contends, "can only be learned and developed in private relationships," while "the virtues of enlightened self-interest … can only be learned and tested in the public arena" (Chambers 2003, 77). As he acknowledges, this public arena, "a world of contracts, transactions, and the law," can be difficult to distinguish from the kind of individualistic and privatized realm posited by public choice theory. Under this view, moreover, the characterization of any CBA as "private" seems anomalous.
Contemporary community organizers operate in a far different environment than did Alinsky. With increased globalization of trade, the connections between laborers and employers have become more attenuated. Many of the mediating institutions that Alinsky sought to engage, moreover, including labor unions, bowling leagues, and volunteer-based civic organizations, have disappeared or experienced steep membership declines (cf. R. D. Putnam 2000; Skocpol 2003). A raft of cultural criticism suggests that the "materialistic standards and self-interest" Alinsky deplored have only become more dominant in the U.S. during the decades since he wrote *Reveille for Radicals* (cf. Lasch 1978; Bellah et al. 1986; Sandel 1996). Chambers (2003, 134–135) echoes such criticism, bemoaning the transformation of the American family into a "money machine" for consumption, the "accumulated corrosive effect of poverty, drug and alcohol abuse, and pornography," and the pervasive presence of television, which "devours time that families could spend together."

Community organizers have responded to these changed conditions with a variety of strategies, some of which unambiguously resonate with communitarian ideals, and some of which do not. As one example of the former, a number of Latino community organizations in Los Angeles use techniques advocated by Paulo Freire (Orr 2007, 15), whose dialogical approach to learning and action resonates powerfully with the communitarian emphasis on civic education. So too does the IAF's emphasis on an iterative process of research, action, and evaluation by community members (Chambers 2003, 80–90). Many community organizations, moreover, attempt to cultivate cultural values through close relationships to religious groups (Orr 2007, 9–10, 15–16), which embody the non-voluntaristic moral commitments central to communitarianism (Sandel 1996, 55–71). But community organizers have adopted other strategies less overtly resonant with communitarianism, such as forging coalitions with labor
unions to ensure that large-scale redevelopment projects occur, but that some benefits flow to community groups (Cummings 2001, 479–483; Orr 2007, 15).

This latter approach, detailed in Part Two, has been central to the emergence of CBAs. Like the arguments of Alinsky and Chambers, it suggests the uneasy tension between the ideals of communitarianism and the institutions of political liberalism. It reflects a renewal of the alliance between labor unions and community organizations, a bond that had atrophied since the 1960s (Dreier 2007, 224), and it represents an effort by organized labor to bolster its dwindling ranks by forging connections with new constituencies (Frank and Wong 2004; Reynolds 2007; Grabelsky 2009). To the extent that this strategy diversifies the ranks of organized labor, undermines wealth as a source of political influence, redistributes resources to lower-income communities, and encourages debate concerning matters of broad importance, it is of a piece with communitarian ideals. But, it may also conflict with communitarian goals by drawing its political power from the threat of legal obstruction (thereby reinforcing reliance on negative liberty), producing generic and commercialized physical spaces that thwart public assembly or diminish place-based attachments, contributing to the displacement of existing communities, and entrenching the commodification of shared resources.

4. Labor unions

Labor unions, which have played a pivotal role in CBAs, occupy an ambiguous position in communitarian thought. The history of political development in the U.S. suggests that such groups promoted the communitarian goal of self-governance and political engagement in the nineteenth century, but more closely resembled economic interest groups by the twentieth century. The steep membership declines that labor unions have experienced in recent decades,
however, have led union leaders to seek new organizing strategies, including many that resonate with communitarian ideals.

Nineteenth-century organizations such as the Knights of Labor were explicitly concerned with the cultivation of character and civic virtue via cooperative effort, which they believed wage labor to undermine (Rodgers 1978, 174–176; Hattam 1990, 90–98). This belief led such groups to privilege the goals of worker independence and self-determination, which continue to resonate among communitarian scholars (Walzer 1983, 116–119, 161–162, 291–303; Sandel 1996, chap. 6). These goals were connected to a broad reform agenda, encompassing the development of property rights in the practice of trades and the de-concentration of economic power (Hattam 1990, 90–93).

With the demise of the Knights of Labor at the end of the nineteenth century, organized labor largely abandoned its ambitious political agenda. Instead, labor unions devoted their energy to securing material improvements in wages and workplace conditions (Hattam 1990, 104–106). By embracing the concept of wage labor, this strategy may have contributed to the transformation of labor unions from sites of broad civic association into economic interest groups with low levels of member participation. (This narrative, notably, appears both in communitarian and public choice scholarship, albeit for different rhetorical purposes (cf. Sandel 1996, 185–200; Olson 1971, 66–84).) Labor leaders continued to emphasize their commitment

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23 Public choice scholar Mancur Olson (1971, 83) suggests that groups such as the Knights of Labor declined precisely because they "emphasized politics and utopian reform" instead of pursuing an agenda focused on "job control." The latter agenda, he indicates, involves limiting the availability of wage labor via "closed shop" rules, requiring employers to hire union members. Such closed shop rules are inherently coercive, inasmuch as laborers must join a union in order to work in a closed shop. But, Olson argues, the normative valence of this observation hinges on the answer to a complicated empirical question:

[T]he large labor union, though not a part of the government, must be coercive, if it attempts to fulfill its basic function and still survive. This is largely because its basic function is to provide a collective good — collective bargaining — to a large group, just as the basic function of government is to provide traditional collective goods like law, order, and defense. On the other hand, a
to redistribution, but their goal was to equalize bargaining conditions between workers and employers so that contracts would be genuinely voluntary (Forbath 1991, 128–135). Sandel (1996, 197–200) suggests that the acceptance of voluntarism as a coherent and desirable goal, along with the associated embrace of wage labor, divorced organized labor from the communitarian conception of independence and self-governance.

After making enormous membership gains during the first half of the twentieth century, private sector labor unions declined precipitously in the second half. Whereas 39% of the private sector labor force belonged to a union in 1954, that figure had declined to 10% by 1999 (Clawson and Clawson 1999, 97). In response, some labor leaders and scholars have called for changes in union strategies that overlap substantially with communitarian ideals. Bronfenbrenner and Juravich (1998), for example, advocate the cultivation of social networks via face-to-face association in order to promote recruitment, leadership development among rank-and-file members, and opportunities for a diverse cross-section of such members to serve as representatives on organizing committees. In addition to embracing such tactics, some unions have sought to recruit undocumented workers and to foster closer ties with community organizing groups and religious organizations, focusing particularly on central cities (Voss and

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government (or a labor union or any other organization) can provide noncollective goods without restricting economic freedom. There are of course many other important factors that have not been considered here that also help to determine how much economic freedom there will be in any given situation .... It would take this study far from its central theme to do justice to this profound problem. Yet it is already evident that the conventional creed which says that unions should not have the power of coercion because they are private associations, and that the expansion of the public sector inevitably entails the loss of economic freedom, is based on an inadequate understanding." (Olson 1971, 96–97)

Whether this is a complex (but theoretically determinate) empirical question, as Olson contends, or a fundamentally indeterminate ideological question, depends on whether the concept of "economic freedom" has an objective meaning. Olson (1971, 94) believes that it does, and he implies that the closed shop rule might hinder such freedom (ibid., 90-91 n. 68). Others contend that "economic freedom" is an inherently contingent concept with inexorable ideological valence (cf. Dewey 1924; Cohen 1933; Cohen 1936).
As described in Part Two, these changes are closely linked to the emergence of CBAs.

C. Contracts

Legal contracts – central components of contemporary urban governance – may be even more at odds with communitarian theory than modern labor unions. Contract entails precisely the sort of voluntarist aspiration and reliance on negative liberty that communitarians criticize as socially corrosive and conceptually incoherent. As described above in sections I and II.A, a basic premise of communitarian theory is that rights are not susceptible to neutral definition. Instead, they are inextricably linked to culturally and historically contingent conceptions of the good life.

From a communitarian perspective, the law of contract is largely concerned with denying such contingency by perpetuating the illusion of a market that is neutral with respect to conceptions of the good life (cf. Unger 1983, 616–648; Sandel 1996, 51–53, 192–197). Under this view, despite the rhetorical association of contract with voluntary exchange (unimpeded by government), the state ineluctably implicates itself in every agreement. It does so by promising judicial resolution of disputes, but conditioning adjudication and enforcement on the satisfaction of statutory and common law rules (as interpreted by judges).

Much legal scholarship indicates that neither these rules nor their judicial interpretation are neutral with respect to the good life. Instead, the articulation and interpretation of contract law entail choices. These include:

- The decision to leave some goods, such as housing, within the realm of contract, while removing others, such as access to clean water (Kelman 1987, 76);

- The decision to enforce agreements (or not) when the bargaining power of parties is unequal (Cohen 1933, 568–571; F. Kessler 1943; Dawson 1947; D. Kennedy 1981, 614–624; Dalton 1985, 1024–1038, 1106–1113);
• The decision, when no written agreement exists, to adjudicate some arrangements (but not others) as contracts "implied-in-law" (Costigan 1920; Dalton 1985, 1014–1024, 1097–1104);

• The decision either that the parties to litigation have formed an enforceable contract by promising to exchange goods (or services) of value, or that the purported contract is instead an unenforceable unilateral promise (Fuller 1941; D. Kennedy 1976, 1736–1737; Dalton 1985, 1066–1095, 1104–1106).

Such decisions invariably involve selecting among competing conceptions of the good life. Under the communitarian view, relegating this selection process to the ostensibly neutral realm of contract adjudication undermines the political (public) realm as a site for debate concerning the good life, with socially corrosive consequences. To the extent that an agreement is negotiated in the shadow of contract law, moreover, such a negotiation process would also be stripped of its potential to serve as a means for choosing among competing conceptions of the good life.

The extent to which one believes that contract law (or any other body of law) influences various kinds of negotiation, however, may depend largely on one's methodological and epistemological orientation. Behavioral empiricists suggest that the influence of law is commonly overstated, and that other variables such as informal norms, reputational concerns, and the strength of social ties may be more important (cf. Macaulay 1963; Ellickson 1991). While such analysis suggests that formal law is not central to many governance arrangements, it tends to treat at least some of the non-legal influences on such arrangements as exogenously determined (or "natural"). As a result, it may neglect endogenous relationships between law and the development of informal norms, reputations, and social ties (Rose 2009, 206–209). A more constructivist approach would likely emphasize such endogeneity and would attempt to illustrate the inherent subjectivity and instrumentality of the sort of exogenous, "natural" baseline for analysis that behavioral empiricism typically presupposes (cf. Rose 1990; D. Kennedy 1991).
Of these two broad methodological approaches to understanding the role of law in society, the latter aligns more closely with the epistemologies and ontologies of communitarian theory. This approach proceeds from the assumption that every agreement is inevitably negotiated in the shadow of the law, although that shadow may be so large that it is simply perceived as the natural condition of light. As a result, communitarian theory underscores the possible biases against the public realm that may result from urban governance by contract. Such biases could be manifest in the organization of social service provision, discussed below in subsection C.1, and in the use of CBAs, discussed below in subsection C.2. Nevertheless, as these subsections describe, both of these phenomena also resonate with core components of the communitarian agenda.

1. Social service contracts

Social service provision – a key activity for many urban governments – has at least two potentially important connections to CBAs. First, CBAs may supplement existing social services or substitute for them. Second, social service contracts may serve as important bargaining chips in negotiations over the land-use approvals that serve as leverage for many CBAs. This subsection briefly describes the potential for social service contracts to promote communitarian goals and then discusses how social service contracting could conflict with communitarian ideals.

Although non-governmental entities have provided social services throughout U.S. history, the scope of their activities has increased dramatically since the 1960s, with private non-profit organizations playing a central role (Smith and Lipsky 1993, 46–71). The delegation of social service activities to non-profit organizations could advance communitarian goals. Michael Walzer (1990, 17–18), for example, suggests that government sponsorship of such groups plays a salutary role in cultivating and nurturing shared values. He indicates that non-profit social
service providers, such as religious groups, "improve the delivery of services by making it a more immediate function of communal solidarity." Government oversight, he contends, ensures minimal standards of quality.

Steven Smith and Michael Lipsky's (1993) study of non-profit social service providers, however, suggests that the delegation of historically governmental tasks to private entities largely undermines the goals that Walzer articulates. Smith and Lipsky indicate that delegation to non-profits not only hampers government oversight, but may also impair political participation. Noting the concurrent trends of increased participation in single-issue political groups and decreased participation in electoral politics, they suggest that the rise of non-profit social service providers may contribute to both tendencies:

On the one hand, the structure of contracting tends to obscure the details of the service state; citizens may be unable to fathom a service provision system that so intermingles public and private responsibilities. Private agency errors are not straightforwardly public mistakes under contracting.

On the other hand, successful public policy in social services now requires healthy private organizations, which must be supported in good times and bad times. Contracting requires concerned citizens to invest in community organizations in order to obtain effective public policies[,] ... [because] governments cannot simply step out into the service mart and pick up a few treatment units for autistic children or youthful sex offenders. In a sense, and paradoxically, the practice of contracting forces citizen energies into private sector concerns. For the concerned citizen, the politics of the service sector now requires not only making demands on public officials but also worrying about maintaining healthy, capable private institutions. (Smith and Lipsky 1993, 210–211)

Even within these private institutions, moreover, "[t]he contracting regime has reduced the role of members of the founding community ... by shifting power within the organization to the executive director; at the same time, the norms of the organization shift to priorities favored by the state [i.e., government officials]" (Smith and Lipsky 1993, 211). The political consequences
of privatizing social service provision could be especially problematic for low-income communities.

Charles Hamilton (1979) describes one possible consequence. Among African Americans in New York City, Hamilton (1979, 212–213) indicates, the expansion of social services in the 1960s and their concurrent delegation to private organizations produced "an intracommunity struggle for the control of 'soft-money, funded programs' or for specific grant money from federal and philanthropic sources." But, he finds, participants in this struggle devoted little "attention to mobilizing a constituency for sustained impact at city and state levels in the struggle for elective public office and the 'hard' tax money that the holders of those offices control."

Hamilton distinguishes the new urban politics of social welfare from the "machine politics" that characterized earlier eras. The crucial attributes of the latter were "reciprocity; [the] face-to-face, personal, friendly quality of the relationship; and [its] diffuse, 'whole-person' nature" (C. V. Hamilton 1979, 213). Under a privatized regime, Hamilton (1979, 214) contends, the patronage relationship more closely resembles a "formal, impersonal, contractual tie," which discourages the recipients' ongoing political participation.

Even if a social service contracting regime does not result in demobilization, moreover, the forms of mobilization that it generates may perpetuate relationships of dependency inimical to the cultivation of civic virtue. Charles Reich (1964, 770) analogized the expansion of social welfare programs to a feudal tenure system. Such programs, Reich contended, confer benefits only conditionally. These conditions "are usually obligations owed to the government or to the public, and may include the obligation of loyalty to the government; the obligations may be changed or increased at the will of the state." Any individual who breaches such a condition risks

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24 Robert Merton (1957) provides a classic account of machine politics as a mechanism for social development; Steven Erie (1988) suggests that Merton's depiction may be too sanguine.
losing the associated benefits. This system, Reich argued, is designed "to enforce 'the public interest' ... by means of the distribution and use of wealth in such a way as to create and maintain dependence." It creates relationships of dependency that benefit "large private interests," which exercise substantial control over the sovereign power that defines and enforces the "public interest." (Such private interests may include, for example, social service contractors.)

Like Reich, Saul Alinsky (1965, 42) perceived the encroachment of such arrangements and described their consequences for urban politics:

In city after city we find City Hall sitting on top of the pile of poverty funds. They have their Committees on Economic Opportunity stacked at least two to one with payrollers or the party faithful. They pursue a policy of identifying what they define as positive and negative programs and positive and negative community leaders. The distinction is simple. Positive means that you do what City Hall says, that you can be counted upon to stay in line, that you are "responsible" (to City Hall, of course.) Negative means that you are a maverick; that you are so subversive that you think for yourself, that your primary loyalty is to the people of your community[.]

This concern suggests one reason that CBA proponents might wish to characterize such agreements as "private" and minimize the direct involvement of government officials. Alinsky urged community organized to remain perennially suspicious of government, believing that alliance with politicians inexorably led to cooptation of communal attachments. Because CBAs can serve as a mechanism for delivering social service, this suspicion militates in favor of minimizing the involvement of government officials.

But, because CBA negotiations inevitably hinge on the exercise of government authority, government officials' control over more conventional means of social service provision may affect CBA negotiations. Although decentralizing mechanisms such as CDCs and neighborhood governments were intended, in part, to create relatively independent bases of sublocal power that
might foster communal attachments, not all have been successful in this regard.\textsuperscript{25} Instead, precisely as Reich and Alinsky worried, some such organizations are vehicles for a "private politics of distribution" (Marwell 2007, 128), based on delivering votes in exchange for social service contracts. If such a "private politics" thwarts mobilization against incumbent politicians, it may enable them to disregard the claims of some community groups seeking a CBA. As Part Two explains, in comparison with the City of Los Angeles, New York City provides substantially more resources (per capita) for this variant of politics.

2. Community benefits agreements

Like the other governance arrangements described above, CBAs occupy an ambiguous position in communitarian thought, with the potential to advance some communitarian ideals while undermining others. The possibility of empowerment and deliberative dialogue animates much of the enthusiasm for CBAs. But, to the extent that CBAs rely on voluntarism and negative liberty, they could reinforce a set of institutional arrangements that communitarians deplore. Subsection 2.a describes the deliberative potential of CBA processes. Subsections 2.b and 2.c describe CBAs as mechanisms of distributive justice through the lens of both public choice and communitarian theory. Based on the U.S. Supreme Court's jurisprudence concerning land-use exactions, subsection 2.b analyzes the efficiency argument for CBAs. Subsection 2.c addresses CBAs as a mechanism for redistribution justified by the virtue ethics undergirding communitarian theory.

a. CBAs as mechanisms of deliberation

The deliberative potential of the CBA process resonates with a key set of communitarian concerns. As discussed above in section II.A, open dialogue is essential to the perennial

\textsuperscript{25} See sections IV.A and IV.B.2 above.
communitarian project of debating the good life or the public interest (cf. Walzer 1983, 17–30; Sandel 1996, 317–321). Such discourse, theorists such as Walzer (1983, 17–30) and Sandel (1996, 317–321) suggest, can contribute to individual empowerment and the development of a coherent sense of self. Based on two case studies, Murtaza Baxamusa (2008, 263) contends CBAs can fulfill these goals via deliberation, because the participants "educate themselves through rational argument" and "adjust their positions" as a result. As Julian Gross et. al (2005, 21) note, "[l]ow-income neighborhoods, non-English-speaking areas, and communities of color have historically been excluded from the development process." The process of negotiating a CBA, they assert, "helps to address [this problem], providing a forum for all parts of an affected community" (Gross, LeRoy, and Janis-Aparicio 2005, 21).

Proponents of CBAs also contend that such agreements can serve as vehicles for ongoing collaboration and social development. Gross et al. (2005, 22) suggest that "[t]he process of negotiating a CBA encourages new alliances among community groups that may care about different issues or have different constituencies." They cite the Los Angeles Sports and Entertainment District CBA, detailed in Chapter Five, as an example in which "the coalition-building aspect of the CBA process has indeed led to lasting collaboration, resulting in greater political effectiveness for participants" (2005, 32). Along similar lines, Baxamusa (2008, 271) argues that, because "CBAs allow coalition members to organize their respective grassroots on a broad range of issues rather than single [issues]," they present organizers with "a colorful palette of issues for keeping in touch with their base continuously, even after the CBA is signed."

The potential for a CBA process to promote civic education and empowerment may, however, hinge on pre-existing distributions of power. A CBA coalition must be able to influence government decision-making (or credibly threaten such influence) in order to gain
concessions from a developer (Baxamusa 2008, 271). Gross et al. (2005, 10) describe the specific incentives for developers to participate:

Developers use CBAs to help get government approval for their development agreements. In exchange for providing community benefits, developers get community support for their projects. They need that support because they want their projects subsidized, and because virtually all development projects require a wide range of governmental permit approvals, such as building permits, re-zoning and environmental impact statements. Permit approvals almost always have some kind of public approval process, as do most development subsidies. For many projects, the degree of community support or opposition will determine whether the developer will receive the requested approvals and subsidies.

This explanation suggests that the CBA process depends on precisely the same kind of leverage as more conventional forms of land-use negotiation: clout with government decision-makers and legal standing to sue.

As a result, the allocation of government authority and electoral influence may affect the deliberative potential of CBA negotiations. Judith Innes (2004, 8) explains that deliberation can contribute to "joint learning, intellectual, social, and political capital, feasible actions, innovative problem solving, shared understanding of issues and other players, capacity to work together, skills in dialogue, [and] shared heuristics for action" (internal citations omitted). Consistent with the communitarian concept of the situated self, Innes (2004, 8) suggests that deliberation may enable the participants to understand their own identities as contingent on others'. She indicates, however, that such outcomes are improbable without "[i]nclusion of a full range of stakeholders" (Innes 2004, 7), suggesting that the allocation of power before a CBA process, including legal entitlements, may determine the deliberative potential of that process. Indeed, Innes and David Booher (2010, 89) underscore the importance of law, classifying legal entitlements as components of an "incentive structure." They note that the success of collaborative dialogue
appears to correlate with the presence of an "incentive structure that encourage[s] the necessary players not only to participate, but to stay at the table and work toward agreement."

Scholars of mediation have articulated several strategies to compensate for power imbalances stemming from this incentive structure. Lawrence Susskind and Connie Ozawa (1983; 1984) emphasize that government officials can play a crucial role in identifying groups who could be affected by a given decision and individuals who might wish to participate. In addition to recommending that officials ask parties who are already involved to identify additional potential participants, Susskind and Ozawa indicate that, in certain circumstances, officials should provide public notice of pending negotiations and actively search for additional parties. Once these parties are at the table, scholars such as Susskind and Jeffrey Cruikshank (1987), John Forester (1989; 1999), and Innes and Booher (2010) suggest, a skilled mediator may be able to overcome suspicion among the parties, clarify issues of concern, and create opportunities for deliberation. As a result, Susskind and Cruikshank (1987, 26–34) indicate, mediation can promote the sort of dialogue that can cultivate civic virtue while producing Pareto-efficient solutions. Nevertheless, to the extent that power imbalances remain, they may subvert communitarian goals, and John Forester and David Stitzel (1989, 262–263 n. 8) worry "about those unrepresented yet affected groups who are not likely to develop the political muscle to threaten agreements made in their absence" (emphasis original). Part Two describes efforts to involve various participants in negotiations concerning seven projects, identifies the participants, and discusses the structure of the negotiation process.

b. **CBAs as exactions**

While mediation strategies may remedy some of the imbalances stemming from the legal incentive structure, the constructivist legal critique discussed above suggests that the influence of
law on negotiation could extend beyond economic incentives, which are a chief concern of public choice. To be sure, legal rules are often explicitly designed to affect such incentives, although the efficacy of specific laws is just as frequently subject to dispute. Beyond such incentive effects, however, law can influence (inherently subjective) impressions concerning potential stakeholders' claims to be legitimate participants (cf. Rose 1983). Laws that privilege putatively "private" parties over "public" ones, for example, may exalt certain forms of association over others, with implications for the distribution of power and resources (G. E. Frug 1980).

In the CBA context, the federal law of exactions provides a concrete example of this potential. Constitutional interpretations by the U.S. Supreme Court restrict the scope of government authority to impose ad-hoc development exactions.26 As discussed in greater detail above in Chapter One (section IV.C.1), exactions are monetary or in-kind contributions from developers to government entities in exchange for permission to develop. Arguably, CBAs are a form of exactions, inasmuch as they leverage a government's police power in order to obtain benefits from developers seeking regulatory approvals (cf. Been 2010). The Supreme Court evaluates exactions by reference to their allocative efficiency, which is also one rationale for CBAs.

As the Supreme Court's jurisprudence makes clear, however, the legal validity of an exaction (or any concession from a developer) hinges on the conceptual baseline that one uses to measure allocative efficiency. If the baseline is a hypothetical Archimedean "constitutional"

moment (as envisioned by Buchanan and Tullock), the legal outcome may be different than if the baseline is the time period immediately prior to the imposition of an exaction. Although the Court's exactions jurisprudence privileges allocative efficiency, it defines such efficiency by reference to a hypothetical "constitutional" moment, at which a regulatory regime involving CBAs might not have been adopted. This determination, rather than the parties' characterization that an agreement is "public" or "private" could be dispositive in evaluating the legality of a CBA. Thus, from a public choice perspective, CBAs may not be "private," regardless of the formal identities of the parties. From a communitarian perspective, meanwhile, characterizing CBAs as "private" may emphasize their least virtuous attributes while undermining their claims to legitimacy, inasmuch as it reinforces a notion of voluntarism inimical to the avowed goals of many CBA proponents.

Under federal constitutional law, if a local government has legal authority to prohibit a given project, then it may also condition its permission on an exaction that would otherwise require the exercise of eminent domain, subject to two restrictions. First, a local government must be able to demonstrate an "essential nexus" between the exacted benefit and the rationale for the government's authority to prohibit the relevant project. Second, it must be able to demonstrate "rough proportionality" between the burden imposed by the exaction and the anticipated impact of the proposed development.

As a result, the legality of the benefits promised by a developer can hinge on whether a CBA is "public" or "private." If a court views a CBA as "public," then, insofar as the CBA

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27 See Chapter One, pp. 25, 36-38.
involves an exchange of land-use approvals for benefits from the developer, it could well be subject to federal constitutional restrictions on exactions. These restrictions would likely bar many community benefits that relate only indirectly to the environmental or fiscal impact of a project (cf. Been 2010, 27–28). In order to escape such restrictions on CBAs, proponents therefore have good reason to characterize these agreements as private (cf. Marcello 2007, 662; Gross 2008, 44).

The Supreme Court's exactions jurisprudence, however, embraces a public choice conception of distributive justice that militates against CBAs, regardless of whether they are formally "public" or "private." Under the Court's "essential nexus" and "rough proportionality" tests, a government must pay "just compensation" for an exacted benefit, unless the exaction mitigates a specific negative externality caused by the associated development project. While the mitigation of negative externalities via land-use regulation is a valid public purpose, the Court suggests, the extraction of economic rents from developers via land-use regulation is not. Indeed, the Court has pronounced the latter exercise of local regulatory power tantamount to "extortion." 31

Why does the Court draw this distinction? In Lingle v. Chevron (2005), the Court explained that its jurisprudence concerning land-use exactions involves "a special application of the doctrine of 'unconstitutional conditions,'" which provides that 'the government may not require a person to give up a constitutional right – here the right to receive just compensation

30 As Gross et al. (2005, 10) note, many projects with associated CBAs also receive financial subsidies from various government entities. Courts are unlikely to view developer concessions exchanged for such subsidies as exactions. As Vicki Been (2010, 34) observes, however, "land use processes and economic development processes often are not so easily separated. Subsidies provided for economic development often include transfers of a local government's land or the use of eminent domain to assemble land, and will almost always involve a rezoning or other land use approval."

31 Nolan v. California Coastal Commission, 483 U.S. at 837 (1987) (unless an exaction "serves the same governmental purpose as [a] development ban, [it] is not a valid regulation of land use but an out-and-out plan of extortion") (internal quotation omitted).
when property is taken for a public use—in exchange for a discretionary benefit conferred by the
government where the benefit has little or no relationship to the property."32 (In the case of an
exaction, the benefit is permission to build (cf. Been 1991, 484 n. 61).)

Why, according to the Supreme Court, does the U.S. Constitution compel such an
application of this doctrine? In Koontz v. St. Johns River Water Management District (2013), the
Court explained, "the unconstitutional conditions doctrine ... vindicates the Constitution's
enumerated rights by preventing the government from coercing people into giving them up."33 Its
application of the doctrine to land-use exactions, the Court indicated, reflects "two realities of the
permitting process":

The first is that land-use permit applicants are especially vulnerable to the type of
coercion that the unconstitutional conditions doctrine prohibits because the
government often has broad discretion to deny a permit that is worth far more
than property it would like to take. By conditioning a building permit on the
owner's deeding over a public right-of-way, for example, the government can
pressure an owner into voluntarily giving up property for which the Fifth
Amendment would otherwise require just compensation. So long as the building
permit is more valuable than any just compensation the owner could hope to
receive for the right-of-way, the owner is likely to accede to the government's
demand, no matter how unreasonable. Extortionate demands of this sort frustrate
the Fifth Amendment right to just compensation, and the unconstitutional
conditions doctrine prohibits them.

A second reality of the permitting process is that many proposed land uses
threaten to impose costs on the public that dedications of property can offset.
Where a building proposal would substantially increase traffic congestion, for
example, officials might condition permit approval on the owner's agreement to
deed over the land needed to widen a public road.... Insisting that landowners
internalize the negative externalities of their conduct is a hallmark of responsible
land-use policy, and we have long sustained such regulations against
constitutional attack.34

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34 Ibid. at 7-8.
A communitarian perspective, described below, suggests that the Court's explanation transmutes narrative into fact and moral debate into constitutional decree. This communitarian critique helps to illustrate how the Court's rationale logically flows from the axioms of public choice, detailed in sections I and II of Chapter One. These axioms also apparently undergird some claims made on behalf of "private" CBAs, although they entail a rejection of certain social obligations that advocates of "private" CBAs seem likely to embrace.

In explaining its restrictions on exactions, the Court makes at least three empirical claims: (1) There is only one permitting process relevant to exactions ("the permitting process"); (2) One "realt[y]" of "the permitting process" is "that land-use permit applicants are especially vulnerable to the type of coercion that the unconstitutional conditions doctrine prohibits"; (3) Another "realt[y]" of "the permitting process" is "that many proposed land uses threaten to impose costs on the public that dedications of property can offset." Communitarian theory suggests objections to each of these claims.

From a communitarian perspective, the Court's reference to "the permitting process" obscures both the great diversity of local land-use permitting processes in the U.S. and the potential variation within and among these processes. Most general-purpose local governments have multiple permitting processes for development projects, accommodating the political and legal idiosyncrasies of state and local government (cf. Fenster 2007, 758–768). In other words, there is not one "permitting process" — there are thousands. The Court's metonymic substitution of "the permitting process" for these thousands of processes arguably bespeaks a synoptic, homogenizing perspective incompatible with the particularities that distinguish community.

Although the Court describes "two realities of the permitting process," moreover, one of these realities is a definitional triviality and the other is not an observed (or observable) empirical
regularity. By the Court's definition, *all* exactions "pressure an owner into voluntarily giving up property for which the Fifth Amendment would otherwise require just compensation." If the owner volunteered the property absent the exaction, then there would be no exaction. But only some exactions, the Court indicates, will also mitigate costs that the "proposed land use[] threaten[s] to impose," thereby escaping invalidation under the unconstitutional conditions doctrine. The "reality" of such mitigation, however, depends both on an inherently subjective definition of "costs" and on the intrinsically speculative (and therefore debatable) predictions undergirding the "essential nexus" and "rough proportionality" tests. From a communitarian perspective, debate over such questions belongs in the public realm, from which ostensibly neutral (but inevitably partial) judicial assertions of fact leach vitality (Sandel 1996, chap. 2). If coercion is simply a synonym for exaction, and if the validity and efficacy of mitigation hinge on idiosyncratic normative judgments, then the rationale for adjudicating exactions under federal constitutional law would seem shaky.

If one accepts the axioms of public choice theory, however, then the Court's reasoning seems more coherent. Adopting the maxim "Love thy neighbor, but also let him alone when he desires to be let alone" (Buchanan and Tullock 1962, 303) as the guiding principle of federal constitutional adjudication dictates the equation of exactions with coercion. The legitimacy of exactions requiring "landowners [to] internalize the negative externalities of their conduct," meanwhile, is not only consistent with Buchanan and Tullock's theory of public choice – it is paradigmatic of it.

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35 Prior to the Court's 2013 decision in *Koontz*, some commentators had suggested that these restrictions affected only exactions involving the transfer of title to real property (e.g., Echeverria 2005). In *Koontz*, however, the Court held that the restrictions can also apply to demands for payment. 570 U.S. ___, at 14-21 (Slip Op.).
The *de novo* creation of a governance system for land use is Buchanan and Tullock's (1962, 55–57) principal example of a hypothetical Archimedean "constitutional" moment. Using Buchanan and Tullock's (1962, 51) notation, \( a \) equals the expected cost of spillovers from "purely individualistic behavior"; \( b \) equals the expected cost of "private, voluntary, but jointly organized, behavior"; and \( g \) equals the expected costs from "governmental action" – in this case, the regime of land-use regulation resulting in a given exaction. If, at a "constitutional" moment, the rational individual believes \( g < b < a \), then this individual would prefer a regulatory regime that could result in the relevant exaction (Buchanan and Tullock 1962, 49–60; cf. Coase 1960, 17–19). Under the assumptions of public choice, a judge should be able to determine whether, at the hypothetical "constitutional" moment, this algebraic inequality would have been satisfied. If, instead, \( a \leq b < g, a < g < b, b < a < g, \text{ or } b < g < a \), then the regime of land-use regulation would result in "overregulation" thwarting allocatively efficient exchange (Buchanan and Tullock 1962, 49–60).

From the public choice perspective, the Supreme Court's exactions jurisprudence targets precisely such "overregulation," potentially rendering CBAs particularly vulnerable to judicial invalidation. To the extent that a government intentionally uses exactions for "overregulation," the Court equates exactions with "extortion."36 Public choice theory suggests not only that this outcome is possible, but that it may be likely – particularly in large central cities, as discussed in Chapter One (sections III and IV). As Vicki Been (1991, 491–492) explains:

36 "[U]nless the permit condition serves the same governmental purpose as the development ban, the building restriction is not a valid regulation of land use but an out-and-out plan of extortion." *Nollan*, 825 U.S. at 837 (internal quotation omitted). "One would expect that a regime in which this kind of leveraging of the police power is allowed would produce stringent land-use regulation which the State then waives to accomplish other purposes, leading to lesser realization of the land-use goals purportedly sought to be served than would result from more lenient (but nontradeable) development restrictions. Thus, the importance of the purpose underlying the prohibition not only does not justify the imposition of unrelated conditions for eliminating the prohibition, but positively militates against the practice." *Ibid.*, at 837-838 n. 5.
[The "essential nexus" requirement] limits the potential profit from overregulation and thereby helps to ensure the efficient level of regulation. The requirement also reduces the number of interest groups likely to pressure government to overregulate. If factions such as those that want better subways and those that want more playgrounds see that exactions are a source of funds for those projects, they will seek to persuade government to overregulate, then ask government for a share of the proceeds from the sale of the regulation. If exactions may be spent only for germane projects, on the other hand, the number of rent-seekers that may be able to appropriate the benefit of the exaction is significantly reduced, and the pressure to overregulate will decrease accordingly.  

Given that – as proponents such as Gross et al. (2005, 10) acknowledge – CBAs exemplify the sort of "overregulation" that federal exactions jurisprudence targets, they hardly seem immune from judicial invalidation, regardless of the formal identities of the parties. Indeed, under the public choice view, a "private" CBA might be a particularly egregious vehicle for "overregulation," because its legal form could serve as a subterfuge to avoid detection of government involvement.

The Supreme Court's exactions jurisprudence, moreover, suggests that the efficiency argument for CBAs could be a losing one in court. Gross et al. (2005, 22) contend that CBAs promote efficiency "by leading to a cooperative relationship between normally adversarial parties, and getting good projects approved without delays late in the process." But if one embraces Buchanan and Tullock's notion of a hypothetical Archimedean "constitutional" moment (as a majority of the Supreme Court seemingly does), then the Pareto efficiency of a CBA itself is largely irrelevant. Instead, the key question is whether – at the unobservable "constitutional" moment – all expected-utility-maximizing individuals would have favored a legal regime that could produce a given CBA, based on a comparison of the expected costs of

\[37\] Been suggests that inter-jurisdictional competition in the Tiebout mode will deter much overregulation, but – as noted above in Chapter One (section III) – public choice theorists have suggested that this argument is less applicable to the central cities where CBAs emerged.
various arrangements for protecting the value of private property. One suspects that, for most public choice adherents, the answer would be "no."

c. **CBAs as non-contractual obligations**

Coupled with the legal vulnerability of CBAs under the Supreme Court's exactions jurisprudence, a communitarian perspective suggests that efforts to characterize CBAs as "private" may be counterproductive. Under this view, in addition to being a questionable legal strategy, defending CBAs in voluntarist terms could undermine a conception of property ownership that entails inherent social obligations, acknowledges the incommensurability of certain values, and regards uncertainty with humility (cf. Peñalver 2008). Such a conception seems more consistent with the goals of CBA proponents than that of public choice. This subsection limns a communitarian critique of the concept of "overregulation" and outlines the contours of a land-use regulatory regime consistent with a communitarian conception of normative ethics.

To the extent that communitarian theories eschew the consequentialism of utilitarian theories such as public choice, they suggest that the concept of "overregulation" is incoherent. Whereas the maximization of individual expected utility is the sole rationale for collective action in public choice theory, communitarian theory places the definition and cultivation of virtue as the goal of social activity. This is an ineluctably cooperative endeavor, entailing encumbrances and obligations that may be at odds with the goals of allocative efficiency and utility-maximization (cf. Taylor 1985, 187–210). From a communitarian perspective, regulation is desirable if it promotes the cultivation of virtue, regardless of its effect on allocative efficiency and expected utility. (As described below, however, a communitarian regulatory regime would hardly be unconcerned with incentives and productivity.) Allocative efficiency and expected
utility are the determinants of "overregulation" in the theory of public choice, but these concepts are largely irrelevant to a normative ethical theory that privileges the cultivation of virtue. Indeed, under such a theory, the idea of "overregulation" has no clear significance.

Because the development of material wealth is essential to the cultivation of virtue, a communitarian regime of land-use regulation would be designed to foster industriousness, a goal with close analogs in notions of efficiency (Peñañver 2008, 877–880). As in a utilitarian regime of land-use regulation, a communitarian regime would combine incentives, exhortation, and the threat of force. Like a utilitarian regime, moreover, a communitarian regime would prioritize landowners' claims to the productive use of their land, in order to encourage industriousness (Peñañver 2008, 878). But, whereas efficiency is the sole criterion for a utilitarian regime of land-use regulation, a communitarian regime would also account for other values, in terms neither predictable at the hypothetical Archimedean "constitutional" moment of public choice nor reducible to a utility function. And whereas a utilitarian analysis typically assumes that concepts such as "productivity" and "industriousness" can be neutrally defined, the process of debating the meaning of these goals would be central to a communitarian regulatory program.

With respect to distributive justice, a communitarian regulatory regime would differ from the kind of social insurance that might be created at one of Buchanan & Tullock's "constitutional" moments. Such a regime would provide the attributes of human flourishing, such as "socialization and the material resources necessary for social participation, moral training, language acquisition, and the nutritional resources necessary for physical and mental development" (Peñañver 2008, 881). From a communitarian perspective, at least some of these goods – such as socialization and moral training – are temporally and culturally contingent, and a system of distributive justice that ensures them therefore cannot be derived from Archimedean
deduction. In order to ensure provision of these goods, a communitarian regime might enforce in-kind transfers of certain rights in land, even when an Archimedean perspective would suggest that a law resulting in such transfers would be allocatively inefficient. But it would thereby eschew the ostensible voluntarism of a "private" CBA, and it would open debate concerning the underlying values to all comers, serving as a site for moral education (cf. Rose 1995, 364–365).

Whereas a utilitarian account of land-use regulation, moreover, necessarily reduces the expected costs and benefits from a given land use to a utility function, a communitarian approach would reject this technique. The communitarian critique of cost-benefit analysis is not (or at least not primarily) that the associated procedures entail daunting (if not insurmountable) technical and conceptual challenges. Nor is it simply that some inputs to a cost-benefit function may be inherently incommensurable with others (cf. Ackerman and Heinzerling 2004), although this a component of the communitarian critique. Instead, the principal communitarian objection is that cost-benefit analysis valorizes technocratic rationality over discursive rationality. From a communitarian perspective, cost-benefit analysis thereby obscures the inherently moral valence of decisions concerning resource allocation and denies the ineluctably political attributes of such decisions (Kysar 2006).

D. The built environment

Because communitarian accounts of the built environment are closely linked to communitarian political theory, they tend to valorize places that facilitate various forms of engagement and character-formation without imposing a smothering intimacy. Most theories of the built environment with communitarian affinities endorse the moral aspiration espoused by early exponents of urban planning, such as Frederick Law Olmsted. Yet, whereas Olmsted and his contemporaries embraced a particular conception of morality and advocated specific
morphological correlates, contemporary communitarian theory generally endorses a value-pluralism that accommodates more multifarious visions of the built environment. As in the corresponding subsection of Chapter One, the theories of the built environment outlined in this subsection suggest ways to distinguish "public" and "private" CBAs that have little to do with the parties to an agreement. Chapter Three addresses the criteria for empirically evaluating the impact that projects associated with CBAs have on the built environment, which Chapters Five and Six apply.

Pioneers of urban planning explicitly endorsed a character-forming function for urban space that contemporary communitarian theorists cite with approbation (e.g., Sandel 1996, 208–216; cf. Walzer 1986). Olmsted, one of the designers of New York City's Central Park, articulated one variant of this argument, extolling the capacity of urban parks to instill "courtesy, self-control, and temperance" (1870, 71), by serving as a respite from the unpleasant and unwanted intimacy of congested sidewalks (1870, 25). (By contrast, more recent theories of the built environment with communitarian overtones tend to celebrate the sidewalk.) The features of an urban park conducive to the cultivation of virtue, Olmsted (1870, 50) contended, mimicked "the beauty of the fields, the meadow, the prairie, of the green pastures, and the still waters."

Olmsted's crusade for pastoral parks exemplified only one of several strategies for moral education through urban design, ranging from modest playgrounds to the monuments of the City Beautiful movement (P. S. Boyer 1978, 233–283). Anticipating a central tenet of communitarian thought, Joseph Lee (1915, 335), a leading advocate of urban playgrounds, argued that such spaces were essential for the kind of organized play that allowed a child the "exhilarating experience" of "merging his own individuality in the common consciousness." Such experiences, Lee (1915, 336) asserted, would serve as "the entrance into his life of man the citizen, man the
politician." (As Lee's focus on the cultivation of male citizens suggests, the moral order of early city planning entailed attributes of domination and exclusion that contemporary communitarians would likely deplore (cf. M. C. Boyer 1983).)

Lee's view of playgrounds as a place of character formation via competition and collaboration resonates in Hannah Arendt's conception of the public realm as a site for simultaneously distinguishing and combining idiosyncratic perspectives through political debate. Arendt (1958, 56) valorizes the polis, which "was for the Greeks ... first of all their guarantee against the futility of individual life, the space protected against this futility and reserved for the relative permanence, if not immortality, of mortals." In the modern conception of the public realm, by contrast, "public admiration and monetary reward are of the same nature and can become substitutes for each other. Public admiration, too, is something to be used and consumed, and status, as we would say today, fulfills one need as food fulfills another" (Arendt 1958, 56).

This atomistic public realm of utilitarianism is not, according to Arendt (1958, 57), "the reality of the public realm." That reality, instead, "relies on the simultaneous presence of innumerable perspectives and aspects in which the common world presents itself and for which no common measurement or denominator can ever be devised" (Arendt 1958, 57). In this public realm, "being seen and being heard by others derive their significance from the fact that everybody sees and hears from a different position" (Arendt 1958, 57).

Arendt did not focus on the morphological correlates of this public realm, but Richard Sennett's critique of the urban built environment translates Arendt's ideals from the form of the polis to that of the metropolis. Sennett (1977, 14) decries "the erasure of alive public space." Based on the specific places that Sennett discusses, the design characteristics of such "erasure" seem to be those identified by Loukaitou-Sideris et al. (2005, 152), such as "enclosing walls,
blank facades, distancing from the sidewalk, de-emphasis of street-level accesses, and entrances through parking structures." Sennett (1990, 60) deplores the homogeneity of central city areas regulated by horizontal and vertical grids of streets and skyscrapers, arguing that "[g]ridded space does more than create a blank canvas for development. It subdues those who must live in the space, but [sic] disorienting their ability to see and to evaluate relationships. In that sense, the planning of neutral space is an act of dominating and subduing others." Such domination prevents the development of the self-mastery necessary to thrive in a disorderly environment.

In part because Arendt's vision of the public realm excluded economic exchange, efforts to apply it to the contemporary metropolis encounter inevitable difficulties. In stark contrast with Arendt, Jane Jacobs (1961) articulated a vision of the public realm that emphasizes the role of commerce, but resonates with communitarian concerns. For Jacobs, whose morphological ideal was New York City's Greenwich Village, the sidewalk was the locus of public life, serving as a site for the formation of a public sphere based on trust:

The trust of city street is formed over time from many, many little public sidewalk contacts.... The sum of such casual, public contact at a local level – most of it fortuitous, most of it associated with errands, all of it metered by the person concerned and not thrust upon him by anyone – is a feeling for the public identity of people, a web of public respect and trust, and a resource in time of personal or neighborhood need. The absence of this trust is a disaster to a city street. Its cultivation cannot be institutionalized. And above all, it implies no private commitments. (Jacobs 1961, 56) (emphasis original)

Along with Jacobs' disdain for government planning programs, emphasis on individual mobility, and celebration of commerce (errands and shop owners are central to Jacobs' vision), her concern that all personal contact be "metered by the person concerned and not thrust upon him by anyone" has endeared her to some proponents of public choice theory (cf. Ellickson 1973, 707 n. 102; 1996, 1171 n. 22; 1998, 84 n. 34; Glaeser 2000).
This superficial voluntarism, however, belies Jacobs' more complex (and more communitarian) vision of the public realm. Jacobs' urban ideal was hardly a place of oppressive intimacy. She described "togetherness" as "a fittingly nauseating name for an old ideal in planning theory ... that if anything is shared among people, much should be shared" (Jacobs 1961, 62). But Jacobs (1961, 35) famously advocated an urban form that placed "eyes on the street," emphasizing a role for surveillance that is incompatible with unfettered voluntarism. The rules governing such surveillance determine when "a citizen ... will take responsibility ... [for] protecting strangers" (Jacobs 1961, 56). They are established by "an almost unconscious assumption of general street support," which must exist "in the brains behind the eyes on the street" (Jacobs 1961, 56). This "almost unconscious assumption" – a shared set of implicit moral norms – is difficult to distinguish from the communitarian morality described above in sections I and II.

Jacobs contended, moreover, that her morphological ideal would nurture the kind of multi-stranded relationships that define the situated self of contemporary communitarianism (cf. G. E. Frug 1999, chap. 6; W. H. Simon 2001, 54). It would do so by fostering "[t]he tolerance, the room for great differences among neighbors – differences that often go far deeper than differences in color – which are possible ... only when streets of great cities have built-in equipment allowing strangers to dwell in peace together on civilized but essentially dignified and reserved terms" (Jacobs 1961, 72). Such sidewalk contacts, according to Jacobs (1961, 72), "are the small change from which a city's wealth of public life may grow." Designers associated with New Urbanism, such as Peter Calthorpe (1993, 15), have acknowledged Jacobs' influence on their morphological ideals, discussed in Chapter One (section IV.D), and communitarian theorists such as Michael Sandel (1996, 335–336) have championed New Urbanist design.
While Arendt extolled the public realm as the locus of heroic political debate, Jacobs valorized it as the means of peaceable coexistence. Jacobs' view of the function of the public realm – and her emphasis on the central role of small-scale commerce in defining that realm – resonates with the views of Margaret Crawford, who lauds "everyday public spaces" such as garage sales and sites used by street vendors. "As chance encounters multiply and proliferate," Crawford (2008, 34–35) suggests, "activities of everyday space may begin to dissolve some of the predictable boundaries of race and class, revealing previously hidden social possibilities that suggest how the trivial and marginal might be transformed into a kind of micropolitics." (Crawford's reference to "micropolitics" is a bit ambiguous, but she seems to have in mind an alternative to representative politics involving the revelation of social possibilities obscured by dominant social mores and discourses. 38)

Crawford identifies these possibilities in the city that was anathema to Jacobs – Los Angeles. Jacobs (1961, 72) found Los Angeles to be "an extreme example of a metropolis with little public life, depending mainly instead on contacts of a more private social nature." For this assessment, Jacobs (1961, 72–73) relies on a handful of sources – the writings of Orson Welles, a conversation with "one of Los Angeles' most powerful businessmen," and "an acquaintance ... [who] has never laid eyes on a Mexican or an item of Mexican culture." Crawford, by contrast, suggests that the traces of public life might be detectable in characteristic features of the Angeleno landscape, some of which Jacobs overlooks and others of which she decries.

As this brief discussion of Arendt, Sennett, Jacobs, and Crawford suggests, communitarian theory accommodates a variety of functions for the public realm and a diverse set

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38 The concept of micropolitics appears in both post-structuralist theory (e.g., Deleuze and Guattari 1987; 1994; Foucault 1980) and in planning theory drawing on Jürgen Habermas' concept of communicative rationality (e.g., Forester 1999; Healey and Hillier 1996).
of spatial correlates. Arendt and Sennett emphasize an agonistic political aspect of the public
realm that allows (and perhaps requires) the perennial possibility of disorder. Although Jacobs
and Crawford also embrace political functions of the public realm, these differ in important ways
from each other and from those of Arendt and Sennett. Jacobs' conception of politics
encompasses three overlapping tiers: the entire city (the site of conventional political contests),
large sublocal areas (which Jacobs viewed as creating "communities of interest"), and "street
neighborhoods" fostering a politics of personal trust and social control (Jacobs 1961, 117–129).
Crawford emphasizes the promise of spaces that Jacobs neglects (or decries), for serving as site
of subversive micropolitical engagement. All of these theories suggest the capacity for public
space to develop and impel moral obligations.
Chapter Three:

Research Questions and Methods

The theories discussed in Chapters One and Two motivate the research questions and methods that this chapter describes. The remainder of the chapter proceeds as follows: Section I presents my research questions and the general methods that I use to answer them; Section II presents my case selection methods; and Section III describes the sources of data.

I. Questions and General Methods

Social analysis entails some set of questions concerning the goals of collective action. From a public choice perspective, all such goals are ultimately reducible to the maximization of individual expected utility. Public choice analysts tend to operationalize utility as material gain or some intermediate objective in pursuit of this ultimate goal. Communitarian theorists generally acknowledge that this goal may be important for many people, but they emphasize other purposes of human action, including various forms of affective experience that may not be reducible to material gain. Where public choice assumes the stability of individual preferences, moreover, much communitarian theory emphasizes fluidity. This section discusses the research questions and methods that these divergent perspectives suggest for the study of CBAs. The questions address the goals of both participants in CBA negotiations and individuals excluded from such negotiations (subsection I.A), the outcomes of CBA negotiations (subsection I.B), and the role of legal institutions in CBA processes and outcomes (subsection I.C).

A. Participants' goals

In order to assess the efficacy of CBAs as mechanisms of representation, I analyze the goals of participants in CBA processes and of those excluded from CBA processes. As discussed
in Chapter One, public choice analysis commonly assumes that individuals engage in collective action in order to maximize the expected value of the goods and services they obtain from government. A communitarian analysis, by contrast, might suggest that territorially organized groups mobilize to forge a collective identity. Each of these broad objectives, moreover, can accommodate a range of concrete goals. Because these goals are indeterminate as a matter of theory, I ask: What were the goals of participants in CBA negotiations? (Question 1). I answer this question in Chapters Five and Six through content analysis of interviews, primary documents, and secondary accounts.

B. Outcomes

If the outcomes of CBAs do not advance the articulated goals of participants in the negotiations, then the value of the agreements as representative mechanisms is unclear. I therefore ask: Are the direct and indirect outcomes of the agreements consistent with the participants' goals? (Question 2). In Chapters Five and Six, after identifying the goals of participants, I evaluate the enforceability and implementation of the agreements using data obtained from interviews, public records, and site visits. Because the goals of participants in the CBA process have no a priori claim to normative primacy, these chapters also address the relationship of the outcomes to other possible goals.

In order to provide a detailed depiction of the relevant outcomes, I focus on the CBA concerning the Los Angeles Sports and Entertainment District, which is widely cited as exemplary. My analysis of direct outcomes involves estimates of the number and quality of jobs provided (to the extent that the relevant data are available), the distribution of these jobs, descriptions of the environmental mitigation measures undertaken, and an analysis of funds provided for affordable housing, public facilities, and other amenities. It also includes an
assessment of the privately owned open space provided, based on criteria indicated by Loukaitou-Sideris et al. (2005), Kayden (2000), and Németh and Schmidt (2007).

C. Legal institutions

Although CBA proponents frequently describe such agreements as alternatives to the existing legal institutions of urban development, the same proponents also emphasize that CBAs are themselves legal instruments (see, e.g., Gross 2008; 2012). In order to assess whether CBAs are effective alternatives, subsection C.1 presents questions addressing the relationship between CBAs and the legal organization of local government power. The questions in subsection C.2 assess whether CBAs are alternatives at all, asking if the legalistic distinction between a "private" (contractual) CBA and the "public" exercise of the sovereign power delegated to a local government is empirically relevant or valid.

1. Local government law

If one conceives of law as the formal constraints on sovereign power, then the arrangement of these constraints (i.e., "veto points") may be a key feature of incentive structures. Much empirical analysis of veto points focuses on national institutions, and the number and heterogeneity of local governments present unique empirical challenges. Under the U.S. Constitution, local governments have no sovereign authority. Consequently, veto points on local government action are determined by federal and (primarily) state law, which typically divides such points among a variety of local and supra-local jurisdictions. These include municipalities, special districts (Chapter One, section IV.B.1), state legislatures, and county governments. Veto points are also idiosyncratically allocated within each jurisdiction, based on a mix of federal, state, and local law. Relevant examples include the apportionment of city councils (Chapter One, Hunter v. City of Pittsburgh, 207 U.S. 161 (1907).
section IV.A.1), the laws governing direct legislation (Chapter One, section IV.A.2), and the powers of sub-local governments (Chapter Two, section IV.A).

CBAs typically address issues (such as housing affordability and employment conditions) that have historically been the domain of social welfare policy. As a result, scholarship concerning the influence of formal veto points on social welfare spending may be relevant to CBAs. Much public choice theory analyzes veto points as determinants of social policy, assessing whether the formal configuration of powers necessary to change the legal status quo affects policy outcomes (e.g., Tsebelis 2002; Mueller 2003, 174–181). But veto points are also variables of interest to scholars working in less emphatically formalist modes of inquiry. Jacob Hacker (2002; 2004), for example, indicates that, instead of producing status quo bias, relatively fragmented formal governance structures (characterized by a profusion of veto points) may simply transfer the arena of social policy from putatively public institutions to nominally private forums. Suzanne Mettler (2011) contends that such shifts "submerge" the state, undermining democratic participation by making government action less visible.

Viewed independently, CBAs might not seem susceptible to such problems, because they entail the direct provision of funds and services. But CBAs do not function independently of other policy mechanisms. Because a developer presumably would not enter into a CBA absent some promise related to government action, CBAs serve as an indirect mechanism for social welfare policy stemming from an exercise of a government's legal power. The possibility of such an exercise, such as granting land-use approvals or providing subsidies, is a necessary condition for a CBA. In identifying whether CBAs involve a shift of social welfare provision from public institutions to private forums, I ask:
• *Which state and local policies affect the negotiation and implementation of CBAs?* (Question 3)

• *Do these policies undermine democratic participation?* (Question 4)

In order to address these questions, I analyze both broad institutional landscapes and individual negotiation processes. I identify plausibly relevant institutional attributes by reference to a framework proposed by Roger Friedland, Frances Fox Piven, and Robert R. Alford (1977, 450). They indicate two aspects of local government structure "important in mediating economic and popular pressures." The first is "the degree of decentralization or centralization of government functions." The second is "the degree of segregation of economic and political functions within urban government." I assess the relevance of these institutional attributes to individual cases based on the interviews, primary documents, and secondary sources described above in section III.

Greater decentralization of state authority, Friedland et al. suggest, accentuates local government sensitivity to business demands for tax exemptions and other subsidies, in part because a highly fragmented system of municipal governance forces central cities into competition with suburbs for investment. (As the discussion in Chapters One and Two indicates, such fragmentation is only one form of decentralization.) From a public choice perspective, jurisdictional fragmentation is desirable precisely *because* it increases competition, thereby expanding the opportunities for individuals to satisfy their preferences for club goods (Chapter One, section II.A). Such competition also provides an impetus (or a rationale) for central city governments to eschew redistributive social policy (Friedland, Piven, and Alford 1977; Peterson 1981). Chapter Four therefore describes the level of jurisdictional fragmentation in the metropolitan areas encompassing New York City and Los Angeles, drawing on legal materials,
prior scholarship, and data concerning local revenues and expenditures. Chapters Five and Six address the effect of such fragmentation on the negotiation and implementation of CBAs.

Friedland et al. (1977, 457) also suggest that, within cities, the formal institutional separation of a government's social welfare and economic development functions "promote[s] participation while deflecting that participation from policies important for economic enterprises." The mechanisms and consequences of this separation are analogous to the processes of privatization and policy "submergence" described by Hacker and Mettler. Friedland et al suggest two mechanisms: (1) bureaucratic segregation of local economic development and redistributive functions, and (2) formal institutional design that insulates the economic development bureaucracy from popular pressure while leaving the redistributive bureaucracy open to public pressure but strapped for resources. The outcomes, they suggest, will be limited public participation in determining issues of economic development, but extensive public input concerning the redistribution of a limited set of resources.

Chapter Four therefore describes the plausibly relevant features of formal institutional design in New York City and Los Angeles, drawing on legal materials, prior scholarship, and budget data. This account is intended to provide some analytic purchase on the path-dependent features of jurisdictional fragmentation and bureaucratic segmentation in each area. Path dependent processes increase the costs of reversing certain institutional decisions. Although reversal is possible, "the entrenchments of certain institutional arrangements obstruct an easy reversal of the initial choice" (Levi 1997, 28, quoted in Pierson, 2004, 20). Because "the relative benefits of the current activity compared with once-possible options increases over time" (Pierson 2004, 21) (emphasis original), path-dependent processes generate positive feedback that reinforces the direction of the trajectory.
By focusing on the obstacles to institutional change, analysis of path-dependent features can provide insights concerning opportunities for overcoming these obstacles.² Jacob Hacker (2002, 55) describes five attributes of path-dependent policies:

First, a policy creates or encourages the creation of large-scale organizations with substantial set-up costs; second, a policy directly or indirectly benefits sizable organized groups or constituencies; third, a policy embodies long-lived commitments upon which beneficiaries and those around them premise crucial life and organizational decisions; fourth, the institutions and expectations a policy creates are of necessity densely interwoven with broader features of the economy or society, creating interlocking networks of complementary institutions; and fifth, features of the environment within which a policy is formulated and implemented make it harder to recognize or respond to policy outcomes that are unanticipated or undesired. (emphasis original)

While Chapter Four assesses the path-dependent attributes of jurisdictional fragmentation and bureaucratic segmentation in both Los Angeles and New York, Chapters Five and Six address the connection of these formal institutions to public participation in the negotiation and implementation of CBAs.

2. "Public" and "private" CBAs

As noted in Chapter One, Julian Gross (2012, 229) suggests that formal distinctions among CBAs have substantive consequences. Gross would not apply the "CBA" label to "a slate of commitments at least in part advocated for by community groups, finally negotiated by a developer and a public entity like a redevelopment agency, and then set forth only in a legally enforceable agreement between the developer and the public entity." None of the New York CBAs on Wolf-Powers' list satisfy this definition, but it does apply to the Hollywood & Highland CBA and the Staples Center agreement. According to Gross, this sort of

² Liebowitz and Margolis (1995) argue that path dependent processes are unlikely to exist where problems are remediable because, market operations will result in optimal outcomes. Notably, however, Liebowitz and Margolis address only technology adoption (or non-adoption) by individual firms. Because institutions that support (or define) markets are exogenous to their model (Pierson 2004, 29–30), their critique is not applicable to the subject of this dissertation.
document, which he labels a "public CBA," differs fundamentally from a "private CBA," for which he would reserve the term "CBA":

First, a public CBA is generally not legally enforceable by the affected community stakeholders. By definition, a private CBA is. Second, a public CBA does not deviate in any way from the public participation processes, contractual agreements, and project approvals that would exist without the CBA. A private CBA derives its force from its status as an additional agreement, involving different parties, made outside established planning processes. (Gross 2012, 230)

Based on a comparison of cases within Los Angeles, I ask: Is the distinction between public CBAs and private CBAs legally and empirically valid? (Question 5). For example, are specific CBAs that Gross has labeled "private" legally enforceable? Do CBAs that Gross has labeled "public" result from a process that does not deviate from "established planning processes"? I assess enforceability by analyzing putatively public and private CBAs by reference to relevant state and local law. I assess enforcement by comparing the agreements to the outcomes. I also compare the negotiation processes for projects resulting in both public and private CBAs.

To the extent that the distinction between public and private CBAs is legally and empirically valid, I ask: How does the use of a private CBA instead of a public CBA affect substantive outcomes? (Question 6). For example, have private CBAs been more vigorously enforced than public CBAs? Do projects involving private CBAs provide benefits of greater value to historically marginalized groups than those involving public CBAs? I answer both of these questions by reference to the implementation and outcomes of the agreements.

II. Case selection

I analyzed a total of seven development projects – four in Los Angeles and three New York City. These are the only two cities with multiple CBAs involving private developers included in Laura Wolf-Powers' (2010) list of CBAs. This list appeared in the Journal of the American Planning Association, a leading peer-reviewed journal of planning scholarship. The
availability of multiple cases in each city decreases the likelihood that any observed differences among CBAs within a city are due to city-level attributes. Because the development projects of governmental or non-profit entities raise distinct issues, I selected projects proposed by private for-profit developers. In order to assess implementation of the agreements, I selected projects for which construction had commenced as of the start of my research in 2012. Only three of the projects in New York City on Wolf-Powers’ list satisfied these criteria: Yankee Stadium, a professional baseball facility; the Gateway Center, a shopping mall; and Atlantic Yards, a mixed-use development including a professional sports arena and housing. I analyze all three of these projects and the associated agreements. Wolf-Powers’ list indicated four projects in Los Angeles satisfying my criteria: the Los Angeles Sports and Entertainment District, a project including a hotel, a theater, retail development, and residential units; Hollywood & Vine, a project including a hotel, retail development, and residential units; Hollywood & Highland, a project including a hotel and retail development; and NoHo Commons, a project including residential, retail, office and entertainment uses. I focus on the first three of these, because the NoHo Commons agreement bears substantial similarity to the Hollywood & Vine CBA and the Los Angeles Sports and Entertainment District CBA. In order to assess Julian Gross’s (2008; 2012) distinction between "public CBAs" and "private CBAs," discussed in Chapter One, I also analyze a fourth agreement (not included on Wolf-Powers' list), concerning the Staples Center, a professional sports arena in Los Angeles.

III. Data Sources

The cases are based on documentary evidence, site visits, and interviews. The processes associated with each development project received extensive journalistic coverage and resulted in a voluminous paper trail. The relevant documents include government records, newspapers
and magazines, survey data, press releases, trade and professional publications, published accounts by key participants, and legal materials such as statutes and judicial opinions.

I conducted interviews with twenty-six individuals who either had direct knowledge of the relevant negotiations or general knowledge about development in Los Angeles. The city-level analysis in Chapter Four suggests that Los Angeles provided more fertile terrain than New York for CBAs consistent both with the express goals of the participants and with those of large numbers of other residents who did not participate in the associated negotiations. Combined with my own analysis of primary documentary sources, the journalistic and scholarly accounts of CBAs in both cities support this hypothesis. In short, CBAs appeared more likely to be broadly representative in Los Angeles than New York and more likely to be implemented. Because Los Angeles provides a "most likely" case for successful negotiation and implementation (Eckstein 1975; George and Bennett 2005, 120–123), my interviews focus on projects in this city.

I initially identified interviewees via a review of scholarly literature and journalistic coverage. I also requested referrals from personal acquaintances familiar with planning and development in Los Angeles. Thereafter, I adopted a "snowball" approach, asking interview subjects to identify additional potential subjects. The interviewees included three private attorneys, nine current or former government officials, three associates of labor organizations, two private development consultants, three academics, two employees of a business advocacy organization, three community organizers, and one private developer. I conducted semi-structured interviews, each lasting approximately one hour. Seventeen interviews were recorded for later transcription. The other interviews were not recorded, in some cases by request of the interviewee and in other cases due to technical problems. (All interviews quoted in the following chapters were recorded.)
Part Two
Chapter Four

A Socio-Legal History of Redevelopment in Los Angeles and New York

At least since the 1980s, scholars of local government have depicted U.S. central cities as dependent administrative bodies, buffeted by forces beyond their control and unable to foster meaningful political participation (cf. Peterson 1981; G. E. Frug 1999). Land is one of the few economic resources under a city's regulatory control, because states typically delegate relatively broad authority over land use to local governments. As a result, urban politics is frequently the politics of land use (Peterson 1981, 25; Kayden 1991). Among economic resources, moreover, land is unusually resistant to commodification. Specific parcels of land have unique histories, linked with their idiosyncratic physical and ecological attributes, as well as their proximity to other parcels. Such non-fungibility gives particular social resonance to debates about land-use regulation (Logan and Molotch 1987, 17–29, 103–110; Peñalver 2008, 828–832).

The scope of such debates – and the possibilities that participants perceive – may be affected both by a city's existing socio-economic attributes and by the political position of the city in the federal system. Section I of this chapter summarizes demographic characteristics of New York City and the City of Los Angeles. Section II addresses the formal legal structure in which each city operates, assessing the mutability of these structures in light of their history. (Chapters Five and Six explore the relationship between these formal structures and the trajectory of specific redevelopment projects involving CBAs.) Section III addresses the roles of labor organizations in New York and Los Angeles.
Figure 1: Los Angeles and New York

Source: U.S. Census Bureau (data); Cartography by author.
I. City Demographics

Table 1 summarizes demographic attributes of New York City, the City of Los Angeles, Los Angeles County, and 112 of the largest U.S. cities. The comparison draws from the 2000 U.S. Census, placing it near the beginning of the study period for the cases in Chapters Five and Six. I present the value of each statistic for New York City, the City of Los Angeles, Los Angeles County (including and excluding the City of Los Angeles), and the median from the sample of 112 cities. For each statistic, the table also indicates in parentheses the rank of New York City and the City of Los Angeles within the sample of 112 cities, which consists of "all cities with 2007 populations over 200,000 except those with 1980 populations below 100,000 and all cities with 1980 populations over 150,000 even if their 2007 population was below 200,000" (Langley 2013, 9) (emphasis original).

New York and Los Angeles were (and, as of 2014 remain) the two most populous cities in the U.S. As discussed in Chapter One (sec. III), public choice theory suggests that such large populations may be uniquely conducive to public policies that obscure the costs and benefits of government action. The challenges of monitoring such a large government, moreover, may induce citizen apathy and disaffection. Proponents of CBAs suggest that such agreements present solutions to both of these problems (Chapter Two, sec. IV.C.2).

While both cities are unusually populous, New York City had more than twice as many inhabitants (8.0 million) as the City of Los Angeles (3.7 million) as of the 2000 U.S. Census. Indeed, New York City's population more closely resembled that of Los Angeles County (9.5 million) than that of the City of Los Angeles. As a result, some commentators have indicated that Los Angeles County, rather than the City of Los Angeles, is the appropriate unit of comparison to New York City (see, e.g., Gladstone and Fainstein 2003, 80).
Table 1: Summary statistics derived from 2000 U.S. Census, with rank of New York City and the City of Los Angeles among 112 largest U.S. cities in parentheses

<table>
<thead>
<tr>
<th>LA County</th>
<th>Population, millions</th>
<th>Land area, square miles</th>
<th>Median household income, $</th>
<th>Income inequality index*</th>
<th>Households in rental housing, %</th>
<th>Renters with high rent burden, %</th>
<th>Individual poverty rate, %</th>
<th>Unemployment rate, %</th>
<th>Racial &amp; ethnic diversity index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entire County</td>
<td>9.5</td>
<td>4061</td>
<td>42,189</td>
<td>0.45</td>
<td>52.1</td>
<td>46.0</td>
<td>18</td>
<td>5.0</td>
<td>0.78</td>
</tr>
<tr>
<td>Minus City of LA</td>
<td>5.8</td>
<td>3592</td>
<td>n.a.</td>
<td>0.42</td>
<td>45.8</td>
<td>44.6</td>
<td>15</td>
<td>4.6</td>
<td>0.78</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City of Los Angeles</td>
<td>3.7 (2)</td>
<td>469 (7)</td>
<td>36,687 (60)</td>
<td>0.50 (8)</td>
<td>61.4 (6)</td>
<td>48.0 (11)</td>
<td>22 (25)</td>
<td>5.6 (23)</td>
<td>0.77 (13)</td>
</tr>
<tr>
<td>City of New York</td>
<td>8.0 (1)</td>
<td>303 (14)</td>
<td>38,293 (46)</td>
<td>0.49 (9)</td>
<td>69.8 (1)</td>
<td>43.0 (44)</td>
<td>21 (30)</td>
<td>5.5 (25)</td>
<td>0.84 (4)</td>
</tr>
<tr>
<td>112 Largest U.S. Cities (median)</td>
<td>3.7</td>
<td>469</td>
<td>36,687</td>
<td>0.50</td>
<td>61.4</td>
<td>48.0</td>
<td>22</td>
<td>5.6</td>
<td>0.77</td>
</tr>
</tbody>
</table>

Notes:

a. The income inequality index is the Gini coefficient, which measures the dispersion of incomes. The index ranges from 0 (perfect household income equality, where all households have an identical income) to 1 (perfect household income inequality, where all income accrues to a single household).

b. This variable measures the percentage of households living in rental housing that pay gross rent equal to at least 30% of household income. ("Gross rent is the contract rent plus the estimated average monthly cost of utilities and fuels ... if these are paid by the renter (or paid for the renter by someone else)" (U.S. Census Bureau 2007d, B-54).)

c. My measure of racial and ethnic diversity is a normalized Simpson's index ranging from 0 (perfect homogeneity) to 1 (perfect diversity). The eight mutually exclusive categories, from the U.S. Census, consist of individuals identified as Hispanic or Latino and seven sub-categories of individuals identified as not Hispanic or Latino: White alone; Black or African American alone; American Indian and Alaska Native alone; Asian alone; Native Hawaiian and Other Pacific Islander alone; Some other race alone; Two or more races.

Sources: U.S. Census Bureau, 2000 Census of Population and Housing, Summary File 1 (Tables G001, H004, P004); ibid., Summary File 3 (Tables DP-3 & H069).

Table 1, however, suggests that – based on demographic measures other than population – a comparison between the two cities may be more apt. The land area of each city is an order of magnitude smaller than that of Los Angeles County, giving rise to a distinct set of spatial planning concerns. As of the 2000 U.S. Census, median household income was substantially higher in Los Angeles County than in either the City of Los Angeles or New York City, while the unemployment and individual poverty rates were substantially higher in the two cities. If Los Angeles County (including the City of Los Angeles) were a city, its median household income would rank below only 22 other large cities. By contrast, the City of Los Angeles ranks 60th in median household income and New York City ranks 46th. The median household income of the portion of Los Angeles County excluding the City of Los Angeles would undoubtedly stand in even more marked contrast to that of the two cities, but the data necessary for this comparison are not publicly available.
cities than in Los Angeles County. New York City and the City of Los Angeles have therefore grappled with different problems than Los Angeles County.

Not only have social conditions in the two cities contributed to a set of governance concerns distinct from those in Los Angeles County, they may also have produced distinctive obstacles to addressing these concerns. As of the 2000 U.S. Census, both cities had a much higher level of income inequality than Los Angeles County, particularly when the City of Los Angeles is excluded from the county-level estimate. Both cities also had a far higher proportion of households in rental housing than Los Angeles County.

In order to measure income inequality, I estimate Gini coefficients measuring the intra-jurisdictional dispersion of incomes as of the 2000 U.S. Census,\(^4\) ranging from 0 (perfect household income equality, where all households have an identical income) to 1 (perfect household income inequality, where all income accrues to a single household). While Los Angeles County (excluding the City of Los Angeles) ranked below the median value for the sample of 112 cities (i.e., has less household income inequality than most of these cities), the City of Los Angeles and New York City were within the top decile of the sample, ranking 8\(^{th}\) and 9\(^{th}\) respectively. If such heterogeneity thwarts redistributive policy,\(^5\) then it may have impeded local efforts to combat poverty and unemployment.

A far higher percentage of households, moreover, lived in rental housing in New York City (69.8\%) and the City of Los Angeles (61.4\%) than in Los Angeles County (45.8\%, excluding residents of the City of Los Angeles). If, as Fischel (2001) suggests, residential renters

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\(^4\) In order to estimate the Gini coefficient, I use Nichols' (2010) Stata module to fit the three-parameter Dagum distribution (Dagum 1980; Dagum 2008) to household income category data reported in the 2000 U.S. Census, Summary File 3, Table DP-3.

\(^5\) A substantial body of research suggests that diversity may be negatively associated with support for redistributive policies (Poterba 1994; Alesina and Spolaore 1997; Alesina, Baqir, and Easterly 1999; Luttmer 2001; Glaser 2002; R. D. Putnam 2007; Gilens 2009; Habyarimana et al. 2009).
have weaker incentives to monitor local government than homeowners, then other interest
groups may have had more leeway in New York City and the City of Los Angeles than in Los
Angeles County (or other municipalities therein).

Just as Los Angeles County makes for a poor demographic comparison with New York
City, so too do the vast majority of the largest U.S. cities – with a handful of exceptions
including the City of Los Angeles. As noted above, the City of Los Angeles and New York City
had two of the most unequal distributions of household income among the 112 largest U.S. cities,
as of the 2000 U.S. Census. These two cities also had comparable rates of unemployment (5.6%
in Los Angeles, 5.5% in New York) and individual poverty (22% in Los Angeles, 21% in New
York). Within the 112-city sample, New York contained the highest percentage of households in
rental housing and Los Angeles had the sixth highest. (Among these households, however, the
percentage paying at least 30% of household income for housing was somewhat higher in Los
Angeles, perhaps for reasons related to differences in housing policy, discussed in section
II.B.3.a below.)

Both cities, moreover, had unusually high levels of racial and ethnic diversity. I measure
such diversity using a normalized Simpson's index ($S$) ranging from 0 (perfect homogeneity) to 1
(perfect diversity). $S$ measures the distribution of $n$ racial or ethnic categories ($c$) with no
overlapping membership, such that for each jurisdiction ($j$):

$$S_j = \frac{n}{(n - 1)} \sum_{i=1}^{n} \left( \frac{c_i}{\sum_{i}^{n} c_i} \right) \left( 1 - \frac{c_i}{\sum_{i}^{n} c_i} \right).$$

Here, $c_1$ consists of all individuals counted in the 2000 U.S. Census who identified as Hispanic or
Latino, and $c_2$ through $c_8$ consist of all individuals counted in the 2000 U.S. Census who did not
identify Hispanic or Latino, but who did identify as: White alone ($c_2$), Black or African
American alone (c_3), American Indian and Alaska Native alone (c_4), Asian alone (c_5), Native Hawaiian and Other Pacific Islander alone (c_6), some other race alone (c_7), or two or more races (c_8). Based on this measure, New York City is the fourth most diverse city in the sample of 112 cities and Los Angeles is the thirteenth most diverse. Like income heterogeneity (with which it is highly correlated) racial and ethnic heterogeneity may hamper redistributive policy.  

II. Legal Structures

Despite confronting many similar challenges of governance, the City of Los Angeles and New York City operate in different formal legal environments. This section describes some attributes of these environments that may affect the planning, negotiation, and implementation of redevelopment projects. (Chapters Five and Six assess whether such effects are observable.) I focus on two attributes of legal structure: the jurisdictional fragmentation of general-purpose local government, which I label "horizontal fragmentation" (sec. II.A), and the allocation of specific responsibilities among and within governments, which I label "vertical fragmentation" (sec. II.B). (Inevitably, these labels are imperfect, not least because they reinforce the conflation of geographic and bureaucratic hierarchy that they are intended to describe.)

State laws divide metropolitan areas into a variety of discrete municipalities (and, in many states, unincorporated areas). Such municipalities are typically (although not invariably) part of a larger county with a distinct government. As discussed in Chapter One (sec. II.A), public choice proponents of horizontal fragmentation suggest that it generates a system of government service provision that is relatively allocatively efficient. Critics of this position contend that horizontal fragmentation undermines democracy by exacerbating inequality,  

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6 See sources cited in note 5, above.
promoting a consumerist vision of government, and producing an opaque jumble of governmental entities (see Chapter One, sec. II.B; Chapter Two, sec. II.A).

Vertical fragmentation allocates responsibility for different policy domains (such as economic development and social welfare) within a single general-purpose jurisdiction to distinct formal entities. One form of vertical fragmentation can occur between municipalities and other forms of government (e.g., counties and special districts). I label this variant "upward fragmentation." Vertical fragmentation can also occur within municipalities (e.g., via the delegation of authority among the branches of local government or to executive agencies), and I label this variant "downward fragmentation." As with horizontal fragmentation, advocates of vertical fragmentation contend that it can increase the efficiency of local economic development, while critics argue that it simply facilitates domination under the guise of efficiency (see, e.g., Friedland, Piven, and Alford 1977).

A. Horizontal Fragmentation

Although the horizontal fragmentation of general-purpose local government is pervasive throughout the U.S. (Adrian and Fine 1991, 211), its pattern varies substantially throughout the country. Such variation is pronounced in a comparison of City of Los Angeles and New York City (Figure 1). The former is one of eighty-eight cities in Los Angeles County, while the City of New York itself encompasses five counties. New York City also has substantially more territorial integrity than Los Angeles, for whereas the City of Los Angeles contains freestanding municipalities such as Beverly Hills, no other municipality exists within the bounds of New York City. This subsection discusses the history of horizontal fragmentation in Los Angeles.

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7 This argument has at least two variants. Under one variant, rooted in a Wilsonian vision of public administration, exemptions from government management facilitate the pursuit of an objective ideal of efficiency by insulating special districts and public authorities from special interests (see Walsh 1978). A second variant, from public choice theory, valorizes fragmentation for reasons discussed in Chapter One (sec. II.A).
County (subsection A.1) and the "Tri-State Region" encompassing New York City (subsection A.2).

1. Los Angeles

Anticipating the concept of urban sprawl, in 1925 humorist H.L. Mencken reputedly called Los Angeles "nineteen suburbs in search of a metropolis" (Swainson 2000, 636).8 A subsequent upward revision of this quip, sometimes attributed to Dorothy Parker (Rawson and Miner 2006, 126), describes "seventy-two suburbs in search of a city."9 This inflation – from nineteen suburbs, to seventy-two, to the present configuration of eighty-eight municipalities in the county – bespeaks the splintering of the region that occurred during the twentieth century.

Yet neither the size of the City of Los Angeles nor the jurisdictional fragmentation of the surrounding region was foreordained. When the City of Los Angeles received its initial charter from the California legislature in 1850, it encompassed a total area of only twenty-eight landlocked square miles (Figure 2). Changes to the state constitution in the 1880s increased local control over municipal incorporation and boundary changes (McBain 1916, 200–204; Warren 1966, 54–58), providing local elites with the legal tools to fulfill their "aspiration to unify the city and county so that a greater Los Angeles would emerge administratively as well as economically" (Fogelson 1967, 222). Meanwhile, access to capital markets and control over water supply gave city officials substantial political leverage over adjoining areas (Fogelson 1967, 85–134, 223–228; Warren 1966, 71–79). As a result, from 1895 through 1949, the city added over 424 square miles of land by annexing unincorporated areas and consolidating

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8 Swainson (2000, 636) indicates that the quote comes from Mencken's book Americana (1925), but provides no page number for the citation. I have located Mencken's book, but could not find the quote therein.

9 Rawson and Miner (2006, 126), who emphasize the questionable provenance of this variant of the quotation, attribute the earlier variant to Aldous Huxley from the book Americana (1925). The latter attribution may be erroneous, as I have been unable to locate any book by Huxley with this title.
existing towns and cities, including a "shoestring" strip (annexed in 1906) connecting the downtown business district to the deep port harbor in the City of San Pedro and the City Wilmington (both consolidated with the City of Los Angeles in 1909) (see Warren 1966, 85–87). The added territory increased the city's area more by than $1,500\%$ (Figure 2).

But the era of jurisdictional unification was short-lived. Nearly 90% of the city's territorial expansion occurred in just three decades, from 1895 through 1924. This rapid unification coincided with the first of two waves of municipal fragmentation in Los Angeles County (Figure 3), which, as of the 2010 U.S. Census, had produced 88 cities (covering 1436 square miles) with 8,761,179 inhabitants, along with 273 square miles of unincorporated census designated places, which were home to 921,066 people.$^{10}$

Changes in industrial technology played an important — although perhaps not decisive — role in the first phase of fragmentation, during which the number of incorporated cities in Los Angeles County jumped from one (in 1885) to forty-four (in 1927) (County of Los Angeles 2010). The telephone and the automobile, for example, facilitated both the decentralization of industry and the increasing physical separation of work and residence (L. Moses and Williamson 1967; Jackson 1987, chap. 9; Monkkonen 1988, chap. 7).

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$^{10}$ Census designated places "are delineated to provide data for settled concentrations of population that are identifiable by name but are not legally incorporated under the laws of the state in which they are located" (U.S. Census Bureau 2012, A–21).
Figure 2: Expansion of the City of Los Angeles

Source: Los Angeles County Department of Public Works (2013) (data); Cartography by author.
But institutional innovations were no less pivotal to the fragmentation of the metropolis. In the first decades of the twentieth century, state laws facilitating the creation of special districts and expanding the county's legal powers freed outlying areas from reliance on the City of Los Angeles for service provision (Mullen 1965, 367–373; Warren 1966, chap. 6). The advent of the municipal zoning power, meanwhile, gave outlying areas a powerful incentive to incorporate independently. In 1908, the City of Los Angeles established "the first major use-zoning law of any American city" (Weiss 1987, 81). By 1913 this ordinance had survived numerous legal challenges, precipitating the rapid diffusion of local zoning ordinances in other municipalities.
Technological innovation had permitted industrial and apartment development at the urban fringe. Without the legal authority to prescribe land use, areas surrounding central cities were largely unable to combat such development (Fischel 2004, 326). The combination of technological advance and legal powerlessness "created a problem for homeowners and the developers who catered to them[,] [because a] vacant lot in a partially developed single-family neighborhood could now easily be sold to a non-residential user or an apartment developer" (Fischel 2004, 321). Municipal zoning authority provided a solution to this problem, making incorporation an attractive option. (Zoning was also used to protect industrial areas of Los Angeles County from residential incursions, as in the City of Vernon (Jamison 1952, 99).)

Although the Great Depression and World War II dashed the initial wave of fragmentation, a second surge began gathering force with the 1954 incorporation of Lakewood (Figure 3). Since at least 1951, Lakewood residents had been fighting annexation by the neighboring City of Long Beach. Consistent with Fischel's account of the relationship between zoning and fragmentation, Lakewood residents' opposition to the annexation stemmed largely from concerns about ceding control over land use and taxation to a large city. Although Lakewood could not afford to provide the full complement of municipal services independently, one advocate of incorporation suggested that an incorporated Lakewood could contract with Los Angeles County for such services. Because the county could achieve scale economies for many services, this plan made incorporation financially feasible for Lakewood. During the following

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11 Such local laws received explicit authorization from the California legislature in 1917 (Weiss 1987, 91).
12 Unless otherwise indicated, all factual claims in this paragraph are from Miller (1981, 14–22).
13 Prior to the advent of this approach to service provision, the Los Angeles County government had long opposed additional incorporations, fearing that they would erode its power. Although some of this power derived from control over countywide services (e.g., libraries, a public health system, welfare administration), much of it stemmed from the county's responsibility for the municipal functions of unincorporated areas, many of which were rapidly urbanizing. Because every newly formed municipality relieved the county of some responsibility, incorporation threatened to diminish the county government's power. As a result, since at least the 1930s, the county government
decade, from 1955 through 1964, thirty additional cities were incorporated in Los Angeles County (County of Los Angeles 2010). All but one of these new cities used the approach to service provision pioneered by Lakewood, which is frequently called the "Lakewood Plan."

The second wave of fragmentation spurred new concerns, resulting in state legislation that slowed the pace of incorporations. In 1959, California governor Edmund "Pat" Brown sought to identify "the danger point in proliferation of local government" by convening a Commission on Metropolitan Area Problems (quoted in Teaford 1997, 69). The California legislature responded by requiring each county in the state to establish a Local Agency Formation Commission (LAFCO) to regulate government boundaries (Goldbach 1965). California's 1977 Municipal Organization Act created an additional obstacle to secession from any existing city, by giving the affected city council veto power over secession (Hogen-Esch 2011, 12). After the LAFCOs and the secession veto largely stemmed the tide of municipal fragmentation (Lewis 1998, 21), a 1992 state law brought incorporations to a virtual standstill throughout California, by restricting LAFCO approval to incorporations that would be "fiscally neutral" for both the county government and affected local governments (Lewis 1998, 21–22; Hogen-Esch 2011, 10–12). As of March 2013, no incorporations had occurred in Los Angeles County since 1991 (California State Data Center 2013), despite an 11% increase in the county's population from 8,863,164 (in 1990) to 9,818,605 (in 2010).

These restrictions on fragmentation may have restored some of the political power that the City of Los Angeles lost with the advent of the Lakewood Plan. Nevertheless, the connection is not entirely clear, as illustrated by the failed attempt of residents and businesses in the San Fernando Valley to secede from the city in 2002 (Figure 4). Denizens of this vast and relatively

had opposed campaigns for incorporation. Because Lakewood's arrangement enabled the county to retain its responsibility for local services, it did not pose a threat to the county government (Miller 1981, 14–22).
affluent area had long complained that the Los Angeles city government ignored their interests while lavishing resources on other areas with more clout in City Hall (Hogen-Esch and Saiz 2002, 49). (Proposition 13, the 1978 statewide ballot initiative that substantially limited property taxes in California – hampering redistribution at the local level – had received strong support from Valley voters (Hogen-Esch 2001, 795; Sonenshein 1993, 181, Table 11.6).) Such sentiments helped to spur a movement that gained momentum during the second half of the 1990s (Hogen-Esch and Saiz 2002, 50–53). The Los Angeles County LAFCO found that separation of the Valley from the City of Los Angeles could be "revenue neutral," thereby facilitating a vote on secession (Hogen-Esch 2011, 13). Secession proponents improved their odds, moreover, by prevailing upon the state legislature to repeal the portion of the 1977 Municipal Organization Act giving the affected city council veto power over secession (Hogen-Esch 2011, 12–13). (Had it retained veto authority, the Los Angeles City Council would almost certainly have exercised it.)

Nevertheless, the secessionists' victories proved pyrrhic. Buoyed by strong support from organized labor, opponents of secession prevailed upon the state legislature to give voters citywide an opportunity to vote on secession. This represented a defeat for Valley secessionists, who urged the state legislature to leave the decision to Valley voters (Sonenshein and Hogen-Esch 2006, 476–477). This turn of events proved decisive because, despite the LAFCO's finding of revenue-neutrality, the secession measure garnered support from only 33% of voters citywide (Hogen-Esch 2011, 13), with opponents successfully labeling secessionists as "would-

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14 The legislation supported by proponents of secession would not have applied to cities other than Los Angeles (Sonenshein and Hogen-Esch 2006, 476).
15 State law enabled the City of Los Angeles to appoint only one of nine members to the Los Angeles County LAFCO board, and the majority of the board's members "were either indifferent to or openly hostile to the City of Los Angeles, the urban colossus in their midst" (Sonenshein and Hogen-Esch 2006, 477).
be perpetrators of 'white flight' seeking to divorce themselves from the responsibilities of caring for the city's poor" (Hogen-Esch and Saiz 2002, 54). A narrow majority of Valley voters (51%) cast ballots in favor of secession, but the measure garnered support from only 20% of voters in the rest of the city (Hogen-Esch 2011, 13).

While the history of the Valley secession campaign underscores the formal precariousness of local governments' place in the federal system, it also points to mechanisms of their political durability. The supremacy of state law governing secession bolstered the San Fernando Valley secession campaign, which succeeded in surmounting one veto point (LAFCO approval) and eliminating another (the Los Angeles City Council's veto power). Nevertheless, the campaign failed, in large part because proponents of secession simply lacked sufficient clout at the state level to eliminate the structural impediment of a citywide ballot measure.

The trajectory of the Valley secession campaign, moreover, can be interpreted in light of both public choice and the communitarian perspectives on urban governance. From a public choice perspective, supporters of redistribution harnessed the coercive power of government to muster organizational resources (such as those of organized labor) and thwart Valley voters' efforts to wrest control over their resources from the broader city. From a communitarian perspective, the outcome arguably represents a success in combating "the secession of the affluent from the public sphere" (Sandel 1996, 332), which horizontal fragmentation under the Lakewood Plan exemplifies (see G. E. Frug 1998, 89 n. 218 and accompanying text).
2. New York

The horizontal jurisdictional fragmentation of the area surrounding New York City is the product of a much earlier history. What was perhaps the most significant event in that process – the delineation of colonial boundaries – predates U.S. nationhood. These divisions essentially demarcated the state lines within the (variably defined) New York – New Jersey – Connecticut
"Tri-State Region" (Figure 5), encompassing New York City and its suburbs. Given the limited sovereignty reserved for the states under the U.S. Constitution, these state boundaries are for all practical purposes immutable.

The boundaries of New York City itself have remained essentially unchanged for more than a century. Prior to its consolidation in 1898, the area currently included within the City of New York was far more jurisdictionally fragmented. On the eve of consolidation, it encompassed New York City (which extended beyond the island of Manhattan to what is now the south Bronx) and three independent counties (Kings, Queens, and Richmond). Just as in Los Angeles, New York City and municipalities in the adjacent counties showed a marked trajectory towards unification throughout the latter half of the nineteenth century. Between 1850 and 1895, New York City extended beyond the island of Manhattan by adding territory that would later become the south Bronx,\(^\text{16}\) while the City of Brooklyn in Kings County increased its territory by more than 350\(^%\).\(^\text{17}\)

The trend towards consolidation culminated with the 1898 creation of Greater New York City. In its 1888 Annual Report, the Chamber of Commerce of the State of New York proposed the creation of a unified city encompassing the entire harbor (Hammack 1982, 193). Chamber member and New York City Mayor Abram S. Hewitt explained that consolidation would facilitate the capital investment necessary to make the harbor "adequate for the easy transfer of the vast commerce of the country" (quoted in Hammack 1982, 192). Other virtues of consolidation cited by Hewitt included the development of "cheap and rapid transit ...[,] salubrious and attractive parks ...[,] [and] a system of taxation so modified that the capital of the

\(^{16}\) See Atlas of Historical County Boundaries (The Newberry Library, Dr. William M. Scholl Center for American History and Culture 2014).

\(^{17}\) Calculated from GIS shapefiles of Brooklyn wards from the Historical Urban Ecological Data Set (Center for Population Economics 2013).
world may be as free to come and go as the air of heaven" (quoted in Hammack 1982, 193). Denizens of the burgeoning City of Brooklyn, which would be absorbed by the new metropolis, were promised lower taxes and new infrastructure (including a bridge from Brooklyn to Manhattan) (Hammack 1982, 195–199). As proponents of consolidation built their case during

**Figure 5: Various Definitions of the "Tri-State Region"**

![Map of the Tri-State Region](image)

*Source: Danielson and Doig (1982, 37)*
the 1890s, they also argued that consolidation would facilitate development of the infrastructure necessary for the emerging middle class to flee the dense tenements of the central city (Hammack 1982, 203). A majority of voters in the New York City, Kings County, Queens County, and Richmond County approved consolidation in a 1894 referendum (Hammack 1982, 205, Tab. 7-1), but the state did not approve a new charter for the metropolis until 1896 (Hammack 1982, 223).

Although New York City entered the twentieth century a territorial colossus, a tide of fragmentation would soon engulf the outlying areas, producing the current plethora of suburban municipalities depicted in Figure 1. Subsequent efforts by New York City to add additional territory within New York State failed, as outlying suburbs deployed special districts to muster the technical expertise and financial wherewithal to provide their own services (Dilworth 2005, 90–101). Across the Hudson River, in New Jersey, incorporations occurred at a whirlwind pace during the latter half of the nineteenth century and the first quarter of the twentieth, driven by the desire of local residents to exclude unwanted land uses (or unwanted people) via de facto zoning. By 1926, the state contained over 540 municipalities (Karcher 1998, 10). The suburban enclaves of the "Tri-State Region" have since become some of the most potent examples of exclusionary zoning (see, e.g., Davidoff and Gold 1970; Danielson 1976; Kirp 1995).

While the Chamber of Commerce of the State of New York had long championed consolidation, it lost control over the process during the political wrangling that followed the referendum vote. Along with other organizations of economic and professional elites, the Chamber expressed strong reservations about the charter that emerged (Hammack 1982, 227). This turn of events suggests that the consolidation – in and of itself – may not have had an intrinsic distributive bias. Rather, the broader constellation of urban governance institutions
appears to have played a decisive role in the Chamber's change of heart. The following subsection discusses institutions that may affect the distributive valence of local policy.

**B. Vertical Fragmentation**

Like horizontal fragmentation, vertical fragmentation (both upward and downward) may be relevant to the negotiation and implementation of CBAs. Upward fragmentation, discussed in subsection B.1, distributes legal authority among overlapping jurisdictions. Even within the City of Los Angeles, fiscal responsibility for government functions is splintered among the city, the county, the Los Angeles Unified School District, and independent special districts (Figure 6). The city itself is responsible for less than half of all per capita local direct expenditures within its borders. By contrast, New York City has authority over nearly all local direct expenditures within its borders (Figure 6). Subsection B.2 discusses statewide direct legislation, a delegation of legal authority that demonstrates attributes of both upward and downward fragmentation. The latter form of fragmentation, discussed in subsection B.3, involves the division of authority over resources within a jurisdiction. In Los Angeles, for example, much authority over the city's redevelopment subsidies during the period covered by this study was lodged with the city council. By contrast, in New York City, the city council exercised little if any formal authority...

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18 My measure of per capita local direct expenditures comes from the Fiscally Standardized Cities database developed by Langley (2013) based on the methodology of Chernick et al. (2011). The standardization procedure allocates an appropriate share of expenditures to overlapping governments, such as counties, special districts, and school districts. The term "expenditure" includes all amounts of money paid out by a government during its fiscal year—net of recoveries and other correcting transactions—other than for retirement of debt, purchase of investment securities, extension of loans, and agency or private trust transactions. Under this definition, expenditure relates to external payments of a government and excludes amounts transferred to funds or agencies of the same government (other than payments to intragovernmental service funds...). The term "direct expenditure" comprises all expenditure other than intergovernmental expenditure (U.S. Census Bureau 2011a, sec. 8-A). (The term "intergovernmental expenditure" describes "[amounts] paid to other governments for performance of specific functions or for general financial support" (U.S. Census Bureau 2011a, sec. 8-A).)

19 Although a number of relevant entities in New York (such as the New York City Housing Authority) are legally special districts, the U.S. Census Bureau has designated these entities as dependent agencies of the City of New York. By contrast, the Bureau has designated the Los Angeles City Housing Authority as an independent special district. For a description of the criteria for distinguishing an independent special district from a dependent agency of a city government, see U.S. Census Bureau (2005, vii–ix).
over such subsidies, while the mayor exercised substantial control. Inasmuch as vertical fragmentation affects the scope of political conflict (cf. Schattschneider 1960, chap. 1–2), it can influence the visibility of government action, the means of public participation, and the substantive outcomes of public decision-making.

Figure 6: Total Fiscal Year 2000 Per Capita Local Direct Expenditures in City of Los Angeles and City of New York (2010 Dollars), Disaggregated by Type of Local Government Responsible for Expenditure


Note: For the definition of direct expenditure and a discussion of the method for attributing direct expenditures in cities to overlapping jurisdictions, see footnotes 18 and 19.

1. Upward Fragmentation

As discussed in Chapters One (secs. III-IV) and Two (sec. IV.C.1), local expenditures on social welfare and economic development programs can affect political mobilization. Because
officials with control over these resources can use them to rally support for favored projects, the allocation of such authority can influence the negotiation of CBAs. This subsection compares the allocation of relevant responsibilities among different levels of government, first through a discussion of county government and second through a description of regional and state-level public authorities (i.e., special districts and redevelopment agencies). (Subsection B.3.a, below, addresses local public authorities.)

a. County government

While county government plays a pivotal role in the politics of the City of Los Angeles, it is essentially non-existent in New York City. Both New York City and the City of Los Angeles are the sites of relatively large per capita social service expenditures, but such expenditures are substantially higher in New York, where the city government exercises far more budget authority. Per capita local government direct expenditures on social services, and housing and community development in New York City are more than double those in the City of Los Angeles, even including relevant expenditures by Los Angeles County and special districts (Figure 7). (In both cities, such expenditures are above the median for the 112 largest U.S. cities.) The City of Los Angeles, moreover, has relatively little control over its smaller set of per

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20 Social services include the following functional categories from the Government Finance and Employment Classification Manual (U.S. Census Bureau 2011a) (function codes in parentheses): Vendor Payments for Medical Care (74), Vendor Payments for Other Purposes (75), Welfare Institutions (77), Other Public Welfare (79), Own Hospitals (except Federal Veterans) (36), Other Health (32).

21 As defined by the Government Finance and Employment Classification Manual (U.S. Census Bureau 2011a), "Housing and Community Development" (Function Code 50) includes: "Construction, operation, and support of housing and redevelopment projects and other activities to promote or aid public and private housing and community development." Examples of housing expenditures include: "Planning, construction, furnishing, and operation of public housing projects (generally for persons not adequately served by private sector); rent subsidies (e.g., 'Section 8' assistance); housing and mortgage finance agencies; promotion of home ownership; assistance for repair and renovation of existing homes; and programs to encourage private sector housing production." ("[T]emporary shelters or housing for the homeless" are included in this category, which also generally excludes "activities that directly aid homeowners or renters themselves (e.g., housing expense relief)."") Examples of community development expenditures include: "Urban renewal and slum clearance; redevelopment and rehabilitation of substandard or deteriorated facilities and areas; rural redevelopment; and revitalization of commercial areas."
capita resources. While New York City has extensive (although not exclusive) authority over social service expenditures within its borders, California law delegates almost all of the relevant authority in the City of Los Angeles to the county government. As a result, Los Angeles County is responsible for roughly 96% of social service expenditures in the City of Los Angeles. (The city government evenly divides administration of the remaining 4% with independent special districts (Table 2.) Authority over the county budget is lodged with the five-member Board of Supervisors, elected by district. Each district contains part of the City of Los Angeles, but – as of 2010 – registered voters in the City of Los Angeles constituted a majority of voters in only two districts.

By contrast, New York City's mayor wields substantial authority over its social service budget, which can confer important indirect influence over the development process. For more than three decades, community-based organizations have held many of New York City's social service contracts (C. V. Hamilton 1979; Grossman, Salamon, and Altschuler 1986; J. H. Mollenkopf 1992, 75, 91–98; Marwell 2007, 109–110). Following federal program changes in the late 1970s, Mayor Edward Koch consolidated control over social service spending in the Mayor's office (J. H. Mollenkopf 1992, 159–160). In 1989, the U.S. Supreme Court mandated a major overhaul of New York City government, and the ensuing city charter reform gave the mayor expansive authority over city procurement contracts for goods and services (Schwarz and


24 29% of voters in the First Supervisorial District lived in the City of Los Angeles. The comparable figures for the other four districts were: 56% (Second District), 82% (Third District), 9% (Fourth District), and 11% (Fifth District). Calculated from Los Angeles County redistricting data, http://redistricting.lacounty.gov/wp-content/uploads/2011/02/03_REGDATA.xlsx (last visited Jan. 28, 2014).

As a result, community-based organizations seeking social service contracts with the city can gain a competitive advantage by supporting the mayor (or one of the mayor's political allies) (J. H. Mollenkopf 1992, 160; Marwell 2007, 109–110). (Such organizations frequently have close ties to local politicians (see, e.g., Marwell 2007, 95–128; T. Robbins 2004).)

**Figure 7: Comparison of Per Capita Social Service, Housing, and Community Development Expenditures (Excluding Direct Cash Assistance Programs) in 112 Largest U.S. Cities**

This figure displays the sum of local government direct expenditures during fiscal year 2000, denominated in 2010 dollars, for social services, housing, and community development in each of the 112 U.S. cities contained in the Lincoln Institute of Land Policy's Fiscally Standardized Cities database (http://www.lincolninst.edu/subcenters/fiscally-standardized-cities/). (For discussion of the method for selecting the sample of 112 cities, see section I of this chapter.) This database includes expenditures of city governments, county governments, school districts, and independent special districts. For relevant definitions see footnotes 18 (direct expenditure), 20 (social services), and 21 (Housing and Community Development).

*Source: Lincoln Institute of Land Policy (2013).*
Table 2: Fiscal Year 2000 Per Capita Direct Expenditures for Social Services (Excluding Direct Cash Assistance), Housing, and Community Development, in dollars

<table>
<thead>
<tr>
<th></th>
<th>Housing &amp; Comm. Dev.</th>
<th>Social Services</th>
</tr>
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<tr>
<td></td>
<td>LA</td>
<td>NYC</td>
</tr>
<tr>
<td>City</td>
<td>60</td>
<td>379</td>
</tr>
<tr>
<td>County</td>
<td>27</td>
<td>-</td>
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<tr>
<td>Special Dist.</td>
<td>137</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>224</td>
<td>379</td>
</tr>
</tbody>
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Note: All special district expenditures for the City of Los Angeles in the Housing and Community Development category are attributable to the Los Angeles City Housing Authority. The Census Bureau defines this entity as a Special District, but defines the New York City Housing Authority as a "dependent agency" of the New York City government. See footnote 19 for further discussion of this distinction.


b. Public authorities

In Los Angeles and New York, public authorities – a rubric that includes special districts and redevelopment agencies – are mechanisms of both upward fragmentation (which this subsection discusses) and downward fragmentation (discussed below in subsection B.3.a). Regional public authorities, controlling vast real estate portfolios, are responsible for the development, operation, and maintenance of transit in both cities. They are frequently involved in the negotiation of large-scale projects, which invariably entail transit planning and may also require the disposition of property owned by a transit authority. But while the New York Metropolitan Transportation Authority (MTA) is concerned primarily with operating and maintaining a transit infrastructure largely developed a century ago, the Los Angeles County Metropolitan Transportation Authority – after a long period of institutional quiescence – embarked during the 1990s upon one of the most ambitious public works programs in the U.S. In New York, moreover, the Urban Development Corporation – a public authority with a board consisting solely of gubernatorial appointees – also has substantial authority over local
redevelopment policy, including the provision of subsidies and the exercise of eminent domain. California had no comparable state-level entity during the period covered by this study.

(I) New York

Chartered in 1968, the New York MTA was born of then-governor Nelson Rockefeller's desire to exert more control over matters of regional concern and to seize much of that control from master builder Robert Moses (Caro 1974, 1067–1081, 1132–1144; Danielson and Doig 1982, 229; Benjamin 1988, 119). As of 2012, the governor had authority to appoint all seventeen voting members of the MTA's board, selecting six (including the chairman) without formal recommendation, four on the recommendation of New York City's mayor, and the remaining seven based on the recommendation of public officials outside of New York City.26 The MTA consolidated the Long Island Railroad, the New York City Transit Authority, and Moses' erstwhile base of power, the Triborough Bridge and Tunnel Authority. It combined these entities' vast network of bridges, tunnels, bus routes, subways, and commuter trains with extensive authority to issue new debt (Danielson and Doig 1982, 226–236). On the eve of the MTA's inception, Rockefeller and William Ronan (who would chair the new authority), announced an ambitious suite of transit infrastructure projects—a new subway line under Second Avenue in Manhattan, a new subway tunnel under the East River, a rail line to Kennedy Airport, and a new fleet of express trains that would whisk commuters to Long Island at speeds of up to 100 miles per hour (Danielson and Doig 1982, 235). By the end of 2013, the MTA had completed only one of these projects—the East River subway tunnel, which entered permanent service in 2001, twenty-five years behind schedule (cf. Burks 1969; Kershaw 2001).

Rockefeller's predilection for powerful, executive-centered public authorities also resulted in the 1968 creation of the New York State Urban Development Corporation (UDC), with enabling legislation allowing the governor to select the corporation's directors and its president. In a book published that year, Rockefeller affirmed his "faith and commitment to the private enterprise system" for the resolution of urban problems (quoted in Botein 2009, 837), and a 1968 press release from the National Rockefeller for President Committee emphasized that UDC was "organized like a business, not like a bureaucracy" (quoted in Botein 2009, 838).

UDC's enabling legislation conferred expansive authority. As two contemporary commentators noted, it provided both "blank check" authority to issue bonds guaranteed by the state and "extraordinary powers to override local governments" (Quirk and Wein 1969, 859–861), including the ability to exercise eminent domain and preempt municipal land-use regulation. In addition, UDC's sponsorship of a project can expedite environmental impact review. Both the City and State of New York mandate such review, but the state's requirements are less substantively and procedurally intricate. Although the city's requirements typically apply within its territory, developments sponsored by UDC are subject only to the state requirements, unless the corporation agrees to follow the city's procedures (Gerrard, Ruzow, and Weinberg 2011, vol. 2, secs. 8A.05–8A.06).

Beginning in the late 1960s, UDC embarked on host of ambitious housing development projects. These projects did not generate sufficient revenue to cover UDC's bond payments, and by 1975 the corporation required a massive bailout from the state (Osborn 1977, 246–247).

(Many contemporary observers viewed the near-default as the trigger for New York City's fiscal crisis (Auletta 1980, 87–91).)

Nevertheless, within two years of its brush with default, UDC had embarked on new projects. Although it no longer issued bonds, it continued to use its other legal powers to expedite development (M. E. Gold 1987, 215–216). According to its president and CEO, by 1979 UDC had "'clearly undergone a 180-degree policy shift' from providing a social benefit, housing, at public cost to assuming 'a catalytic role' in putting economic projects 'that cannot quite make it to reality over the top'" (Horsley 1979, quoting Richard A. Kahan). In 1995, UDC began calling itself the Empire State Development Corporation (Dunlap 1995), although it retained its original name as a legal entity, entering contracts as "New York State Urban Development Corporation d/b/a [doing business as] Empire State Development Corporation" (see, e.g., Empire State Development Corporation et al. 2005).

(2) **Los Angeles**

While California has no state-level analog to UDC, transit development in the City of Los Angeles is controlled by a regional public authority with some similarities to the New York MTA. Although neglect of mass transit is an infamous aspect of Los Angeles history, both the city and county have done much in recent decades to shake their reputation for highway-oriented transportation planning. The Los Angeles County Metropolitan Transportation Authority has played a key role in this transformation, in part by leasing land for urban redevelopment projects.

The prospects for mass transit in Los Angeles County following World War II were inauspicious. While state legislators were eager to respond to constituents' frustration with rapidly increasing traffic congestion, they hoped to steer clear of inter-local conflict. As a result, the Los Angeles Metropolitan Transit Authority, created in 1951, was "the most bizarre instance
of governmental intervention in the transit industry anywhere in the USA.... The new authority was so deeply constrained in so many financial and institutional ways that it was clear to all concerned that in its original form it was condemned to life as a marginal organization" (S. Adler 1987, 161).

Public transit began to shed its marginal status in Los Angeles in 1976, when the California legislature created the Los Angeles County Transportation Commission with "an unprecedented set of financial, planning, and coordinating powers" (S. Adler 1986, 330). Los Angeles County voters approved a 0.5% sales tax increase in 1980 and an additional 0.5% increase in 1990, with the resulting revenue dedicated to transit improvements and fare reductions (Grengs 2002, 166–167). In 1992, the Transportation Commission embarked on one of the most ambitious public works programs in the U.S., adopting a 30-year plan with an estimated cost of $183 billion (Garrett 2006, 544–546). Marking a "major departure" from the automotive orientation of planning in Los Angeles (Wachs 1993, 332), the plan focused on rail transit development, despite widespread consensus among planning scholars that such spending would be a waste of scarce mass transit resources in such a spread-out metropolis (Richmond 2005, chap. 3).

State legislation merged the Commission with the Southern California Rapid Transit District in 1993 to form the Los Angeles County Metropolitan Transportation Authority (LACMTA) (Garrett 2006, 593–596). In contrast with the New York MTA, the Governor of California wields no direct authority over the LACMTA's thirteen voting members, who include the five county supervisors, four public officials from areas of the county outside the City of Los Angeles, and four representatives of the City of Los Angeles (the mayor and three mayoral
appointees, including two city council members).\textsuperscript{29} Despite a troubled rollout for the 30-year plan (scaled back to an $87$ billion 20-year plan in 1995) (Fulton 1997, 142–150), the Authority has maintained its commitment rail development (He 2013, 167–168), seeking to develop new stations in conjunction with transit-oriented redevelopment projects on land that it owns (Los Angeles County Metropolitan Transportation Authority 2009).

2. Fragmentation of Indeterminate Direction: Statewide Direct Legislation

Direct legislation involves the delegation of law-making power to voters, rather than elected representatives (Lupia and Matsusaka 2004, 465). Some public choice theorists favor direct legislation, arguing that it promotes allocative efficiency, while other commentators contend that it undermines public deliberation and exacerbates inequality (Chapter One, sec. IV.A.2). (Notably, some scholars working within the public choice framework question the value of direct legislation (see, e.g., T. Kousser and McCubbins 2005).) Some states (such as California) confer relatively broad authority on voters to supplement (or usurp) representative decision-making at the state level, while others (such as New York) largely deny voters this power (Initiative and Referendum Institute 2013). (Subsection 3.b below discusses local direct legislation.)

Statewide direct legislation fits uneasily in the framework of horizontal and vertical fragmentation, suggesting the limits of this taxonomy. Inasmuch as direct legislation delegates authority otherwise lodged with a state-level representative government to individual voters, it is a form of downward fragmentation (or decentralization). But if, as Kousser and McCubbins (2005, 967–969) suggest, it increases the constraints on local decision-making more than

statewide representative democracy (and contrary to the wishes of local voters), it is a form of upward fragmentation (or centralization).

Proposition 13, one of the most famed products of statewide direct legislation, illustrates the ambiguous valence of direct legislation as a means of delegation. Proponents of Proposition 13, a 1978 statewide ballot initiative that substantially limited property taxes in California, framed the measure as a popular corrective to the "band aid illusion" tax relief laws adopted by an unresponsive state legislature in the preceding decade (DeCanio 1979, 55). But Proposition 13 has imposed unanticipated constraints on local decision-making, undermining its promise of decentralization and popular control (Chapman 1998). First, it forced municipalities to pay even closer attention to the likely fiscal consequences of land-use regulation. In particular, municipalities began to vie fervently for uses that would generate sales taxes (Lewis 2001). In this contest, local governments used the tools that remained at their disposal – land-use regulation and redevelopment subsidies. Second, a welter of opaque financing techniques designed to circumvent the limits of Proposition 13 emerged. As Chapman (1998, 15) notes, these new approaches to municipal finance have tended to be "more complex, more expensive, and typically are not discussed in public forums in ways that are intelligible to the public and elected officials." Third, in response to Proposition 13, the state government took greater fiscal control over social services previously under the authority of the county governments. (New York City's revenue collection is not nearly so constrained as that of California local governments (New York City Independent Budget Office 2006).)

3. Downward Fragmentation

Friedland et al. (1977, 457) contend that downward fragmentation – the division of authority over resources within a jurisdiction – can also influence distributive outcomes by
separating economic development objectives from redistribution through the design of public agencies. Such separation, they argue, can hamper political mobilization to connect these two domains. Both the City of Los Angeles and New York City have substantial fiscal responsibility for economic development and the preservation or construction of affordable housing. Nevertheless, per capita expenditures in New York City for these purposes far outstrip those in the City of Los Angeles (Table 2) and, in particular, the City of New York spends substantially more on the development and rehabilitation of low- and moderate-income housing (see Been et al. 2012, 42–44; Ellen and O’Flaherty 2013; Brown 2012; City of Los Angeles 2008). (As discussed in Chapter Six, these funds provide an important political resource that can be relevant to negotiations concerning large-scale projects.)

Intra-jurisdictional allocation of authority over the associated resources varies substantially between the two cities. This subsection first discusses city-level housing and economic development agencies. During the period covered by this study, responsibility for spurring redevelopment in New York was shared by the New York City Economic Development Corporation and state-level entities including UDC. The development and financing of affordable housing, meanwhile, was largely the bailiwick of other entities such as the city’s agency of Housing Preservation and Development and its Housing Development Corporation. By contrast, much of the funding for affordable housing development and rehabilitation in Los Angeles came from the city's Community Redevelopment Agency (CRA). The CRA also had broad responsibility for promoting economic growth through the redevelopment of "blighted" areas.30

The concluding portion of this subsection briefly compares environmental review and local direct legislation in the two cities. Both mechanisms give individuals or private groups

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powers typically associated with representative institutions of democratic government. As a result, they are another means for dividing authority over resources. For each mechanism, state and local law delegate more formal authority to individuals in Los Angeles than in New York.

a. **Local housing and economic development agencies**

Although Los Angeles and New York both provided subsidies for economic development throughout the period covered by this study, bureaucratic and political control over the associated resources varied substantially between the two cities. In New York, economic development is segregated from the rehabilitation and development of affordable housing, and the mayor exercises substantial authority over both policy domains via public authorities. By contrast, in Los Angeles, these policy domains have long been combined, largely under the authority of the city council.

(1) **New York**

The relevant formal structure in New York City reflects both deeply entrenched legal institutions and the efforts of extraordinary individuals, such as Robert Moses, to harness those institutions in service of their goals. At least since the development of the Erie Canal in the early nineteenth century (Quirk and Wein 1971, 523–526; Scheiber 1987, 420–422), New York State has extensively used public authorities to promote economic development. An early model for the public authority law of other states (Scheiber 1987, 421), New York State maintained "a more fully developed array of legal regulations controlling authorities than any other state in the nation" (Walsh 1978, 264). While Robert Moses deftly deployed this intricate body of law to create a juggernaut of infrastructure development largely immune from democratic oversight (Caro 1974, chap. 10, 11, 28; Walsh 1978, 211–224), he did not invent it and his fall from power.
did not unravel it. Indeed, Nelson Rockefeller sought to depose Moses by seizing control of existing public authorities and creating new ones (see sec. II.B.1.b(1) above).

The dominance of insulated public authorities has had an enduring effect on the economic development institutions of New York City, although they have gained more autonomy from the state government in the past two decades. Overwhelmed by powerful entities such as Moses' Triborough Bridge and Tunnel Authority and (later) UDC, by the 1980s New York City had yet to develop any powerful local institutions for economic development (N. I. Fainstein and Fainstein 1984, 15; Shefter 1985, 60). Created in 1966, the city's Public Development Corporation had authority "to dispose of land acquired from the city on a sole-source basis, rather than through a competitive-bid process or auction" (Sagalyn 2001, 71). But the Public Development Corporation lacked many of UDC's extraordinary powers and, after decades of playing second fiddle to UDC, it did not have personnel capable of handling complex, large-scale projects (Sagalyn 2001, 71–73).

From the latter half of the 1980s and into the 1990s, however, the Mayor's office took greater control over redevelopment policy. During the 1980s, UDC increasingly turned away from large-scale development projects (Gottlieb 1983; Sagalyn 2001, 76–77). Meanwhile, the federal Urban Development Action Grant program "pushed city officials to restructure their relations with private developers" (Sagalyn 2007, 10), by fostering competition for federal aid based on the perceived economic feasibility of proposed projects (Sagalyn 2007, 9; see also, Frieden 1990, 425). In 1989, the U.S. Supreme Court held that the city's Board of Estimate — a legislature consisting of each of the five borough presidents, the mayor, and two other representatives elected by citywide vote — violated the "one-person one-vote" requirement of the
federal constitution. Although, in abolishing the Board of Estimate, the resulting city charter expanded the city council's authority over land-use approvals (Schwarz and Lane 1998, 856–872), it also gave the mayor relatively broad authority to dispose of city property for economic development projects, free of constraints on competitive bidding.

Less than a year after the Board of Estimate dissolved, Mayor David Dinkins called for the consolidation of the Public Development Corporation and five other economic development agencies (Barbanel 1991). The resulting entity was the New York City Economic Development Corporation (EDC). According to its certificate of incorporation, EDC was formed:

To plan, develop and implement a comprehensive and professional program to promote private lending to private businesses and public and private projects in The City of New York ... [and] to mobilize the talents and resources of The City of New York financial community in support of the comprehensive program to increase the use of public funds and incentives by private businesses. (New York City Economic Development Corporation 1992, 2)

Unlike the Public Development Corporation, whose leaders had been drawn primarily from the public sector and the real estate industry, all of EDC's presidents to date have had Wall Street

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32 "NY City Charter § 384(b)(1) permits the Mayor to authorize the sale of City-owned real property or an interest therein 'only for the highest marketable price or rental, at public auction or by sealed bids.' However, ... Section 384(b)(4) of the NY City Charter allows the Mayor to sell City-owned property to a local development corporation [a form of public authority] ... without competitive bidding, if the property does not involve 'inalienable property,' and if the Mayor has the approval of the appropriate borough board." Landmark West! v. City of New York, 9 Misc.3d 563, 571-572 (Sup. Ct. N.Y. County 2005). Because a local development corporation is not formally a city agency, it can dispose of the property unfettered by competitive bidding rules, subject to the constraints described by the Landmark West! court. ("Inalienable property" consists of the City's "water front, ferries, wharf property, bridges, land under water, public landings, wharves, docks, streets, avenues, highways, parks, waters, waterways and all other public places." N.Y.C. Charter § 383. A borough board consists of "the borough president and the district council members from such borough, and the chairperson of each community board in the borough." N.Y.C. Charter § 85.) Mayoral agencies have even broader discretion over the disposition of certain kinds of properties specified by state law or the city charter, such as legislatively designated redevelopment areas and public markets. See, e.g., East Harlem Alliance of Responsible Merchants v. City of New York, 2010 N.Y. Slip Op 30023(U) (Sup. Ct. N.Y. County 2010) (redevelopment areas); Straus v. Strategic Development Concepts, 10 Misc.3d 1067(A), 2006 WL 20391 at 7-9 (Sup. Ct. N.Y. County 2006) (public markets).
33 Presidents of the Public Development Corporation included real estate industry veterans Philip E. Aarons, Steven Spinola, James Stuckey, and Carl Weisbrod, who presided over the consolidation of the Public Development Corporation into the Economic Development Corporation (see "Carl Weisbrod: Looking Up" 1994; Sagalyn 2001).
experience.  

Under two annually renewable contracts with New York City, EDC undertakes a wide array of activities intended to attract and retain businesses. For example, it provides business development grants and loan guarantees; it funds and oversees planning studies, infrastructure improvements, and site assembly; and it solicits and evaluates requests for proposals from private firms to develop city-owned property. The mayor has almost complete operational authority over the EDC, selecting a super-majority of its directors, controlling quarterly funding from an annual budget that has exceeded $1 billion, and exercising discretion over its sub-contracts.

EDC also administers the New York City Industrial Development Agency (NYCIDA) (New York City Economic Development Corporation 2012d), which provides subsidies for development projects. In the words of the City's Corporation Council (i.e., the city attorney), state law "gives the Mayor a key role in the appointment of fourteen members of the fifteen-member NYCIDA" (Cardozo 2005, 5). NYCIDA's principal subsidy mechanism is conduit debt, consisting of bonds issued by NYCIDA but backed by assets from a private project.

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34 As of April 2014, the successors to Carl Weisbrod (see note 33, supra) were: Clay Lifflander (Dunlap 1994; Firestone 1995), Charles Millard (Hicks 1995; Lueck 1999), Michael G. Carey ("Ex-Governor's Son Gets Top Job at City Agency” 1999), Andrew Alper (Cooper 2002; “Metro Briefing: New York” 2006), Robert C. Lieber (Rivera 2007), Seth Pinsky (Rivera 2007; Bagli 2013), Kyle Kimball (Bagli 2013; Grynbaum 2014), and Michael Schlein (Grynbaum 2014).

35 The contracts are executed between the corporation and the city's Department of Small Business Services (Kunz 2007a, 25–27; City of New York, Office of the Comptroller, Bureau of Financial Audit 2010, 4–5).

36 New York City Economic Development Corporation (1992, sec. 1–2) See also, N.Y. Not-for-Profit Corp. Law § 1411 (McKinney 2012).

37 See New York City Economic Development Corporation (1992, sec. 3(i)–(xiv); 2012a; 2012b; 2012c); Kunz (2007a, 27).

38 Composite Copy of Restated Certificate of Incorporation of New York City Economic Development Corporation (As of June 22, 1992), §§ 1.1, 2.4; Kunz (2007a, 27–28).


proponent. In a typical conduit debt transaction (Figure 8),\textsuperscript{41} an industrial development agency purchases a facility and sells bonds in order to subsidize the facility's construction or improvement. The agency will then lease the facility to the operator with an agreement to convey the facility to the operator at nominal cost (e.g., $1) when the lease terminates. In order to secure the bonds, the agency will mortgage the facility and assign the lease to a bank, which serves as a trustee. The bonds are typically repaid with revenue from the lease, although – as discussed below – payments in lieu of taxes have also been used for this purpose. In 2004, NYCIDA issued more than $683 million in conduit debt and, by the end of the fiscal year, had over $7.3 billion in such debt outstanding (Office of the New York State Comptroller 2006, 38).

\textbf{Figure 8: Typical Conduit Debt Transaction}

\textsuperscript{41}This description is based on Gadsden (1996, 467–470) and Postler & Jaeckle Corp. v. County of Monroe Industrial Development Agency, 153 Misc.2d 392, 393-394 (Sup. Ct. Monroe County 1992).
Conduit debt issued by NYCIDA confers various tax advantages, reducing financing and construction costs for a project proponent. The cost of capital can be lower than it would be for bonds issued by a private entity, because the interest on NYCIDA bonds may be exempt from federal, state, and local income taxation. Because NYCIDA technically owns facilities for which it issues conduit debt, such facilities are also exempt from sales taxes (for construction materials), use taxes, mortgage recording taxes, and property taxes. Annual NYCIDA tax exemptions in 2004 alone totaled $99.6 million (Office of the New York State Comptroller 2006, 25).

Given the complexity of conduit debt arrangements, there is little doubt that direct subsidies and tax abatements would provide incentives of equal value at lower cost to the public (see Gadsden 1996, 470; R. C. Fisher 2007, 252–254). But the opacity and complexity of NYCIDA conduit debt have political advantages that would be lost under more direct approaches. As with all industrial development bonds, NYCIDA bonds export much of the subsidy cost to the U.S. Treasury, in the form of foregone federal tax revenue. Moreover, although New York State law requires facility operators to make payments in lieu of some foregone local tax revenue, such payments to NYCIDA (which totaled $31.4 million in 2004 (Office of the New York State Comptroller 2006, 25)) differ from local taxes in important respects that can confer substantial power on the mayor.

Unlike the local taxes for which they substitute, these payments are not automatically remitted to the city’s general fund. Instead, state law gives the mayor broad discretion over the

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use of these payments, which local administrative arrangements enhanced for much of the period covered by this study. As the director of the New York City Independent Budget Office explained:

While the funds [from payments in lieu of taxes] remain in the hands of [NYC]IDA and its designated trustees, it is essentially left to the Mayor to determine how these funds are spent. This arrangement was established in a memorandum of understanding entered into by [NYC]IDA, EDC, the Department of Finance, and the Mayor's Office of Management and Budget in 1992. It is a process that is not public and — even for those of us in government — difficult to decipher. (Lowenstein 2005)

(Although the Independent Budget Office is part of the city government, the mayor exercises virtually no control over its leadership, operations, or funding, giving it some measure of autonomy.) Notably, some payments in lieu of taxes related to projects discussed in Chapter Six were never remitted to the city's general fund. Instead, they were used to pay the debt service on tax-exempt construction bonds issued by the NYCIDA. (Although subsequent federal

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45 According to the Corporation Counsel of the City of New York:
[T]he City, through the Mayor, has the power to convey rights to personal property in the manner it deems appropriate, including rights to contracted-for payments under NYCIDA contracts. See [N.Y.] Gen. City L. §20(2); [N.Y.] City Charter §8; Creole Enterprises, Inc. v. Giuliani, 167 Misc. 2d 810, 818 (Sup. Ct. N.Y. Co. 1995), aff'd, 236 A.D.2d 272 (1st Dep't 1997), leave to appeal denied, 90 N.Y.2d 802 (1997). Moreover, [N.Y. Gen. Mun. Law] §917, which establishes the NYCIDA, makes plain that the Mayor is responsible for interacting with the NYCIDA on behalf of the City. While the [General Municipal Law] defines "governing body" for other industrial development agencies within the State as "the board or body in which the general legislative powers of the municipality are vested," [N.Y. Gen. Mun. Law] §854(5), which governs the New York City Industrial Development Agency, provides in contrast that the "governing body ... shall mean the Mayor of the City," [N.Y. Gen. Mun. Law] §917(k). Further the statute gives the Mayor a key role in the appointment of fourteen members of the fifteen member NYCIDA. Thus ... both State law (§917(a)) and the City Charter (§8) empower the Mayor to act on behalf of the City when the Mayor directs the use of PILOTs [payments in lieu of taxes] for the City's behalf.
(Cardozo 2005, 5–6)

46 The director of the Independent Budget Office (IBO) is selected by majority vote of a five-person committee with no mayoral appointees. N.Y. City Charter § 259(a). Appropriations for the IBO are pegged at 10% of the appropriations for the mayoral Office of Management and Budget, and IBO's director has sole authority over the appointment and duties of agency personnel. Ibid. § 259(b).
regulation and local law somewhat constrained this use of NYCIDA bonds, the mayor retained substantial direct authority over redevelopment subsidies through control of EDC and NYCIDA.)

As a result, even though EDC lacks UDC's extraordinary land-use powers (including eminent domain authority), New York City mayors have found it to be a useful vehicle for their development agendas. After taking office in 1994, Mayor Rudolph Giuliani made extensive use of EDC to convey city property to private corporations, avoiding certain requirements for competitive bidding and public approvals (see, e.g., Ravo 1997; but see Council of the City of New York v. Giuliani, 664 N.Y.S.2d 197 (Sup. Ct. N.Y. County 1997), aff'd 687 N.Y.S.2d 609 (N.Y. Ct. App. 1999)). Giuliani's successor, Michael Bloomberg, has used both EDC's property disposition powers and NYCIDA's debt authority to advance his redevelopment agenda (Association of the Bar of the City of New York, Committee on New York City Affairs 2007; Kunz 2007a; 2007b).

While EDC does not focus on residential development, the city has also dedicated extensive resources to the preservation and development of affordable housing— an average of roughly $657 million annually from 2004 to 2011 (Brown 2012, 7). The production of public housing units in New York City, which constitute 5.3% of the city's housing stock (as compared with 0.5% in the City of Los Angeles) (Been et al. 2012, 42), effectively ended in the 1980s (Vale and Freemark 2012, 391). Thus, the city's production goals rely on private for-profit and

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47 In May 2005, the city council passed legislation requiring its approval for the expenditure of payments in lieu of taxes. N.Y. City Council, Int. 0584-2005(A). The law would have effectively required council authorization for bonds backed by such payments. Mayor Bloomberg vetoed the legislation, claiming that the council lacked legal authority to enact it (Bloomberg 2005). Nevertheless, the mayor reached a compromise with the city council, which enacted a narrower law on June 30, 2005, requiring its approval for the expenditure of payments in lieu of taxes that were not remitted to the city's general fund. N.Y. City Council, Int. 0665-2005. In 2008, the U.S. Treasury Department issued regulations effectively barring private parties from financing construction with payments in lieu of taxes, but exempting projects already negotiated (L. E. Gans 2010, n. 98–99 and accompanying text).

48 Calculated from total New Housing Marketplace Plan spending (2004-2011), less leveraged value of Low Income Housing Tax Credits. (The figure reported in the text includes federal HOME funds, which are part of the city's capital budget.)
non-profit developers, which the city has supported under two ten-year plans (announced in 1985 and 2002) via donations of property, tax abatements, zoning relief, financing assistance, and direct subsidies (see Schill et al. 2002; City of New York, Department of Housing Preservation and Development 2011; 2013). As of 2013, nearly 343,000 units – constituting over 10% of all units in the city as of 2010 (see Been et al. 2012, 48) – had been constructed or rehabilitated under the two plans. 49

This system has produced a large and vocal constituency of affordable housing advocates within the city. Felice Michetti, a former commissioner of the city's Department of Housing Preservation and Development (HPD) indicates: "When the [first] Ten Year Plan began, there were about twelve not-for-profits in the City of New York that were actively involved in housing.... By the time I left HPD, there were over a hundred not-for-profits involved in the Ten-Year Plan, and involved not in the traditional federal role of sponsoring projects, but actively involved [in development]" (quoted in Schill et al. 2002, 535).

(2) Los Angeles

In the City of Los Angeles, during the period covered by this study, a single entity – the Community Redevelopment Agency (CRA) – was responsible both for affordable housing and economic redevelopment projects. Like UDC, CRA had broad authority to exercise eminent domain and override local land-use regulation. 50 But, unlike New York's public authorities, the CRA owed its existence largely to the power of local business elites. Nevertheless, its

49 Schill et al. (2002, 540) indicate a total of 182,861 units assisted under the first ten-year plan; New York City Department of Housing Preservation & Development (2013, 2) indicates that, as of 2013, "nearly 160,000" units had been financed under the second ten-year plan.
50 See Cal. Health & Safety Code § 33342 (authorizing redevelopment agencies to acquire real property "by gift, purchase, lease, or condemnation"); Kehoe v. City of Berkeley, 67 Cal. App. 3d 666, 674 (1977) (discussing the authority to override local land-use regulation under California's redevelopment law).
institutional development (and eventual demise in 2012), cannot be explained without reference to California's distinctive fiscal politics.

The CRA was founded in 1948 under a state law which authorized the creation of local redevelopment agencies largely to secure and administer federal urban renewal funds (Marks 2004, 254). But Los Angeles business leaders vehemently opposed federal intervention in the city's development, fearing that the associated conditions would impinge on their autonomy (Marks 2004, 258). Although such opposition threatened to foreclose one potential source of funding, California's redevelopment law allowed the CRA to issue general obligation bonds, subject to the approval of two-thirds of city voters. But proponents of the requisite bond measure failed to secure such a super-majority, forcing the CRA to turn to an alternative (and novel) public finance mechanism: tax increment financing (Marks 2004, 259). (The California legislature added the relevant provision to the state's redevelopment law in 1951 at the behest of the CRA board, and California voters approved this addition the following year (Marks 2004, 259–260).)

California was the first state in the nation to authorize tax increment financing (Briffault 2010, 69), which has subsequently become "the most widely used local government program for financing economic development in the United States" (Briffault 2010, 65). Under the California law, a redevelopment agency (such as the CRA) could issue bonds backed by projected property tax revenues reserved for the agency. Within project areas approved by the local legislature, the redevelopment agency was entitled to any subsequent increase in property taxes, less a 2% annual adjustment for inflation, until all outstanding debt for the project had been retired (Dardia 1998, 4). (As discussed below, a 1993 amendment to the state's redevelopment law constrained this power.) Advocates such as James Beebe, who chaired the Los Angeles Chamber of
Commerce's State and Local Government Committee in the early 1950s, claimed that tax increment financing would result in projects "completely financed from the savings, as it were, that the community realizes through the redevelopment. We have no subsidy from the Federal Government. We have no subsidy from the City of Los Angeles" (quoted in Marks 2004, 260).

Notwithstanding the ostensible costlessness of tax increment financing, the CRA's sole project in downtown Los Angeles during its first two decades of existence – the clearance and eventual redevelopment of Bunker Hill – was so mired in problems that the agency was unable to gain authorization from the city council for additional downtown project areas until the 1970s (Marks 2004, 263–269). Moreover, the chair of the council's Planning Committee, Ernani Bernardi, argued that tax increment financing for downtown development was effectively a subsidy at the expense of residents and businesses in his San Fernando Valley district (Burleigh 1972). The tide began to turn, however with the 1973 election of redevelopment proponent Tom Bradley as mayor and the subsequent reassignment of the Planning Committee chair from Bernardi to Councilwoman Pat Russell, an ally of Bradley's (Sonenshein 1993, 168). In 1975, the Council approved the Central Business District redevelopment project encompassing 255 blocks in downtown Los Angeles (Community Redevelopment Agency, City of Los Angeles, California 1975; Hebert 1975). Due to legal challenges, implementation did not begin until 1977, when a stipulated judgment imposed a $750 million cap on tax increment funds for the new project area (Estolano 2006, 1).

Redevelopment assumed a new urgency in Los Angeles as the 1970s waned and the 1980s dawned. In the year following the adoption of Proposition 13, property tax collection in the City of Los Angeles dropped by 50% (R. A. Ross 1980, viii). Although Proposition 13 also reduced the CRA's tax increment receipts (Marks 1999, 171), at least two attributes of tax
increment financing made it an increasingly valuable tool. First, it enabled cities to provide incentives to businesses that might boost sales tax revenue, which became an increasingly important source of funds for local governments in the wake of Proposition 13 (Chapman 1998, 11-13; Lewis and Barbour 1999). Second, because California redevelopment law at the time imposed relatively few requirements concerning the remission tax increment revenue to overlapping jurisdictions (such as the county and the state), it enabled local governments to hoard the dwindling tax receipts (Dardia 1998, ix-x, 29–32). The 1980 election of Ronald Reagan as President, and the subsequent decline in federal aid for central city redevelopment, also "had profound implications for the [Bradley] coalition's plan for economic equality ... [and] pushed the coalition to expand the downtown redevelopment angle as the solution for equality" (Sonenshein 1993, 169–170).

Although one impetus for the creation of the CRA had been to separate the city's business agenda from redistributive efforts, the Bradley coalition deployed the agency in the service of housing development for low- and moderate-income residents. Leery of electoral antipathy towards redistribution, the CRA had sponsored a 1950 amendment to the California code explicitly denying redevelopment agencies authority "to sell, lease, grant or donate public property to a housing authority or to any public agency for low-rent public housing projects" under the state's redevelopment law (Community Redevelopment Act, Section 29 (1950), quoted in Marks 2004, 255). Indeed, at the CRA's inception, its downtown business allies supported the agency largely in an effort to block the development of public housing close to the city's downtown area (Marks 2004, 251–255). Notably, fewer than 10,000 public housing units were ever built in the City of Los Angeles, an order of magnitude lower than the analogous figure for New York City (Figure 9).
Despite this institutional legacy, the CRA's land-use and debt-issuing powers made it a valuable tool for the redistributive goals of Tom Bradley and his allies. As chair of the city council's Planning Committee, Pat Russell championed the Central Business District redevelopment plan, but insisted, "If there is no start on low income housing, then there will be no other development within the district" (quoted in Marks 2004, 270). Whereas – in the 1950s – CRA officials had sought changes in state law to constrain redevelopment agency involvement with low-income housing, by the 1970s a new crop of agency officials were asking the state legislature for more latitude to develop affordable housing (Marks 2004, 276–278).

Figure 9: Public Housing Units in New York City and the City of Los Angeles, 1941-2011

Source: Adapted from Vale and Freemark (2012).
As the role of city council members such as Bernardi and Russell suggests, the council had long exercised important power over the CRA. Even at the pinnacle of the CRA's autonomy, for example, council approval was required for the designation of redevelopment project areas, the council could limit the agency's tax-increment powers, and the agency could not authorize projects in excess of existing height limits without authorization from the council (Marks 2004, 267–273). Nevertheless, the agency retained substantial operational independence throughout the 1970s and into the 1980s.

This bureaucratic autonomy began to erode as the political climate in Los Angeles became increasingly inhospitable to redevelopment. In 1986, Los Angeles voters approved Proposition U, a ballot measure that cut allowable commercial densities by half throughout the city, with the exception of downtown, Hollywood, and the mid-Wilshire area (Fulton 1997, 51–55). Tom Bradley and Pat Russell, confronting political woes of their own (Sonenshein 1993, chap. 12), could no longer insulate redevelopment from the antipathy of voters on the city's Westside and in the San Fernando Valley.

Moreover, as the council became more ethnically and racially diverse in the 1980s, the fraught relationship between redevelopment and redistribution came increasingly to the fore. In 1980, twelve of the council's fifteen members were non-Hispanic whites and three were African-American. By 1987, with the election of Latina Gloria Molina, Latino Richard Alatorre, and Asian American Michael Woo, all in districts previously represented by non-Hispanic whites, the council had become substantially more ethnically diverse. Mark Purcell contends that "these new council members were not immune to the same growth politics as their predecessors, but they also had an added responsibility to an ethnic constituency, a responsibility that complicated their
relationship to growth, especially when a given project had a negative impact on members of their constituency" (M. Purcell 2000, 95–96).

In 1990, Gloria Molina introduced legislation substantially expanding the council's oversight of the CRA. The resulting ordinance, enacted in 1991, curtailed the agency's independence, giving the council veto power over agency appointments, authorizing the council to review any agency action, and requiring council authorization for a wide array of essential agency operations. According to one of the CRA's board members, these reforms reduced the agency to "asking for City Council permission each time it needs to sharpen a pencil" (quoted in Marks 2004, 241).

The oversight legislation was not the only constraint on the CRA. By this time, the CRA was nearing the tax increment cap for the Central Business District that the council had enacted in 1976, hampering further agency involvement in downtown development. In 1993, the California legislature enacted AB 1290, which created new requirements for inter-governmental revenue sharing and more stringent controls on redevelopment finance (Fulton and Shigley 2005, 262–264, 275–276). (In the eyes of many state lawmakers, redevelopment remained a tool for local fiscal shell games, and a combination of state legislative and judicial action in 2011 dissolved all redevelopment agencies in California as of 2012 (O’Malley 2012, 9–13; Lefcoe 2012, 2–25).)

As legislative oversight increased and the CRA's resources for downtown development diminished, the agency shifted its attention to other projects. In the late 1980s, more than 70% of CRA funds went to downtown development. By the first decade of the twenty-first century,
however, the agency devoted less than a third of its funds to downtown projects (Deener et al. 2013, 396-397).

b. Environmental review and local direct legislation

Although much local government authority resides in representative institutions and public authorities, state or local law may explicitly provide opportunities for more direct popular exercises of authority. Environmental review statutes, for example, can deputize individuals or groups to ensure that development projects comply with state or local law. In effect, such statutes give these private parties authority conventionally assigned (in the U.S.) to the executive branch of a representative government. Direct legislation, another mechanism that can affect large-scale development projects, entails law-making by popular vote, supplanting (or supplementing) the decisions of an elected legislature.

In both the City of Los Angeles and New York City, virtually all large-scale development projects must undergo environmental impact review. Individuals and private groups have relatively broad authority to challenge the adequacy of these processes in court, although that authority is somewhat broader under California law. From a developer's perspective, such legal challenges can increase development costs by inducing delay or by adding mitigation requirements. As a result, developers may seek to placate groups likely to contest some aspect of

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54 Compare Manaster and Selmi (2012, sec. 23.02(1)) (describing standing requirements under the California Environmental Quality Act) with Gerrard, Ruzow, and Weinberg (2011, sec. 8A.05 n. 185) (collecting decisions concerning standing under the New York City Environmental Quality Review). See also Matthews (2001, 450) (comparing standing under the California Environmental Quality Act and the New York State Environmental Quality Review Act). New York City supplements the state's environmental impact review with additional substantive and procedural safeguards for individuals and private groups. See generally Gerrard, Ruzow, and Weinberg (2011, sec. 8A).
an environmental review (Barbour and Teitz 2005, 11), using mechanisms such as CBAs (see, e.g., Cummings 2008, 65–66).

California law gives the City of Los Angeles wide latitude with respect to local direct legislation, and the city has long allowed local voters to initiate actions to enact and amend its laws. For example, voters in the City of Los Angeles can consider via ballot initiative "any proposed ordinance which the Council itself might adopt." By contrast, New York State law significantly restricts the use of direct legislation in New York City.

III. Organized Labor in Los Angeles

As Wolf-Powers (2010, 153) notes, "the role of organized labor in any given CBA process is bound up with labor movement politics in the municipality in question, and with the interaction between labor politics and the politics of development." While labor unions have been closely involved with the emergence of CBAs in Los Angeles, they have engaged far less with CBAs in New York, reflecting the different trajectories of organized labor in the two cities:

Organized labor is larger and older in New York City [than in Los Angeles] and has strong historical ties to Democratic Party politics, but its very institutionalization distinguishes it from the social movement orientation of its sisters and brothers in Los Angeles. [In Turner and Hurd's (2001, 11) formulation, "social movement unionism ..., is a type of unionism based on member involvement and activism."] ... [The New York City] Central Labor Council has historically been strongly influenced by relatively conservative construction trade unions, which have a stake in the public works contracting and construction business in [the city]. [The city's] public employees' unions have been weak and

57 L.A. City Charter § 450(a) (Am. Leg. 2012).
58 New York City voters may, via ballot initiative, enact a "local law for the creation of a commission to draft a new or revised city charter." N.Y. Mun. Home Rule Law § 36(3); see also ibid. §§ 37, 10(1)(ii)(c). The city council can also create a charter revision commission, which would refer amendments to the voters. Ibid. § 36(2). State law, however gives the mayor authority to preempt the voter initiative process and the council's commission by creating a separate charter revision commission. N. Y. Mun. Home Rule Law §§ 36(4), 36(5)(e); Council of City of New York v. Giuliani, 248 A.D.2d 1, 679 N.Y.S.2d 14 (1998); Weingarten v. Robles, 309 A.D.2d 614, 615, 766 N.Y.S.2d 417 (2003). Goldfeder (2012, 272–278) describes additional restrictions on direct legislation in New York.
are careful not to challenge incumbent mayors who will sit across the bargaining table from them. (J. Mollenkopf and Sonenshein 2013, 144)

By contrast, even as the power of organized labor dwindled nationally during the last decades of the twentieth century, Los Angeles – long viewed as hostile territory for unions – became a labor stronghold.

Although Los Angeles's political and business leaders actively opposed organized labor throughout much of the twentieth century (see Fogelson 1967; Donner 1990; Sonenshein 1993), the tide began to turn with the 1973 election of Tom Bradley. Still, as recently as 1991 (two years before Bradley left office), one scholar of Los Angeles politics averred, "Los Angeles can hardly be described as a union town" (Regalado 1991, 87) (emphasis original). But even as unionization rates continued their national decline during the 1990s, they held relatively steady in Los Angeles (and statewide) (Figure 10). By the first decade of the twenty-first century, labor had become the city's most potent organized electoral force (Sonenshein and Pinkus 2005, 714).

This shift was accompanied by changes in employment contributing to a dramatic increase in income inequality throughout Los Angeles County.59 In the last quarter of the twentieth century, two waves of job loss – first in the automotive sector and later in the aerospace industry – swept the county. Soja (2010, 125–126) suggests that as many as 400,000 jobs may have been eliminated as a result. From 1980 through 2010, the Gini ratio for household income countywide increased by 13.8%, from 0.435 to 0.495. (During this period, the national Gini ratio for household income increased by 16.6%, from 0.403 to 0.470.) Income inequality grew somewhat more slowly within the City of Los Angeles itself, as the 2010 Gini ratio (0.527)

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59 National income inequality data are from U.S. Census Bureau (2014a). I derived the 1980 county and city Gini ratios from U.S. Census Bureau (2014) household income data, as described in note 4, supra. I assume that the Gini coefficients for 2010 are equal to those in the 2012 American Community Survey 5-year estimates (U.S. Census Bureau 2014b).
increased by roughly 10.7% from a 1980 level of 0.476. Nevertheless, as of 2010, among the 88 cities in Los Angeles County, the City of Los Angeles ranked fifth in income inequality, after Beverly Hills, Malibu, Santa Monica, and San Marino. (Notably, in a jurisdictionally fragmented area, greater income equality (i.e., homogeneity) at the municipal level can exacerbate regional inequality (Massey and Denton 1993; Howell-Moroney 2008; cf. Tiebout 1956).)

**Figure 10: Percentage of non-agricultural wage and salary workers belonging to a labor union, 1988-2004**

During this period, the percentage of workers in the region belonging to a labor union declined across several industries. The collapse of automotive and aerospace manufacturing in Los Angeles County greatly weakened the manufacturing unions (Regalado 1991, 106). And although the Los Angeles construction industry had been fully unionized in the 1960s, by the latter half of the 1970s the construction unions' ranks began to dwindle. In 1975, 89,500 of the
96,300 wage and salary workers in the Los Angeles construction industry (i.e., 93%) were union members. By 1985, the number of workers in the industry had increased to 119,900, but the number of union members had decreased to 70,400 (i.e., 59%) (Milkman 2006, 85, Tab. 2.1).

At the same time, however, unions representing public sector employees and service workers were gaining power. In 1968, the state adopted the Meyers-Milias-Brown Act, which Grodin (1972, 722) credited with "stimulating the adoption by many local governments of fairly progressive collective bargaining procedures and relationships" with public sector unions (see also M. Ross and De Gialluly 1971). As Grodin noted, however, the resulting development of such procedures and relationships was "uneven … and in large measure reflect[ed] the political vectors of a particular community." In the City of Los Angeles, such vectors were increasingly propitious for organized labor. Having received strong support from public sector employee unions in his successful 1973 mayoral campaign, Tom Bradley "showed considerably more interest than his predecessor in municipal labor relations" (Lewin 1976, 207).

Shortly after taking office, Bradley implemented an employee relations ordinance, enacted in the wake of the Meyers-Milias-Brown Act, that considerably increased the clout of public sector unions such as the Service Employees International Union (SEIU) and the Association of Federal, State, County and Municipal Employees (AFSCME) (Lewin 1976, 207–209; Regalado 1991). Most Los Angeles City and County labor leaders responding to a survey conducted from 1988-1989 indicated that SEIU would be the union "in the strongest political position in the city over the next decade" (Regalado 1991, 101). The ensuing two decades would demonstrate the perspicacity of this prediction, as service and public sector unions in the Los Angeles region gained members while the construction and manufacturing unions largely failed to reverse their decline (Figure 11).
By the end of the 1980s, the service unions began to incorporate groups that had historically been excluded from organized labor and disenfranchised politically. Between 1980 and 1990, the foreign-born share of the private-sector building services workforce in Los Angeles nearly doubled, from 35.7% to 68.3% (see Waldinger et al. 1996, 8, Tab. 1). This shift reflected the increasingly large proportion of the city's growing population consisting of residents of Hispanic origin (as designated by the U.S. Census) (Figure 12). In the late 1980s, SEIU Local 399 began to organize building service workers, focusing largely on immigrant communities. Commentators have described the resulting Justice for Janitors campaign as both a catalyst for greater collaboration between labor unions and non-profit community-based
organizations, and as a product of such collaboration (see, e.g., Pincetl 1994; Waldinger et al. 1998; Vargas 2001; Osterman 2006).

**Figure 12: Population of the City of Los Angeles, 1980-2010**

![Graph showing population growth from 1980 to 2010.](image)

- Not of Hispanic origin
- Hispanic origin

*Source: U.S. Census Bureau (2014c; 2014d; 2014e; 2014f; 2014g).*

This change in strategy came as civil rights litigation was increasing the political clout of the city's growing Latino population. In 1985, the U.S. Department of Justice sued the City of Los Angeles, claiming that the city's 1982 redistricting violated both the federal Voting Rights Act and the U.S. Constitution by reducing the power of Latino voters as a bloc (Merina 1985). In order to settle the suit, the city council redrew its district boundaries in 1986 to create a second majority Latino district, where it authorized an early election (R. Simon and Decker 1986; R. Simon 1986). In 1988, the Mexican American Legal Defense Fund, the American Civil Liberties Union, and the U.S. Department of Justice sued Los Angeles County, claiming that the county's
1981 redistricting had unlawfully diluted a Latino voting bloc (Merina 1989). Following the resulting judicially ordered redistricting,60 Gloria Molina became the first Latina or Latino elected to the Los Angeles County Board of Supervisors in 116 years (J. M. Kousser 1999, 134).

The 1996 election of Miguel Contreras as the head of the Los Angeles County Federation of Labor (locally known as the "County Fed") heralded an assertion of labor's electoral power in the city and county (Frank and Wong 2004, 160–163; Lamare 2010a; 2010b). The County Fed is an umbrella organization for hundreds of American Federation of Labor-Congress of Industrial Organization (AFL-CIO) unions in Los Angeles County. As a member of the United Farm Workers of America, Contreras had been exposed to that organization's combination of electoral mobilization with community outreach (Shaw 2008, chap. 7), an approach reflected by CBAs (Frank and Wong 2004, 175).

Contreras had initially come to Los Angeles as a trustee to the Hotel Employees and Restaurant Employees Union (HERE) Local 11 (Frank and Wong 2004, 157). In 1993, HERE Local 11 created the non-profit Tourism Industry Development Council, later renamed the Los Angeles Alliance for a New Economy (LAANE) (Khalil and Hinson 1998, 18). LAANE, according to one of its founders, Madeline Janis, sought to "combine a think tank tackling the issues of poverty and raising all boats with a community grass-roots organizing model" (quoted in Fine 2010). The organization spearheaded campaigns to improve the wages and job stability of workers employed by firms receiving subsidies or contract payments from the City of Los Angeles and the Community Redevelopment Agency (see Khalil and Hinson 1998, 19–27; Zabin and Martin 1999, 12–18; S. Luce 2005, 50–51). The campaigns brought together union officials and representatives of nonprofit organizations including several later involved in CBAs, such as

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the Esperanza Community Housing Corporation and Action for Grassroots Empowerment and Neighborhood Development Alternatives (Khalil and Hinson 1998, 20).

These efforts resulted in the enactment and implementation of new local labor regulation, backed by strong support from the County Fed and LAANE (Frank and Wong 2004, 173–175; Zabin and Martin 1999, 12–18). A service worker retention ordinance, adopted in 1995 and amended in 1996, applied to firms assuming service contracts with either the City of Los Angeles or certain recipients of city-administered financial assistance for job creation. The ordinance created a 90-day period, during which such contractors were barred from dismissing long-term workers employed under the prior contract. It allowed subsequent termination for cause, but limited the ability of covered contractors to conduct layoffs in order to replace incumbent workers with lower-paid substitutes. On April 1, 1997, the city council adopted a living wage ordinance, over the mayor's veto, requiring certain employers receiving financial assistance from the city to pay employees a statutorily specified wage exceeding the state's minimum.

Conclusion

As section I indicates, the City of Los Angeles and New York City are among the most racially and ethnically diverse in the U.S., and each city confronts an unusually high level of income inequality. Such inequality creates the possibility of local redistribution, mediated by government institutions. Although these institutions vary between the two cities, both cities are fragmented in ways that may make their governments relatively more responsive to economic pressure than conflicting popular pressure, resulting in the kinds of exclusionary redevelopment processes that CBAs are intended to combat.

62 Los Angeles City Ord. No. 171547 (1997); Los Angeles City Council File No. 96-1111-S1.
As noted in Chapter Three (sec. I.C.1), Roger Friedland et al. (1977, 450) identify two aspects of local government structure that can affect government mediation between these two pressures. The first is "the degree of decentralization or centralization of government functions," i.e., horizontal fragmentation. Greater horizontal fragmentation, they suggest, shifts the balance in favor of economic pressure, limiting popular influence. Based on the evidence in section II.A, the City of Los Angeles would seem more susceptible to these pressures than New York City. The second structural feature that Friedland et al. identify is "the degree of segregation of economic and political functions within urban government," i.e., vertical fragmentation. Based on the evidence in section II.B, redevelopment in New York City seems subject to greater vertical fragmentation than in Los Angeles, although the consequences of Proposition 13 suggest that such fragmentation may be far from irrelevant to the politics of redevelopment in Los Angeles.
Chapter Five

Negotiating Redevelopment in the City of Los Angeles

This chapter details the emergence of CBAs by reference to several large-scale developments in Hollywood and downtown Los Angeles (Figure 1). Section I discusses the Hollywood & Highland mixed-use project, widely hailed as the first CBA. Section II discusses the negotiation and implementation of the Los Angeles Sports and Entertainment District CBA, placing it in the context of earlier development of the Los Angeles Convention Center and the Staples Center professional sports arena. Section III describes CBAs and redevelopment policy in the City of Los Angeles after the Los Angeles Sports and Entertainment District CBA.

I. Hollywood & Highland: The First CBA?

Three days after overriding the mayor's veto of the living wage ordinance,¹ the Los Angeles City Council authorized the Community Redevelopment Agency (CRA) to enter into exclusive negotiations with developer TrizecHahn concerning a proposed project on Hollywood Boulevard, between Highland Avenue and Orange Street.² Located above a subway station to be owned and operated by the Los Angeles County Metropolitan Transit Authority, the project (as initially proposed) would include retail, restaurants, and a 12-screen multiplex theater at an estimated cost of $145 million (Los Angeles Business Journal 1997; Engineering News-Record 1997).

The project, eventually called Hollywood & Highland, was emblematic of a new breed of redevelopment project, intended to promote one of the few sectors of the Los Angeles economy then burgeoning—tourism (see Geron 1997; Gladstone and Fainstein 2001). News reports

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¹ See Chapter Four, p. 196.
² See Los Angeles City Council File No. 97-0484. I use the name "TrizecHahn" for TrizecHahn Centers and all of its successor entities and subsidiaries.
Figure 1: Map of Projects

Photo credits: Orthoimage: U.S. Geological Survey; Hollywood & Highland: tinselating.com (left), discoverlosangeles.com (right); Staples Center / Los Angeles Sports & Entertainment District: author (left), bustler.net (right); Hollywood & Vine: la.curbed.com (left), dci-engineers.com (right).
trumpeted the fact that David Malmuth, who had played an important role in the redevelopment of New York City's Times Square as an executive at the Walt Disney Company, would lead the Hollywood & Highland project for TrizecHahn (see, e.g., Zehr 1997; Ouroussoff 1997; Boxall 1998).

On the city council, the project's chief advocate was Jackie Goldberg, whose district encompassed the proposed development. Goldberg was a staunch ally of the County Fed, and her support had been central to the city's 1997 living wage law (S. Luce 2005, 50; Tynan 2013; see also Merrifield 2000, 34; Moberg 2001, 51), which she had sponsored. While Goldberg wanted to see Hollywood & Highland built, she was equally adamant that the project should promote the goals of labor organizations such as the County Fed, HERE, and LAANE, discussed in Chapter Four (pp. 195-196). As Goldberg recounted:

Prior to my coming on to the city council, the CRA had put a fortune into the New Otani Hotel downtown, which has had continuously terrible relations with its employees. I was determined that if we were going to put money into Hollywood-Highland, the employees would be treated well. We wanted development, [but] we basically decided that all boats should rise. (Quoted in Meyerson 2006, 40)

In order to promote this goal, Goldberg insisted on an agreement that has been hailed as the first CBA in the U.S. (see, e.g., Meyerson 2006, 40; Estolano 2013, 2; see also Lowe and Morton 2008, 26; Wolf-Powers 2010, 144, Tab. 1).

After a year of negotiations between TrizecHahn and the city, the scope and cost of the project had expanded. By May 1998, it was anticipated to encompass 640,000 square feet of commercial and entertainment uses, public spaces covering 20% of the site (including a "grand staircase" and a portal to the underlying Metro station), the acquisition and renovation of an adjacent hotel, a 3,300-seat live television broadcast theater (where the Academy Awards would

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3 See Los Angeles City Council File No. 96-1111-S1.
be held), and a 3,002-space underground parking garage (Comrie and Deaton 1998, 1–2). The expected cost by this time exceeded $385 million (Ocampo 1999, 2). The CRA would contribute $60 million to the parking garage, to be funded with bonds backed by projected revenues from the garage and citywide parking receipts. The city would contribute $30 million to the theater, funded with bonds effectively backed by its general fund (Comrie and Deaton 1998, 4–5; Ocampo 1999, 3–4).4

The size of this subsidy gave the city council substantial leverage in its negotiations with TrizecHahn. Roxana Tynan (2013), who was Goldberg’s economic development deputy at the time and later became LAANE’s executive director, recalls:

TrizecHahn, led by this guy David Malmuth, knew that to push such a huge subsidy through City Hall, and a series of really complex land-use entitlements – including closing off a small street – they knew that that was going to require a love fest in terms of community and labor support....

I had done a bunch of community organizing in that zip code. And so we brought those residents to the table to negotiations with the developer around the local hire [and] around some of the job training money.

Although this process was formally distinct from negotiations between the developer and labor unions, Tynan emphasizes the important informal connections:

The activist community that we’d been organizing with was very involved in pushing for those union agreements because they saw the connection between the local hire agreement, which they knew we were going to be all over implementing, and we were, so that they were going to get access to those union jobs, and that’s what happened. Of course, legally, Jackie, or any city council member, cannot require any company go union.... The union was negotiating on a parallel track and frankly coordinating with, to some degree, with ... LAANE. And the union was negotiating on a parallel track to say, look, the city is going to drop a lot of money into this project. You don’t want us to put up a picket line the first day you open.

4 While a 1998 memorandum from the City Administrative Officer and the Chief Legislative Analyst indicated that "[t]he annual debt service (estimated at $3.2 million) would be guaranteed by the developer ... so that the General Fund base would not be impacted" (Comrie and Deaton 1998, 4), a 1999 report from the City Administrative Officer acknowledged that "the theater bonds are essentially a General Fund obligation" (Ocampo 1999, 4).
As a result, TrizecHahn consented to a neutrality agreement with labor unions (Sachs 2011, 1180 n. 137), and it included community outreach, local hiring, and job training provisions in a disposition and development agreement with the CRA.\(^5\)

Under the latter agreement, TrizecHahn and its contractors would "make commercially reasonable efforts to include within [their] employ thirty percent (30%) of the aggregate number of new hires from" residents of the Hollywood Redevelopment Project Area.\(^6\) Employees of the developer, along with employees of its contractors and subcontractors, would be paid in accordance with the city's living wage ordinance, as would all employees in the parking facility and the broadcast theater.\(^7\) TrizecHahn would also provide incentives to its commercial tenants to provide compensation consistent with the city's living wage ordinance. The disposition and development agreement between the CRA and TrizecHahn was revised the following year, as the public costs had increased by $8.5 million (Ocampo 1999, 2). The new agreement also required TrizecHahn to adopt a first-source hiring plan, which TrizecHahn would develop in collaboration with the CRA and the city.\(^8\)

Roxana Tynan (2013) indicates that the living wage goals for tenants were not intended to be a significant component of the agreement, which was focused on securing union jobs for local residents:

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\(^7\) *Ibid.*, sec. 805(1).

We [LAANE and the community] knew that the living wage jobs were going to be the union jobs that we fought for. And so we had a choice to fight really hard for good union jobs with a developer outside of City Hall, or try and negotiate kind of soft living wage language, and our choice was we pushed for living wage language, but we knew we just didn’t have the power to get both of those things.

According to Tynan (2013) and Mulligan-Hansel (2008, 23–24), the first-source hiring program was largely successful in getting nearby residents into union jobs. Although local residents completed only 19% of construction-worker hours, falling somewhat short of the 30% goal, local residents obtained 36% of roughly 650 permanent jobs in the project. Many of these jobs were consistent with the City’s living wage ordinance, or exceeded its requirements. As Tynan explains:

I don’t think the hotel was unusual in getting to 65 percent from the 90028 [zip code]. We were careful to always link requirements to poverty as well as geography, because you can get into challenges around discrimination, and, in any case, we care more about poverty. And as it happens, our district in that zip code, 90028, was a very high poverty zip code. And so I don’t know all the numbers outside of the hotel, which was the biggest employer, but I know that their numbers were not unusual from what we were getting reported back to us anecdotally. So the ones that were living wage were really only the union jobs, which was the hotel, the parking lot attendants, the janitors, and maintenance, and the developer subcontracted employees, like admin and security. ⁹

The CRA’s bookkeeping at the time of this project was the subject of three scathing audit reports (City of Los Angeles, Office of the Controller 2004a; 2004b; 2004c). The subsequent dissolution of the CRA, discussed in Chapter Four (p. 187), presents an additional impediment to obtaining any official reports that may have been created in accordance with the disposition and development agreement.

From TrizecHahn’s perspective, the project may have been somewhat less successful. By November 2000, the estimated cost had leapt to $567 million (Los Angeles Business Journal

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⁹ In a follow-up e-mail, Tynan (2014) adds: "Construction was also covered by a PLA [project labor agreement], and they got to 20% local hire."
2000b; Los Angeles Times 2000b), and in April 2001, the *Los Angeles Business Journal* (2001) reported that Hollywood & Highland was over budget by almost $300 million. The retail and theater components opened on November 9, 2001 (just under two months after the terrorist attacks of September 11, 2001), having cost an estimated $615 million (Whitaker 2001), and the hotel opened the following month (Los Angeles Times 2001).

The project design received mixed reviews (see Figures 2, 3, and 4). The architecture critic for the *Los Angeles Times* criticized Hollywood & Highland as a "clunky" and "corporate" development lacking "[a] feel for urban life ... [or a] knack for the spectacle" (Ouroussoff 2001). The *Los Angeles Business Journal* (2000a), however, lauded the design for its "outward [orientation] to the surrounding area."

**Figure 2: Hollywood & Highland, View Southeast from Interior Courtyard**

*Source: oyster.com (2013)*
Figure 3: Hollywood & Highland, View Northeast from Hollywood Boulevard, between Orange Drive and Hollywood Avenue

Source: Google Maps (2014)

Figure 4: Hollywood & Highland, Aerial View

Image Source: Apple Maps (2014)
The financial problems – for both the developer and the city – persisted after opening day. The retail component performed gloomily (Belgum 2002). Parking revenues did not cover the city's bond payments, forcing the city to draw on other funds (Fine 2002). By November 2002, TrizecHahn reduced its valuation of Hollywood & Highland to approximately 31% of its initial estimate (King 2002), and in February 2004, the company sold Hollywood & Highland to CIM Group for $201 million (Vincent 2004). Because the sale drastically reduced the assessed value of the property, the CRA's Hollywood redevelopment project area tax revenues dropped by 7% (King 2004). As of March 2009, the city still had "approximately $70 million of outstanding debt for the Hollywood and Highland [parking] facility, ... [and] the debt service exceed[ed] the net income generated by th[is] facility[y] annually" (Ciranna 2009, 3).

II. The Staples Center and the Los Angeles Sports and Entertainment District

While the Hollywood & Highland CBA is commonly cited as the first such agreement, the subsequent agreement concerning the Los Angeles Sports and Entertainment District (frequently called the "Staples Center CBA") is almost invariably hailed as singularly exemplary. Jacqueline Leavitt (2006, 257–258) describes this agreement as evidence that "across the nation, grassroots 'Davids' are using community benefits agreements (CBAs) in order to negotiate with the developer 'Goliaths' and gain a community voice at the negotiating table." Leland Saito (2012, 130) contends that the agreement demonstrates how "CBAs represent a new model of civic engagement for low-income residents, a fundamental change in urban politics and inequality regarding development." Edward Soja (2010, 152) calls "the landmark CBA ... worked out in conjunction with the huge Staples Center development project ... the culmination of a long series of LAANE's accomplishments and struggles."
Such praise for the Los Angeles Sports and Entertainment District CBA is hardly restricted to the ivory tower. Julian Gross et al. (2005, 14) describe this CBA as "a tremendous achievement in several respects. It includes an unprecedented array of community benefits ... reflect[ing] the very broad coalition that worked together to negotiate the CBA ... [and] demonstrat[ing] the power community groups possess when they work cooperatively and support each other's agendas." Janet Yellen (2007, 3), currently the Chair of the Board of Governors of the U.S. Federal Reserve System, claims, "The Staples Center Community Benefits Agreement sets an important precedent for how local government, private developers, and community groups can work together to promote equitable development. Among other features, the Agreement ensures that 20 percent of new housing units in the project area will be affordable to low-income households, and stipulates that 70 percent of the jobs at the new center pay a living wage. The Agreement also provides for preferential hiring treatment to local and displaced residents." (As discussed below in subsection B.2, Yellen's claims about both the housing and the living wage provisions of the agreement are inaccurate.)

Despite the extensive attention that this agreement has garnered, few published accounts have carefully compared it to the underlying regulatory context or documented implementation of the agreement in any detail. By remediying both shortcomings, this account suggests that the optimism of earlier studies may be somewhat unwarranted, although it also indicates previously overlooked strengths of the agreement. Subsection A describes the development of the Staples Center sports arena and the first years of the arena's operation. Subsection B addresses the subsequent negotiation and implementation of the CBA concerning the surrounding Los Angeles Sports and Entertainment District (Figure 5).
Figure 5: Site of Convention Center, Staples Center Arena, and Los Angeles Sports and Entertainment District, 1989-2011

Image Source: Google Earth
A. The Staples Center

The story of the Staples Center sports arena is one chapter in a decades-long saga of efforts to transform "downtown Los Angeles" from an oxymoron to a destination. From 1971 to 1996, urban renewal funds totaling 4.1 billion constant 2013 dollars were spent in downtown Los Angeles.\(^{10}\) But, as urban planner William Fulton (1997, 229) explained, despite this enormous expenditure, most denizens of the Los Angeles metropolis "would never, ever mistake downtown Los Angeles for an actual place that has significance [in their lives]." At most, "you might go downtown if you are in some kind of hassle with City Hall, or if you want to buy cheap jewelry, or if you are going to a car show at the Convention Center." This last item on Fulton's short list of downtown attractions was to be the springboard for the Staples Center, and its own history sheds useful light on the dynamics of downtown development in Los Angeles.

1. The Los Angeles Convention Center

Since opening in 1971, the Convention Center had been plagued by problems dogging many such facilities in the U.S. Throughout the 1970s and 1980s, as part of an economic development "arms race" (Fleischmann, Green, and Kwong 1992, 677), municipalities nationwide were undertaking similar projects. As a result, from 1970 through 1996, the number of convention centers in cities with at least 100,000 residents increased by more than 450% (Figure 6). This glut of convention centers oversaturated the market, undermining many advocates' claims that such facilities would more than pay for themselves by stimulating tourism and additional development (Altshuler and Luberoff 2003, 39–40).

Figure 6: Convention Centers Opened by Decade in U.S. Cities with at Least 100,000 Residents

Data source: Laslo (1999, 60, Table 4.2)
Note: Figure excludes one convention center for which opening date could not be determined.

The tale of the Los Angeles Convention Center neatly encapsulates the arms race dynamic. As cities continued to build bigger and fancier new facilities, the demands for upgrades to existing facilities were incessant. Thus, as Heywood Sanders (1998, 65) relates:

[In 1983 Los Angeles] Mayor Tom Bradley and a Blue Ribbon Committee enthusiastically backed [a] $350 million expansion effort [for the Los Angeles Convention Center]. But the eventual expansion proved more difficult and expensive than the mayor and the Blue Ribbon Committee had anticipated. The cost rose from $350 million to $500 million, and the 385,000 square foot expansion did not open until November 1993, about three years late.

When the projected increase in attendance failed to materialize, the city was obliged to pay roughly $20 million annually from its general fund to cover debt service and operating expenses for the Convention Center (Sanders 1998, 65). As in other cities with similar difficulties (Altshuler and Luberoff 2003, 40 n. 88), proponents of the Convention Center attributed its
shortcomings to a lack of adequate nearby hotel facilities (see U.S. General Accounting Office 1998, 6). The genesis of the Staples Center is closely linked to the city's search for a convention center hotel.

2. The Arena Proposal

In 1995, businessmen Phillip Anschutz and Edward Roski purchased the Los Angeles Kings professional hockey team with the intention of moving the team to a new arena, preferably in downtown Los Angeles (Dillman 1995; Bruck 2012, 51; K. Reich 1995). Anschutz and Roski quickly focused on a site next to the Convention Center (Simers 1996b; Flanigan 1996), emphasizing their interest in building an associated hotel and announcing that the Lakers, a professional basketball team, would join the Kings in the new facility (Simers 1996a; Los Angeles Business Journal 1996). In August 1996, their joint venture, L.A. Arena Company, LLC, submitted a formal proposal for the project to the Los Angeles City Council (Roski 1996).

"Anyone who votes against this is voting for a perpetual ... loss at the Convention Center," said Steven Soboroff, an advisor to Los Angeles Mayor Richard Riordan (Merl 1996b). (Anschutz and Roski left open the possibility that the two teams might instead remain in Inglewood, (Simers 1996a; Flanigan 1996; Simers 1996b; Merl 1996a), the Los Angeles suburb where they had been playing for nearly three decades (see Zimmerman 1967).)

In September 1996, the Los Angeles City Council voted 11-1 to approve the developers' proposal "in concept." L.A. Arena Company would pay for the construction and operation of the new arena, which it would own, and it would lease the land from the city for one dollar per year (Comrie and Deaton 1996, 6–7) (Figure 7). If, within seven years of completing the arena, L.A. Arena Company had not submitted a complete application to develop a hotel with at least

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11 Los Angeles City Council File No. 96-1590-S1, see also Merl (1996c).
1,400 rooms, the city could reclaim certain property that the CRA would condemn for the arena project (Comrie and Deaton 1997a, 2). Otherwise the city would provide a right of first refusal to L.A. Arena Company for any subsidies for development on the surrounding property. The city’s direct contribution for land clearance, relocation, and administrative costs would be roughly $70.5 million, according to its negotiators (R. Simon 1996; Comrie and Deaton 1997a, 2). In order to finance this contribution, the city would incur annual debt service and related costs of approximately $6.8 million for twenty-five years (Comrie and Deaton 1997a, 3).

**Figure 7: City Land to be Leased for Proposed Arena Development**

Source: Adapted from Comrie and Deaton (1996, Attachment A, Exhibit A).
The lone dissenting vote came from Councilman Joel Wachs, who said, "I'd love to see this project happen, but I want to be sure it can pay for itself" (quoted in R. Simon 1996; see also Merl 1996c). Wachs, who represented a district in the San Fernando Valley, embraced a host of liberal social policies while establishing a reputation as a fiscal watchdog (Clifford and Simon 1992; Greene 1997; H. Martin 1997; Schwada 1993). Many Valley residents shared Wachs's suspicion of government spending, having long complained that City Hall ignored the Valley while lavishing resources on other parts of the city, including the downtown area (Hogen-Esch and Saiz 2002, 49). Such sentiments helped to spur the Valley secession movement that was coming to a head just as the city council received the arena proposal (see Chapter Four, pp. 153-155). Wachs, who would run for mayor in 2001, apparently believed that the proposed arena subsidy exemplified precisely the kind of government spending that many Valley voters loathed.

Wachs continued to rail against the project, which became increasingly contentious. A poll of Los Angeles voters released by the Loyola Marymount Center for the Study of Los Angeles on September 30, 1996, indicated that 55% of respondents opposed the proposed arena (Center for the Study of Los Angeles 1996; Merl 1996d). (Two days later, arena proponents had issued poll results indicating majority support for the project (Orlov 1996a; Wilgoren 1996).) On December 4, the city council considered a revised proposal in a closed-door meeting (Burmahl 1996). This meeting was preceded by a public hearing, for which the Central City Association, a group representing downtown businesses, had assembled roughly fifty supporters of the project.

12 Councilman Nate Holden was absent for the vote, but wrote a letter in opposition (Holden 1996).
13 A mailer for Wachs' 2001 mayoral campaign highlighted his role in opposing a "back room deal to give your tax dollars to billionaire sports team owners for their new arena" (quoted in M. Gold 2001).
14 From September 20, 1996 through November 1, 1996, Wachs and Councilman Nate Holden introduced at least four unsuccessful motions to require additional analysis and to restructure the deal. See Los Angeles City Council, File Nos. 96-1590-S2; 96-1590-S3; 96-1590-S4; 96-1590-S5.
including members of community groups, organized labor, and businesses (Merl 1996f). But the council also received more than a dozen letters from San Fernando Valley homeowners and groups representing them, deploiring the secretive nature of the council's deliberation. Community leaders speaking on behalf of households facing displacement due to the proposed arena, meanwhile, asked for replacement housing to be provided in the same neighborhood (Merl 1996e). (The following month, tenants from the area would reiterate this concern at a council committee hearing (Council of the City of Los Angeles, Ad Hoc Committee on L.A. Arena Proposal 1997, 2).)

With intimations of mounting opposition, the city council placed new conditions on the project. At their private meeting on December 4, council members learned that the developers would consent to a ticket fee to cover $3.5 million of the city's annual costs (Merl 1996e; Comrie and Deaton 1997a, 3), an option the developers had refused to consider earlier in the negotiation process (Merl 1997). After the meeting, Wachs reiterated his concerns about taxpayer protections, but said, "There is no question that the deal is substantially better than it was" (quoted in Merl 1996f). A week later, on December 13, the city council met again in private. Voting 10-2, with Wachs in the majority, the council approved instructions for the city's negotiators, specifying fourteen issues requiring attention, including employment outreach for communities surrounding the proposed arena; participation of minority and women's business enterprises; and a guarantee that the Lakers and the Kings would remain in the arena for at least twenty-five years (Merl 1996g). During the weekend of December 14-15, developer Roski told council members John Ferraro and Rita Walters that he was ready to walk away from the deal because of the city's new demands (Orlov 1996b). On December 17, the Inglewood City Council

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15 See Los Angeles City Council File No. 96-1590-S6.
renewed its push for the arena, unanimously approving a local ballot measure, asking local voters to allow Inglewood to raise taxes in order to subsidize a new arena (Los Angeles Times 1996).

Despite the Los Angeles City Council members' demands and Roski's threat to abandon the deal, the arena project now appeared to be regaining momentum. On January 15, 1997, the council approved the new proposal by a vote of 13-2. Wachs, joined by councilman Nate Holden, again voted in opposition and also moved (unsuccessfully) to require the developers to cover the city's costs in case of unanticipated shortfalls in the relevant revenue streams (Merl 1997). With Wach's support, the council also adopted a motion requiring city agencies to address community concerns about relocation housing and to create a training and outreach program for arena-related jobs, including a minority business development program. City officials moved to finalize a detailed memorandum of understanding concerning the deal, while the CRA oversaw preparation of an environmental impact report required under the California Environmental Quality Act. In an article published the day of the council vote on the new proposal, Anschutz spokesman Bob Sanderman said, "We're really getting to the point where we think we're two to three weeks away from both the city of Inglewood and the city of L.A. having their best and final offers on the table. We'll then sit down and make a decision" (quoted in Trepany and McGreevy 1997). On February 20, the developers unveiled their design model for a downtown arena and announced their decision: they would shut down talks with Inglewood to focus on the downtown Los Angeles site (Orlov 1997a; L. Gordon 1997).

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16 Council of the City of Los Angeles, Motion adopted to approve ad hoc [sic] on the LA arena proposal rpt [sic], as amended by 47A revised, Jan. 15, 1997 (Council File No. 96-1590-S1).
17 Motion 47A-Revised & Amending motion 47A adopted, Jan. 15, 1997 (Council File No. 96-1590-S1).
18 Council of the City of Los Angeles, Ad Hoc Committee on L.A. Arena Proposal (1997).
Throughout the winter and spring of 1997, city negotiators and the developers worked on a memorandum of understanding, fleshing out the terms of the deal (Comrie 2012). The council received the 96-page document on May 16, 1997.20 That day, the developers announced they were willing to invest $500 million to bring a National Football League team to the Los Angeles Coliseum in South Central Los Angeles (Simers 1997a). Councilman Mark Ridley-Thomas, whose district covered a large portion of South Central, ardently supported bringing professional football to the Coliseum. Although league owners had indicated their interest in bringing football to Los Angeles, they reportedly recoiled at the idea of a stadium located in South Central, the epicenter of riots that had shaken the city in 1992 (del Olmo 1998; Simers 1997c). Ridley-Thomas explained that the developers' support for the Coliseum project "was a decisive turning point, a pivotal point in leveraging. I was willing to give the arena support, but it was conditional: I just wanted to make something happen so the city could have two new sports venues" (Simers 1997b). (Anschutz would later abandon the Coliseum project and pursue a National Football League stadium adjacent to the downtown arena (Bruck 2012).)

At a council meeting on May 23, labor and housing advocates expressed support for the deal.21 HERE Local 11 president Maria Elena Durazo, said the project "should demonstrate that industry can lift families out of poverty" (quoted in Metropolitan News Enterprise 1997). Sister Diane Donoghue of the Esperanza Community Housing Corporation voiced support for the project "as long as replacement housing is built" for the 188 units the project would displace, and called for a housing trust fund to supplement the $4.5 million allocated to replacement housing (quoted in Metropolitan News Enterprise 1997). Jackie Goldberg echoed Donoghue's concerns

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20 File history, Council File No. 96-1590-S7.
21 Not all public comments were favorable: An attorney representing a group called the Coalition for Community Rights questioned the adequacy of the environmental impact report (Metropolitan News Enterprise 1997).
about replacement housing, but voted to approve the memorandum of understanding along with ten of her colleagues (Metropolitan News Enterprise 1997).^{22}

Nevertheless, the financial terms of the deal had scarcely changed since January, leading Wachs and Holden to vote against the project once again, joined this time by Rita Walters (Orlov 1997b; E. Moses 1997a; Orlov 1997c).^{23} According to the City Administrative Officer and the Chief Legislative Analyst, the city and the CRA would still be responsible for spending roughly $70 million to acquire the land and relocate displaced households and businesses, at cost of $6.8 million annually for twenty-five years (Molloy 1997, 4; L.A. Arena Development Company, LLC et al. 1997, sec. 5.2–5.4). The city would fund its contribution by combining money from the Convention Center’s bond reserve fund with newly issued taxable bonds. As in January, city negotiators projected that the new costs would be covered by $3.5 million in annual ticket fee revenue, roughly $1.6 million in annual overflow parking revenue, and net new annual tax revenues of $1.3 million. If the assumptions underlying these revenue projections were inaccurate, the city stood to lose millions of dollars annually. The risk was exacerbated by the uncertain legality of the proposed ticket fee. If a court invalidated the fee, the developers would pay $1.75 million annually to the city, leaving the city responsible for the additional $1.75 million in projected annual ticket fee revenue.

3. The Initiative Campaign

In June 1997, Los Angeles Times writer Bill Boyarsky (1997a) published a column asking whether the Lakers and Kings could "abandon the arena if a more beguiling and generous landlord beckons." Boyarsky worried that such an outcome would leave Los Angeles taxpayers

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^{22} See also Los Angeles City Council File No. 96-1560-S7.
^{23} Unless otherwise noted, the sources for all information in this paragraph are Comrie and Deaton (1997a) and Wilgoren (1997a).
to repay the city's costs without the benefit of an arena tenant. From 1970 to 1997, the vast majority of U.S. professional sports franchises threatened to move, precipitating intergovernmental bidding wars, and many teams made good on their threats (Danielson 1997, 134–151; Euchner 1994, 5). The City of Los Angeles had not fared well in this competitive environment, losing two professional football teams (Euchner 1994, 82–87, 96–101; Danielson 1997, 118, 149), and Boyarsky explicitly invoked this history. Over the ensuing weeks, as Boyarsky continued to question the terms of the arena deal in print (Boyarsky 1997f; 1997b; 1997h; 1997g; 1997e; 1997d; 1997c), his concerns attracted attention from city officials and members of the public (see Shuster 1997b; Mark Purcell 2002, 321; Rohrlich 1997a; Plaschke 1997; Satzman 1997; Wilgoren 1997d; Haefele 1997; Los Angeles Times 1997).

With explicit support from Boyarsky (1997c; 1997d), Joel Wachs renewed his campaign to revisit the deal. On July 10, Wachs called for the developers to prove that the Lakers and Kings would be obligated to remain in the new arena for twenty-five years (E. Moses 1997b). Although the city would sign a variety of contracts with the developers' Los Angeles Arena Company, it would not have a contract with the teams themselves. According to spokesman John Semcken, the developers had "an agreement with the teams to play there for 25 years," but confidentiality provisions prevented release of the relevant contracts (quoted in E. Moses 1997b). On July 22, the council unanimously adopted Wachs's motion demanding the public release of "all relevant agreements (excluding proprietary information) between the Los Angeles Lakers, the Los Angeles Kings, and the Los Angeles Arena Company."24 One week after the Council adopted Wachs's motion, City Attorney James Hahn demanded expansive disclosure of all agreements related to the arena deal (Wilgoren 1997c; O'Donoghue 1997).

24 Council of the City of Los Angeles, Motion adopted July 22, 1997, Council File No. 96-1590-S8; see also Wilgoren (1997b).
Under pressure from Boyarsky, Wachs, and Hahn, the developers agreed to release all of the documents related to the deal prior to the city council's vote on the agreement (Wilgoren 1997d). But the developers would continue to withhold many of these documents until completing ground lease negotiations with the city (Wilgoren 1997d). Decrying this arrangement, Wachs launched a campaign for a ballot initiative that would require local voters to approve city expenditures for professional sports facilities and teams (Wilgoren 1997d).

Wielding the threat of an initiative, Wachs extracted several concessions from the developers. In order to acquire land for the arena development and relocate displaced households and businesses, the city and the CRA would assume $70 million in debt (Wilgoren 1997a; Molloy 1997, 4; L.A. Arena Development Company, LLC et al. 1997, sec. 5.2-5.4). Wachs insisted that, if the arena did not generate adequate additional revenue to cover this debt, the developers should make up the shortfall (Rohrlich 1997a). By the end of August, the developers had agreed to guarantee repayment of the city's costs, although Wachs continued to question the terms of the arrangement (Rohrlich 1997b; 1997c; 1997e). Wachs also persisted in his demand for disclosure of the developers' contracts with the Lakers and the Kings, so that city negotiators could determine whether the teams could escape from their leases before twenty-five years had elapsed. On August 27, the developers complied (Rohrlich 1997a).

As Wachs continued to push for additional concessions throughout September, he came under increasing pressure to exempt the arena from his proposed initiative and accept a deal. The developers vowed not to build the arena if the initiative qualified for the ballot (Rohrlich 1997c). At a rally near the proposed arena site, Los Angeles County Federation of Labor head Miguel Contreras vowed to campaign against any elected official standing in the way of the arena, saying, "We'll body-check Joel Wachs" (Rohrlich 1997c). Cardinal Roger M. Mahony, the
Archbishop of Los Angeles, publicly excoriated Wachs for the initiative proposal (Rohrlich 1997d).

On October 8, 1997, Wachs announced that, because the developers had satisfied most of his concerns, he would exempt the arena from his proposed ballot measure (Shuster 1997a). The key city council approvals followed by the end of the month.25 By the following March, construction had commenced on the Staples Center, as the developers had named the arena in exchange for roughly $100 million from the office supply chain Staples, Inc. (Dillman 1997, 100). In October 1999, the Staples Center opened with a Bruce Springsteen concert (Rohrlich 1999).

4. The Agreement

The final arena deal addressed Wachs' concerns. The agreement capped the combined direct subsidies from the city and the CRA at $63 million.26 Under the disposition and development agreement, the city would lease the arena site to the L.A. Arena Development Company in exchange for $3,231,659 plus interest.27 While the initial proposal had the L.A. Arena Development Company leasing additional publicly owned for a nominal fee, under the final agreement, the CRA conveyed certain City-owned property to the company by grant deed in exchange for $1,591,121 plus interest.28 It also would acquire and convey additional property to the company by grant deed for $1.00 per parcel, subject to the satisfaction of certain conditions concerning subsequent development (Figure 8).29 As Wachs had demanded, if city revenues from arena ticket fees, arena parking lots, and half of the sales taxes from arena construction did not cover the city's costs, L.A. Arena Development Company would guarantee

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25 On October 21, 1997, the city council certified the Final Environmental Impact Report for the project and approved the relevant disposition and development agreement. Los Angeles City Council, File No. 96-1590-S1. On October 28, 1997 the council approved the relevant development agreement. City of Los Angeles, Ord. No. 171764 (1997). (Development agreements are discussed in Chapter One, sec. IV.C.1.)
26 Disposition and Development Agreement by and among the Community Redevelopment Agency of the City of Los Angeles, the City of Los Angeles, and L.A. Arena Development Company, LLC (1997) [hereinafter Arena DDA], attachment No. 15, paragraphs C & D.
27 Ibid., sec. 4.3(a). The Gap Funding Agreement between City of Los Angeles and L.A. Arena Development Company, LLC (1997, Annex B) [hereinafter Gap Funding Agreement], Council File No. 96-1590-S1, indicates a twenty-five year lease term with level annual rent payments of $302,726.
28 Arena DDA, supra note 26, sec. 4.3(b).
29 Ibid., art. 5.
repayment of up to $58.5 million.\(^3\)\(^0\) The company's repayment obligation would be further reduced by a credit for the creation of new jobs, with an estimated value of $2.7 million.\(^3\)\(^1\) The company acquired insurance for its repayment guarantee,\(^3\)\(^2\) and, along with the teams, executed estoppel certificates to provide assurances that the teams would remain in the arena for at least twenty-five years, unless the city agreed to release them.\(^3\)\(^3\)

In response to concerns that members of the council's Ad Hoc Committee on L.A. Arena Proposal had raised in late 1996, the final agreement included a "Community Benefits Program,"\(^3\)\(^4\) consisting of provisions to promote local hiring and minority- and women-owned businesses. In cooperation with the developers, the city's Community Development Department would implement a program to increase participation of local women- and minority-owned businesses in the arena project.\(^3\)\(^5\) The developers would also coordinate with the city's existing job training and outreach efforts,\(^3\)\(^6\) and they would provide regular updates on the implementation of the Community Benefits Program.\(^3\)\(^7\) Under a separate program, the developers would award at least twenty-five percent of the contract value for the design, construction, management, and operation of the arena to businesses owned and controlled by minorities and women.\(^3\)\(^8\)

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\(^3\)\(^0\) Gap Funding Agreement, supra note 27, sec. 3.1–3.3, 3.8.
\(^3\)\(^1\) Ibid., annex D (as amended as of March 20, 1998).
\(^3\)\(^2\) Ibid., sec. 3.9.
\(^3\)\(^3\) Arena DDA, supra note 26, attachments 9 & 10.
\(^3\)\(^4\) Ibid., sec. 13.2.
\(^3\)\(^5\) Ibid., sec. 13.2(a).
\(^3\)\(^6\) Ibid., sec. 13.2(b).
\(^3\)\(^7\) Ibid., sec. 13.2(c).
\(^3\)\(^8\) At least twenty percent of the contract value would be allocated to minority business enterprise firms and at least five percent would be allocated to women business enterprise firms. Arena DDA, supra note 26, attachment 14, sec. III.A.
Figure 8: Property Interests Conveyed from City and CRA to L.A. Arena Company as of October 15, 1998

5. Outcomes

Criteria for evaluating the arena vary, as do applications of any given criterion. The goal of this subsection is neither to assess the criteria nor their application, as Chapter Six addresses both issues. Instead, this subsection describes the goals articulated during the negotiation process, outlines different mechanisms for evaluating the success of the project according to these criteria, and flags some potential goals that were seemingly not addressed.

The publicly articulated goals resemble those associated with virtually all large-scale development projects recent decades (see Altshuler and Luberoff 2003, 27–42). The objectives of the city's negotiators were "structuring a deal which (1) pays for itself; (2) 'turns the lights back on downtown' through a successful arena; and (3) provides the impetus for development of a convention center hotel and retail, dining and entertainment facilities around the Arena and the Los Angeles Convention Center" (Comrie and Deaton 1997b, 1). (The second and third of these objectives were closely related, and I reserve discussion of both for subsection B, below.) As noted above, HERE Local 11 president Maria Elena Durazo hoped that the project would "demonstrate that industry can lift families out of poverty" (quoted in Metropolitan News Enterprise 1997). Housing advocate Sister Diane Donoghue hoped to avoid displacement of low-income households, as did Councilwoman Jackie Goldberg (Metropolitan News Enterprise 1997).

a. Fiscal Impacts

Whether "the deal ... pai[d] for itself" is inherently ambiguous. The answer depends both on how one defines "the deal" and, having defined the deal, on which counterfactual scenario one considers. First, "the deal" has been described (sometimes within the same document) as including only the arena and as involving the subsequently developed hotel and entertainment
district (see, e.g., Comrie and Deaton 1997b; Comrie and Deaton 1997a; Baade 2003; Rosentraub 2010). Second, even presuming that the deal included only the arena, assessments concerning the financial impact of the deal for the city are fairly sensitive to assumptions about costs and benefits. Robert Baade (2003, 5) suggests that the cost to the city would total 12.6 million 2001 dollars (the amount paid by the CRA), only "[i]f parking revenues and ticket taxes being used to repay the debt represent[ed] an entirely new or previously inaccessible revenue stream." If all such revenues simply substituted for revenues that would have been generated elsewhere in the city had the arena not been built, then the cost to the city would be 71.1 million 2001 dollars. Baade (2003, 48) contends that the cost figure is likely closer to $12.6 million than $71.1 million, and estimates the increased city tax revenue over the twenty-five-year term of the agreement at $49.234 million (2003 net present value). This estimate "assume[s] that the City would not have generated property taxes or rent from the property, which the Staples Center utilizes, over the life of the agreement" (Baade 2003, 46), and it also assumes additional ongoing costs to the city beginning at $540,000 in 1999 and increasing by 3.91% annually (Baade 2003, 47). Judith Grant Long (2013, 112), however, estimates both a slightly higher public outlay for capital expenditures (79.6 million 2001 dollars, compared with Baade's estimate of 71.1 million) and a public outlay for ongoing expenses equaling over 640% of Baade's estimate.39 Thus, while Baade's estimates suggest a likely net revenue increase for the City due to the project, Long's cost estimates, in conjunction with Baade's incremental revenue estimates, suggest a likely net revenue loss.

39 I used the CPI Inflation Calculator, supra note 10, to adjust Long's estimate of capital expenditures in 2010 dollars to 2001 dollars. In order to compare Long's estimate of ongoing public expenses to that of Baade, I projected Baade's incremental cost estimate over a 30-year lease (the period used by Long), then calculated the 1999 net present value of the estimated incremental costs using Long's discount rate of 6%, and then adjusted this value to 2010 dollars using the CPI Inflation Calculator, supra note 10.
b. Jobs

Relatively few jobs at the arena seem likely to have "lift[ed] families out of poverty," as HERE Local 11 president Maria Elena Durazo hoped (quoted in Metropolitan News Enterprise 1997). (The subsequent hotel development may have fared better in this respect, as discussed in subsection B.2.a below.) In the year after the Staples Center opened, 247 full-time jobs, 3 full-time equivalent jobs, and 1,212 event jobs were attributable to the facility, based on the criteria established in an agreement with the city, according to a report from Staples Center General Counsel Ted Fikre (2000). Of these 1,462 jobs, 797 were filled by residents of the City of Los Angeles, and 208 were "quality jobs," meaning that they paid "total compensation in excess of the Lower Living Standard Income Level ("LLSIL") applicable to the Los Angeles Metropolitan Statistical Area for a family of four in effect as of the Annual Review Date [for the Jobs Incentive Program], as published by the Department of Labor." (The relevant LLSIL for the first year of the Staples Center's operation in 1999 and 2000 was $28,630, roughly 40,033 2013 dollars.)

The "quality jobs," however, tended not to be held by residents of the City of Los Angeles. Of the 955 jobs for which I have obtained detailed data, 82 were "quality jobs." Of these 82 "quality jobs," only 27 were held by residents of the City of Los Angeles. And, of those 27 residents, only four lived in zip codes with a 1999 median household income below the 1999 LLISL of $28,630, making it unlikely that the Staples Center did much to alleviate poverty in the

40 Gap Funding Agreement, supra note 30, annex D (as amended as of March 20, 1998).
41 Ibid., annex D (as amended as of March 20, 1998), at 10.
43 Calculated using CPI Inflation Calculator, supra note 10.
44 These data come from a copy of Fikre (2000) that is missing several pages. This partial copy was an attachment to López Mendoza's (2001) comment letter on the Draft Environmental Impact Report, which in turn was included in the Final Environmental Impact Report (City of Los Angeles, Department of City Planning 2001b, vol. II). I was unable to locate a complete copy of Fikre (2000) in the Los Angeles City Archives, and a subsequent search on my behalf by the Acting City Archivist was also unsuccessful (Holland 2014).
City of Los Angeles. (For its job creation during this period, the L.A. Arena Land Company claimed a credit of $1,991,637.50 against repayment of certain city costs for the project (Fikre 2000).)

Despite the support of labor leaders such as Contreras and Durazo for the project, labor relations at the arena were contentious. Although the L.A. Arena Company and many of its contractors compensated employees in a manner consistent with the city's living wage ordinance, Staples Center president Tim Leiweke said, "We are complying with the living wage ordinance because we choose to, not because we're obligated to" (Shuster 1999). (At Jackie Goldberg's behest (Orlov 1997c), the disposition and development agreement for the arena project indicated, "In connection with the construction and operation of the Project, the Developer shall comply with the provisions of the City's Living Wage Ordinance and all applicable regulations related thereto, to the extent applicable" (emphasis added).45) A living wage training to be conducted at the arena by LAANE staff members was cancelled (Cardenas 2000). (Staples Center officials indicated that the cancellation had been requested by McDonald's, but McDonald's officials denied that allegation (Los Angeles Times 2000a).) Meanwhile, food concessionaire Ogden Entertainment declined to sign a contract with HERE Local 11, making it the only holdout among the arena's contractors (Cleeland 1999).

The threat of a strike clouded the 2000 Democratic National Convention, which would be held at the arena, and boded ill for the developers' hopes to obtain city subsidies for the planned convention center hotel. Jackie Goldberg negotiated a supplemental agreement with the L.A. Arena Company (Shuster 1999), affirming the company's commitment to the living wage

45 Arena DDA, supra note 26, sec. 13.4.
ordinance and the city's service worker retention ordinance,\textsuperscript{46} which the council approved on February 23, 2000.\textsuperscript{47} Following "several demonstrations outside Staples as well as sporadic work stoppages ... Staples Center President Tim Leiweke, prodded by Democratic convention planners," helped to bring Ogden and HERE Local 11 back to the table, resulting in an agreement by the end of April 2000 (Cleeland 2000).

c. \textit{Effect on Displaced and Remaining Residents}

The arena project's effect on housing and traffic are scarcely (if at all) less contentious than its fiscal impact on the city. Figure 12 displays the areas around the arena from which existing households were displaced due to land clearance for the project. According to Jerry Scharlin (1999, 2), Interim Administrator of the CRA at the time, the agency relocated 130 households (Figure 13), of which at least 41 "were relocated to Agency assisted and/or tax credit housing projects, ensuring them long term rental affordability." According to David Riccitiello (1999, 1), the CRA project manager responsible for the relocation, prior to relocation, "all of the households lived in substandard housing, most in one or two room apartments. The area was known for major gang activity and illegal drug sales and prostitution. It was not a safe environment for the many families with small children that lived in the area." Riccitiello also noted that "[t]hree non-profit agencies, St. Francis Center, Inquilinos Unidos, and First United Methodist Church, were hired by the Agency to provide outreach services and to act as advocates for the tenants."

\textsuperscript{46}See Chapter Four, p. 196.
\textsuperscript{47}Los Angeles City Council File No. 99-0826.
Figure 9: Displacement Areas for Arena Project

Displacement Areas

Source: Los Angeles City Council File No. 96-1590-S1.
Figure 10: Relocation Areas for Arena Project, by Zip Code

Note: In addition to the intra-local relocations indicated on the map, one household relocated to each of the following California cities: Fontana, Lake Elsinore, and Santa Ana. Two households relocated to New York, and two relocated to Mexico. Sources: Scharlin (1999) (relocation data); U.S. Postal Service & U.S. Census Bureau (GIS data); Cartography by author.
Others had a less sanguine view of the relocation effort. Quoting an interview with Enrique Velasquez, who had worked for Inquilinos Unidos on the arena relocation (McNeill 2014a), Saito (2012, 138) reports:

"Of those he was able to contact several years after they moved, "all the families said they were living worse than before." One of the major issues was that they had to leave rent-controlled units, and the only housing they could find was more expensive. Once housing subsidies for displaced residents ran out, their rents were much higher than before. Also, the former residents told Velasquez that the move, which scattered the residents across the region, created tremendous hardships in their lives and strained their networks because "we got separated. We lost our friends. We lost our neighborhoods" and to reach "our jobs, we now have to travel long periods by bus."

Leavitt (2006, 273 n. 12) argues that the official figure of 130 displaced households is misleading because "in all likelihood the threat of displacement led some people to leave without gaining benefits." In the months after the arena was completed, the Figueroa Corridor Coalition for Economic Justice, a non-governmental organization described below in subsection B.1, "documented specific cases of rent increases and reduced maintenance" in the surrounding area (López Mendoza 2001, 7).

Opinions also varied concerning the effect of arena traffic on surrounding areas. Based on a report from the City's Department of Transportation, the Los Angeles City Council Transportation Committee (2000, 1–2) indicated that "the traffic controls around the new STAPLES Center have performed at levels which exceed the expectations of the public and the Department of Transportation.... Initial temporary signage alerting STAPLES and Convention Center visitors not to seek parking and access through the neighborhoods appeared to be effective." By contrast, based on "one-on-one interviews, surveys, and small group meetings regarding traffic with approximately 200 residents" around the development, a letter written on behalf of the Figueroa Corridor Coalition for Economic Justice described "substantial, dangerous increases in traffic and congestion" along the corridors illustrated in Figure 11 (López Mendoza
Leavitt (2006, 264), moreover, indicates that "at the end of arena games ... police left the neighborhood to sports fans leaving the Staples Center, who would create mayhem, stealing cars and smashing windows."

**Figure 11: Roadways with "dangerous increases in traffic and congestion," according to the Figueroa Corridor Coalition for Economic Justice**

![Map showing roadways with increased traffic and congestion](image)

Sources: López Mendoza (2001, 26) (corridors); Los Angeles Region Imagery Acquisition Consortium Program (building footprints); Cartography by author.

6. **Paths Not Considered**

Largely lost in discussions of fiscal and community impacts are antecedent questions concerning the decision to expend so much time, energy, and money promoting a tourist economy. Peter Eisinger (2000, 323) argues that the focus on the kinds of issues outlined in the preceding sections obscures at least two other (and perhaps more important) concerns:

[The effects on cities of the mobilization of resources to build big entertainment amenities are likely to extend well beyond economic development outcomes. One of the potential unexplored effects of entertainment projects is that they threaten to strain the bonds of trust and accountability between citizens and their leaders. A second possible effect is that the effort to realize these projects can easily skew or distort the civic agenda.]
As a mayoral candidate, Joel Wachs tried to make political hay by claiming to have saved taxpayers from a "back room deal" concerning the arena (M. Gold 2001), suggesting that he – like Eisinger – believed that such projects undermined public trust in the elected officials who supported them. But even Wachs claimed that he would "love to see this project happen," so long as it would "pay for itself" (quoted in R. Simon 1996), suggesting that – apparently like all other participants in the arena negotiation – he did not share Eisinger's concern that such projects may "distort the civic agenda." The most salient manifestation of such distortion, Eisinger (2000, 329) contends, entails "allocate[ing] hard dollars to protect the space around tourist attractions, which necessitates shifting resources from or denying new resources to other parts of the city."

But the focus on visitors (instead of residents) may also have more subtle distorting effects, for example by valorizing the kinds of secure (or homogenized) public space found in business improvement districts and privately owned plazas at the expense of parks, playgrounds, sports fields, and public sidewalks (see Chapter One, sec. III.D, Chapter Two, sec. III.D).

B. The Los Angeles Sports and Entertainment District

The coalition of non-governmental organizations that mobilized around the subsequent hotel, retail, and entertainment development adjacent to the Staples Center as the Figueroa Corridor Coalition for Economic Justice was, in large part, concerned with precisely the kinds of distortions that Eisinger describes. In a letter to the City Planning Department written on behalf of this coalition, attorney Jerilyn López Mendoza (2001, 41) noted that, although the city had considered a variety of alternatives for the development of the Los Angeles Sports and Entertainment District, "the most obvious alternative – one that improves existing housing and retail in the community; that integrates neighborhoods [sic] uses with regional attractions; that combines old and new buildings, residents and uses – has been completely overlooked." The efforts of the coalition to bring this alternative under consideration have been the subject of
extensive attention (see pp. 206-207, above). Subsection B.1 summarizes the story told in prior works, adding some additional detail from interviews and primary documents. Subsection B.2 discusses the implementation of the resulting agreement, which has received substantially less attention.

1. Mobilization in the Figueroa Corridor

The Figueroa Corridor Coalition for Economic Justice (FCCEJ) was largely the product of relationships forged during a campaign to improve the employment conditions of roughly 350 food service workers at the University of Southern California (USC), located in downtown Los Angeles (Figure 12) (Haas 2002, 91–92; Leavitt 2006, 262; McNeill 2014a). This campaign reflected the County Fed’s new approach to organizing in low-income communities of color (see Chapter Four, pp. 195–196), bringing together labor unions and community organizations as the Coalition for a Responsible USC. This coalition was convened in 1998 by the nonprofit Strategic Actions for a Just Economy (SAJE), described by Gilda Haas (2002, 91–92), one of its founders as "a popular education and economic justice organization that is committed to building economic power for working-class people in Los Angeles." Co-founder Sandra McNeill (2014a) notes that SAJE "established an important relationship with HERE Local 11 when the Coalition for Responsible USC first was formed."

As the USC food service worker campaign was winding down, the leaders of the coalition sought to broaden their objectives, and on May 1, 1999, FCCEJ (pronounced fick-ejj) was born (McNeill 2014a). Although McNeill came to view the acronym as "unfortunate" ("those initials!") and SAJE co-founder Gilda Haas (2012, 272) called it "a name that only a mother could love," it reflected the new approach:

We felt like … this concept that being organized around USC isn’t what we’re about; what we really need to understand is all of these development pressures in the neighborhood and how we collectively are positioned. So we went through a whole conversation at the time to restructure the coalition….
[HERE Local 11 President Maria Elena Durazo] was in the room with us a lot during those early strategy conversations about the coalition. And so even though her union was very focused on the workers, the workers lived right in the neighborhood, and so ... it wasn’t just about, you know, these jobs, but also could people even – with these wages – are they even going to be able to stay in the neighborhood? (McNeill 2014a)

FCCEJ would cover an area including parts of downtown Los Angeles, the Pico Union neighborhood, and Historic South-Central Los Angeles (Figure 12), which encompassed some of the poorest census tracts in the county (Figure 13).

**Figure 12: Figueroa Corridor Coalition for Economic Justice (FCCEJ) Coverage Area**

*Sources: U.S. Geological Survey (images); Leavitt (2006, 262) (FCCEJ coverage boundaries); Cartography by author.*
Figure 13: 1999 Census Tract-Level Median Household Income as a Percentage of the County Median


The new organization's first major campaign would focus on a development project just northeast of USC – the Los Angeles Sports and Entertainment District. The members of FCCEJ had numerous concerns about the Staples Center and the hotel and commercial projects that seemed likely to surround it in the future. Residents complained of increased traffic and displacement from the Staples Center (see pp. 227-231), while worrying that new development would bring additional problems (see López Mendoza 2001). At the time FCCEJ was founded, moreover, leaders of HERE Local 11 and LAANE were locked in conflict with executives from the Staples Center and Ogden Entertainment (see pp. 226-227). David Koff, who worked as a
strategist for HERE Local 11, explains another motivation for the alliance between the labor
groups and community-based organizations: "Had FCCEJ started demonstrations – which they
were on the verge of doing – the likelihood was that they wouldn't derail, but would probably
only delay the development process. So it was in the interest of the hotel workers union that if
the development was going to happen, the sooner it happened, the better" (quoted in
Montgomery 2011, 103–104).

On May 3, 2000, less than a month after resolution of the dispute involving HERE Local
11 and Ogden Entertainment, Staples Center executives announced a proposal to transform
roughly 30 acres surrounding the arena into "a shopping, dining and theater area, capped by a
four-star, 40-story, 1,200-room hotel. Those amenities would abut and ring the center,
enveloping a public space that" – in a flourish reminiscent of the Hollywood & Highland
proposal – "the proponents likened ... to 'Los Angeles' Times Square'" (Newton 2000). The
proposed project would "require ... a taxpayer subsidy" and would "ultimately total more than 3
million square feet that would include office space and 800 residential units" (Newton 2000).

In the months after the announcement, SAJE organizer Enrique Velasquez conducted
door-to-door outreach in the surrounding area (Saito 2012, 140; McNeill 2014a). Velasquez had
previously worked for the tenants' rights organization Inquilinos Unidos on residential
relocations related to the Staples Center (McNeill 2014a). In his conversations with the
remaining residents, Velasquez asked about the effects of the Staples Center on their
neighborhoods (Saito 2012, 140; McNeill 2014a). Many of these residents attended coalition
meetings at the First United Methodist Church, sometimes joined by Staples Center officials,
where they discussed concerns about the existing and impending development (Romney 2001b;

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48 See also pp. 227-230, supra.
Cummings 2008, 62; McNeill 2014a). Through Velasquez’s efforts, FCCEJ eventually included roughly 300 residents, some of whom – in addition to attending meetings and speaking with Velasquez – wrote letters to the city and served as liaisons for the negotiations that ultimately ensued (City of Los Angeles, Department of City Planning 2001b, vol. II, letters 44-122; Leavitt 2006, 264; Cummings 2008, 62; McNeill 2014a).

McNeill served as the coalition coordinator, combining grassroots support with that of institutional allies. At its largest, FCCEJ had 29 organizational members including LAANE, community activist groups such as SAJE, labor unions HERE Local 11 and SEIU Local 1877, the Environmental Justice Project Office of the non-profit group Environmental Defense, the Esperanza Community Housing Corporation, and a host of local faith-based organizations (López Mendoza 2001, 1; Cummings 2008, 62).

On February 26, 2001, Environmental Defense attorney Jerilyn López Mendoza sent a 42-page letter to the Los Angeles City Planning Department on behalf of FCCEJ (López Mendoza 2001). Relying, in part, on interviews conducted with residents, the letter alleged extensive problems with the draft environmental impact report that had been prepared for the project under the California Environmental Quality Act, laying the groundwork for a potential lawsuit (Cummings 2008, 66). Even an unsuccessful lawsuit could easily have delayed the project approvals beyond the impending citywide election, which – due to term limits – would remove several of project’s staunchest supporters on the city council as of July 1. (The mayor, another ardent proponent of the project, would also be termed out of office on that date.) Because the developers "had no idea what the dynamic was going to be with the new council" (McNeill 2014a), they attempted to avert the threat of delay by accommodating FCCEJ (Cummings 2008, 66; McNeill 2014a). - 237 -
Formal negotiations between FCCEJ and the developer began in March (Romney 2001b; Leavitt 2006, 264), foregrounding the importance of FCCEJ's alliance with the unions. As SAJE co-founder Gilda Haas (2002, 92–93) explains:

[T]he developer's need for speed became the coalition's leverage to fashion a complicated community-labor bargaining table. The L.A. County Federation of Labor, which had learned a lot from its previous experience with the Staples Center, coalesced the five affected unions – Hotel Employees and Restaurant Employees (HERE), the Service Employees International Union (SEIU), the Operating Engineers, the International Alliance of Theatrical Stage Employees (IATSE), and the Teamsters – into an "all for one, one for all" bargaining team in which no one would sign an agreement until everyone had an agreement to sign. The Figueroa Corridor Coalition ... struggled to quickly integrate its members' diverse concerns, knowledge, and experience into a shared set of standards for the new development. The resulting demands related to jobs, housing, and other community needs and became known as the "Community Benefits Package."

Sandra McNeill (2014a) elaborates:

[FCCEJ had] a much stronger relationship during that campaign with SEIU [Local] 1877 than with HERE [Local 11].... [HERE Local 11 strategist David Koff] was in our meetings as an observer representing the County Fed in all of our negotiations with [the developer]. And ... for us to on the spot be able to strategize [with him] on the message we're sending was important. But, ... other than that, [HERE] ... sort of had their deals done, and so they – you know, it was a more sort of silent role, like, "Okay, we'll just hold out until [the developer reaches an agreement] with [SEIU Local] 1877."

But 1877 was not in the same situation, and 1877 has a much more grassroots leadership, so we would go and meet with their council. I can't remember the name of their council, but – you know – it's workers. So there was that level of support for what we were doing. And they had problems in their own negotiation. So at some point it happened in both directions, at some point when we were having issues in our negotiations, 1877 said to [the developer], "We're not going to move forward until you [i.e., FCCEJ] resolve what you need." And we did the same thing, that at some point 1877 was having a problem in their negotiation and we said, "We're not going to move forward on it until you resolve [it]."

McNeill (2014a) estimates that FCCEJ had at least eight formal negotiating sessions with the developer, the Anschutz Entertainment Group (AEG).
Although FCCEJ's priorities for the negotiation emerged from the community meetings, McNeill (2014a) notes that "there [were] tensions between what the community members wanted to accomplish and what some of the organizations felt was most important and also most viable." In particular, staff members from LAANE were "very, very focused on jobs," while some community members insisted "there’s a bunch of [other] stuff we need to talk about" (McNeill 2014a; see also Cummings 2008, 63). David Koff, who served as the observer for the County Fed in negotiations between FCCEJ and AEG, suggests a similar dynamic: "On the community side, I think there were some issues and tensions that existed between the orientation of the Figueroa Corridor Coalition, and the unions and LAANE" (quoted in Montgomery 2011, 125).

Negotiations with the developer occurred at AEG's Los Angeles headquarters (Montgomery 2011, 121), with staff members from SAJE, LAANE, Action for Grassroots Empowerment and Neighborhood Development Alternatives, the Esperanza Community Housing Corporation, Environmental Defense, and Coalition L.A. each taking responsibility for a specific content area, such as housing, jobs, parking, environmental mitigation, parking, and open space (McNeill 2014a). As Gilda Haas (2012, 277) explains:

The coalition agreed to a very rapid time frame, compressed from 24 to 36 months to three to six months, in exchange for a serious and robust negotiating effort by AEG. This decision required FCCEJ to quickly create a negotiating body with the knowledge, relationships, and capacity to get the job done. The Steering Committee came up with five criteria for selecting team members, including "past success negotiating with a major corporation" and "strong technical knowledge and experience in one of the key areas of discussion (i.e. housing and jobs)." These pragmatic requirements eliminated any of the approximately 300 local neighborhood activists, most of whom were working-class Latino immigrant tenants. We all felt that the accelerated timeline would not accommodate the preparation typically needed for our grassroots participants to authentically lead the negotiations.

McNeill has suggested that "the decision about the composition of the negotiating team was made in a very small room and it was mistake. I would never repeat that. It was almost all white..."
and it was just totally carved out. None of the immigrant rights groups were represented" (quoted in Montgomery 2011, 130).

McNeill indicates that, in order to compensate for this deficit:

We organized a group of our [community] leaders and it rotated. We always had an interpreter there at negotiations and we always had community leaders there in the room during negotiations. And those community leaders were the ones who always reported back to the 300 people in the coalition. And actually, that worked out well because they had a whole lot more credibility with local residents. (quoted in Montgomery 2011, 131)


When the negotiating team caucused and the developer left the room, the community activists would join FCCEJ’s lead negotiators at the table for a discussion. FCCEJ continued to convene the broader coalition during negotiations, but by the time the negotiating team went to coalition members for the final signatures, members had to primarily rely on the negotiating team to make appropriate decisions.

By May 31, 2001, the developers and FCCEJ reached a final agreement (Romney 2001a; Haas 2002, 90).49

A joint press release issued on that date by FCCEJ and AEG indicated that the CBA was "expected to provide: thousands of living wage jobs, hundreds of units of affordable housing, a million-dollar investment in parks and green space and substantial investment in traffic, parking and safety improvements" (LA Arena Land Company 2001). In exchange, SAJE, LAANE, HERE Local 11, Esperanza Community Housing Corporation, Coalition L.A., and three other organizational members of FCCEJ50 agreed to advocate "approval of the Project … by the City, the [Community Redevelopment] Agency and other government agencies,"51 and – along with

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49 Development Agreement by and among the City of Los Angeles, the L.A. Arena Company, Inc., and Flower Holdings, LLC (2001) [hereinafter LASED Development Agreement], appendix 4 [hereinafter LASED CBA].
50 The other three were: Central American Resource Center (CARECEN), Concerned Citizens of South Central Los Angeles, and Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA). See Cooperation Agreement by and among the Coalition and the Developer (2001) [hereinafter LASED Cooperation Agreement] at 1-2.
51 Ibid. at 4.
Environmental Defense – agreed to waive legal claims related to the project.\textsuperscript{52} The advocacy included the joint press release quoted above,\textsuperscript{53} a letter of support for the project prepared "in collaboration with the [d]eveloper,"\textsuperscript{54} and testimony at public hearings, as requested by the developer.\textsuperscript{55} In addition, if any of eighteen other specified organizations\textsuperscript{56} threatened or attempted to litigate any claim waived by the coalition signatories, the coalition signatories agreed to use their "best efforts to attempt to persuade" that organization to drop the claim.\textsuperscript{57} If such a claim could not be settled out of court, then the developer would be "relieved of all obligations" under the CBA.\textsuperscript{58} Staples Center President Tim Leiweke explained, "I don't expect any problems at City Hall because of the unique coalition.... We have done this with the community. We learned from our last experience how things should get done" (Daunt 2001).

Leiweke's prediction proved correct. On September 4, 2001, the Los Angeles City Council approved a rezoning for the Los Angeles Sports and Entertainment District (Figure 14),\textsuperscript{59} and it authorized the execution of the development agreement between the City of Los Angeles and the project developer.\textsuperscript{60} The latter document incorporated the CBA.\textsuperscript{61} The next day, the City Council adopted (as amended) the third implementation agreement to the Community

\footnotesize
\textsuperscript{52} Ibid. at 4-7.
\textsuperscript{53} Ibid. at 4-5.
\textsuperscript{54} Ibid. at 5.
\textsuperscript{55} Ibid.
\textsuperscript{56} Those eighteen organizations were: "Association of Community Organizations for Reform Now (ACORN); Action for Grassroots Empowerment and Neighborhood Development Alternatives (AGENDA); All People's Christian Center; Blazers Youth Services; Budlong and Jefferson Block Club; Coalition for Community Health; El Rescate; Episcopal Church of St. Phillip the Evangelist; Faithful Service Baptist Church; First United Methodist Church; Neighbors for An Improved Community (NIC); St. Agnes Catholic Church; St. John's Episcopal Church; St. John's Well Child Center; St. Mark's Lutheran Church; Service Employees International Union (SEIU), Local 1877; Student Coalition Against Labor Exploitation (SCALE); and United University Church." Ibid. at 2-3.
\textsuperscript{57} Ibid. at 8.
\textsuperscript{58} Ibid. at 9.
\textsuperscript{59} City of Los Angeles, Ord. Nos. 174224, 174225, 174226 (City Council File No. 00-0813).
\textsuperscript{60} City of Los Angeles, Ord. No. 174227 (City Council File No. 00-0813).
\textsuperscript{61} See LASED Development Agreement, supra note 49, appendix 4.
Redevelopment Agency's disposition and development agreement with the arena developer, which also incorporated the CBA.

2. Community Benefits and Community Costs

The following subsections assess the community benefits and costs associated with the Los Angeles Sports and Entertainment District (LASED). They assess evidence bearing on whether the CBA fulfilled the expectations articulated in the press release issued jointly by FCCEJ and AEG (LA Arena Land Company 2001): providing "thousands of living wage jobs" (subsection 2.a); creating "hundreds of units of affordable housing" (subsection 2.b); producing "a million-dollar investment in parks and green space" (subsection 2.c); and resulting in a "substantial investment in traffic, parking and safety improvements" (subsection 2.d). Subsection 2.e discusses neighborhood impacts and subsection 2.f describes potential citywide costs and benefits.

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62 Los Angeles City Council File No. 01-1817.
Figure 14: Los Angeles Sports and Entertainment District Specific Plan Boundaries and Selected Land Uses (2001)

a. Living Wage Jobs

As with the Hollywood & Highland project, the LASED (which would come to be called L.A. Live) promised to provide a large number of union jobs, many of which would pay wages at least as high as those guaranteed by the city's living wage ordinance. As HERE Local 11 strategist David Koff explains, in negotiations with the developers:

The hotel workers had to get a card check neutrality agreement, whereas with other unions, it was a matter of extending existing contracts that the developers already had with those unions (where they were already employing existing members of those unions in other parts of the development). (quoted in Montgomery 2011, 125)

Neutrality agreements "provide for employers to remain neutral during an upcoming union organizing campaign" (Brudney 2005, 821). Such agreements can include card check provisions ensuring "that the employer will ... recognize the union as exclusive representative, and participate in collective bargaining, if a majority of its employees sign valid authorization cards" (Brudney 2005, 821).

Although the card check and neutrality agreements for the Los Angeles Sports and Entertainment District are not publicly available, other public documents clearly indicate their existence. For example, an attorney's brief from a National Labor Relations Board case indicates the existence of "a neutrality and card check agreement" between Marriott International, Inc., doing business as J. W. Marriott Los Angeles at L.A. Live, and UNITE HERE! Local 11, the successor organization to HERE Local 11 (see Meyerson 2009). The hotel and the union also have a collective bargaining agreement, which applies to a wide variety of "regular full-time and regular part-time hotel service, housekeeping, food and beverage employees … including room

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cleaners, house persons, bell persons, telephone operators, kitchen employees, servers, bussers, bartenders, cashiers, hosts, front desk employees, and concierges. 65 It is not clear that the Community Benefits Agreement itself should be credited with the associated conditions of employment, because the unions negotiated their card check, neutrality, and collective bargaining agreements without FCCEJ.

The CBA did include a Living Wage Goal, but -- as with Hollywood & Highland -- this goal was aspirational. The CBA required the developer to "make all reasonable efforts to maximize the number of living wage jobs in the [Los Angeles Sports and Entertainment District]," and it set "a Living Wage Goal of maintaining 70% of the jobs in the Project as living wage jobs." 66 "Living wage jobs" included "jobs covered by the City's Living Wage Ordinance," "jobs covered by a collective bargaining agreement," and jobs meeting certain salary and benefits requirements. 67 "Whether or not the Living Wage Goal [was] being met" at five- and ten-year intervals from the date of the CBA, the developer would "be considered to be in compliance with" the CBA's Living Wage Program if: 68

* The developer, its tenants, and its contractors were in compliance with the city's living wage ordinance, "to the extent such ordinance is applicable" (emphasis added), 69 and

* The developer notified the coalition of prospective tenants at least 45 days before signing a lease or similar contract with such tenants (except where "exigent circumstances" precluded such notification), would "arrange and attend a meeting between the Coalition and the prospective Tenant, if the Coalition so requests," and "within commercially reasonable limits,

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66 LASED CBA, supra note 49, sec. V.A.2.
67 Ibid, sec. V.A.3. The wage and benefits requirements were as follows: For salaried jobs, "at least $16,057.60 per year if the employee is provided with employer-sponsored health insurance, or $18,657.60 per year otherwise. Ibid. For un-salaried jobs, "at least $7.72 per hour if the worker is provided with employer-sponsored health insurance, or $8.97 per hour otherwise." Ibid. For both salaried and un-salaried living wage jobs, the applicable amounts would "be adjusted in concert with cost-of-living adjustments to wages required under the City's Living Wage Ordinance." Ibid.
69 Ibid, sec. V.A.1.
[took] into account as a substantial factor each prospective Tenant's potential impact on achievement of the Living Wage Goal;"70 and

• The developer "provide[d] an annual report to the City Council's Community and Economic Development Committee on the percentage of jobs in the Project [i.e., the Los Angeles Sports and Entertainment District] that are living wage jobs[,] ... containing project-wide data as well as data regarding each employer in the Project."71

The living wage ordinance requirement simply reiterates existing legal obligations, although it may have given the coalition signatories some power to ensure compliance independently. As discussed below, moreover, the tenant selection requirements provide the coalition with little (if any) formal authority, and the available evidence indicates that the developer has not complied with the reporting requirement.

The CBA gives the coalition signatories virtually no formal authority over tenant selection. The requirement that the developer must "take into account as a substantial factor each prospective Tenant's potential impact on achievement of the Living Wage Goal, within commercially reasonable limits" places no obvious legal constraint on the developer's decision, because it does not require the developer to weigh this "substantial factor" more heavily than other "substantial factors." Indeed, the developer is only required to undertake the specified accounting exercise "within commercially reasonable limits," a restriction that would appear to permit leases to a wide variety of tenants unwilling to provide living wage jobs,72 as defined by the CBA.73

While these limitations might not matter if the project had met (or approached) the Living Wage Goal, public records requests indicate that the developer has not submitted the required reports to the city concerning the percentage of living wage jobs in the project. The tenth annual

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70 Ibid., sec. V.A.6.
71 Ibid., sec. V.A.5.
73 See note 67, supra and accompanying text.
report to the city from the developer's attorney, dated March 14, 2012, indicates:

The Developer is currently in the process of preparing its annual report to the City Council's Housing, Community and Economic Development Committee concerning compliance with the requirements of the Living Wage Program. Once it is complete, the Developer will transmit this report under separate cover to the Housing, Community and Economic Development Committee. (D. A. Goldberg 2012, 4–5)

(The eleventh annual report, dated March 21, 2013, contains an identical provision (D. A. Goldberg 2013, 5).) The attorney did not respond to my request for the living wage report, and my request for this report from the Housing, Community and Economic Development Committee yielded the following email response from that committee's legislative assistant on March, 14 2013:

Unfortunately, the Developer has not been sending reports to the Housing, Community and Economic Development Committee in the past 3 years that I've been handling the Committee, and I'm told by the Committee's previous legislative assistants that they also never received the reports.

The legislative assistant's reply to a follow-up query indicated that, as of December 6, 2013, the committee still had not received any report concerning the living wage goal. (In an email communication, a representative of the FCCEJ member responsible for administering the jobs provisions of the CBA indicated that he also did not have access to the reports as of March 26, 2014.) A memorandum from the chief executive officer of the successor agency to the Community Redevelopment Agency of the City of Los Angeles indicates that the status of the developer's compliance with the living wage provisions of the CBA was "unknown" as of June 20, 2013 (Riccitiello 2013b, attachment C).74

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74 The LASED CBA also included local hiring provisions. It provided up to $100,000 in seed funding for an entity to administer local hiring and provide job training. LASED CBA, supra note 49, sec. V.I.D. A report on behalf of the LASED developer indicates that, as of March 21, 2013, the developer has provided $82,000 of such funding (D. A. Goldberg 2013, 5). The LASED CBA included a "First Source Hiring Policy," including hiring procedures and reporting requirements. LASED CBA, supra note 49, attachment I. In an email message to the author, a representative of the FCCEJ member responsible for administering the First Source Hiring Policy indicated that he
b. Affordable Housing

Although the joint press release issued by AEG and FCCEJ hailed the CBA's affordable housing provisions, coalition coordinator Sandra McNeill (2014a) has a somewhat different retrospective assessment: "We fucked up the housing portion, and I do use that language very intentionally – we really, really, really messed it up." This subsection describes the housing provisions of the CBA as they were initially negotiated, subsequently revised, and ultimately implemented.

(1) The Initial Housing Agreement

Shortly after the CBA was signed, the Los Angeles Times reported that the "developers agreed to dedicate 20% of total units ... to low-income residents" (Romney 2001b), a statistic that continues to be widely cited (see, e.g., Wolf-Powers 2010, 147). This is not, however, precisely what the agreement guaranteed. The affordable housing portion of the CBA described the obligations of the LASED "Developer" (at that time, L.A. Arena Land Company and Flower Holdings, LLC) with respect to the Project (the Los Angeles Sports and Entertainment District as described in the associated Draft and Final Environmental Impact Reports prepared by the City of Los Angeles in compliance with the California Environmental Quality Act). It indicated, "The Developer shall develop or cause to be developed affordable housing equal to 20% of the

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75 See LASED CBA, supra note 49, sec. II; LASED Cooperation Agreement, supra note 50 at 2-3.
units constructed within the Project," subject to adjustment for certain affordable units created "through joint efforts with community-based organizations." (The developer also promised to provide up to $650,000 in interest-free loans to specified non-profit affordable housing developers.) The city, in a separate agreement with the developer, conditioned building permits for a portion of the market rate units on the completion of a proportionate number of affordable units.

The CBA required more affordable units, as a percentage of market rate units, than the applicable Community Redevelopment Agency regulations in place at the time (City of Los Angeles, Department of City Planning 2001b, vol. I, 195). It therefore could have resulted in roughly 33% more affordable units than required by law (Table 1). It could also have resulted in more than twice as many units targeted to families earning under 80% of an administratively determined area median income (Table 1). The actual impact of the CBA on affordable housing, however, is somewhat more ambiguous.

76 LASED CBA, supra note 49, sec. IX.B.1. "[W]ithin 2 years after receiving final entitlement approvals for the Project," the Developer would "provide interest-free loans in the aggregate amount not to exceed $650,000 to one or more non-profit housing developers [specified in the CBA] or ... mutually agreed upon by the Developer and the Coalition [as defined in the LASED Cooperation Agreement, supra note 50]." LASED CBA, supra note 49, sec. IX.C.2. "[F]or every two units of affordable housing (including both rehabilitation or new construction) created by the non-profit developer or developers with the assistance of [these interest-free loans] in excess of 25% [of the units constructed within the Project]," the Developer would "receive a credit of one unit toward Developer’s obligation to create affordable housing units; provided, however, that Developer’s overall obligation for affordable housing units [would] not be less than 15% due to any such reduction." Ibid., sec. IX.D.

77 LASED CBA, supra note 49, sec. IX.C.2.

78 Under the initial development agreement with the city, L.A. Arena Land Company and Flower Holdings, LLC could build no more than 250 market rate units in the project until at least 40 affordable units had been constructed in accordance with the CBA. LASED Development Agreement, supra note 49, sec. 3.1.3.11. They could build no more than 499 market rate units in the project until at least 40 affordable units had been constructed in accordance with the CBA, and they agreed to "construct or cause to be constructed at least 160 affordable units within twelve months following completion of 800 total housing units." Ibid.
Table 1: Comparison of Affordable Housing Requirements Applicable to the Los Angeles Sports and Entertainment District

<table>
<thead>
<tr>
<th>Affordability Range (% Area Median Income)</th>
<th>Affordable Units as % of Market Rate Units</th>
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<tbody>
<tr>
<td></td>
<td><strong>Community Benefits</strong></td>
</tr>
<tr>
<td>0-50</td>
<td>6%</td>
</tr>
<tr>
<td>51-60</td>
<td>7%</td>
</tr>
<tr>
<td>61-80</td>
<td>7%</td>
</tr>
<tr>
<td>&lt;110</td>
<td>-</td>
</tr>
</tbody>
</table>

Sources: Development Agreement by and among the City of Los Angeles, the L.A. Arena Company, Inc., and Flower Holdings, LLC (2001), Appendix 4, sec. IX.B; City of Los Angeles, Department of City Planning (2001b), Vol. I, 195.

(2) **Subsequent Modifications**

Following relatively minor revisions to its development agreement with the city in 2003, the LASED developer sought more sweeping changes in 2005. After obtaining development entitlements from the city, the LASED developer prepared to sell some of the undeveloped land to other firms (Fixmer 2005; Michaelson 2005). It sought to assign certain obligations, including the affordable housing requirements, to these firms via an amended and restated development agreement (Michaelson 2005). Staff from SAJE and the Esperanza Community Housing Corporation had long been interested in establishing a community land trust in order to prevent displacement of low-income residents (McNeill 2014a; see also López Mendoza 2001, 14). Although FCCEJ would not be a formal party to the amended and restated development agreement (just as it had not been a party to the initial development agreement), the

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79 See Los Angeles City Ord. No. 175591 (2003) (Council File No. 01-1817). Gross et al. (2005, 31) indicate, "In 2002, the coalition, the city, and the developer worked cooperatively to resolve timing issues around construction of affordable units, and amended the development agreements and the CBA to reflect their shared understanding of the intended timing."


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renegotiation presented an opportunity to secure funding for this new entity, the Figueroa Corridor Community Land Trust.

But these efforts were dogged by an omission from the initial CBA. That document required the developer to "develop or cause to be developed affordable housing equal to 20% of the units constructed within the Project," but it did not define the phrase "develop or cause to be developed." As Sandra McNeill (2014a) explains, when the CBA was negotiated:

We had conversations with the community and they said, "Look ... we think that the housing should be created elsewhere.... We don't want to live with this nonsense of these bright lights and these limos everywhere...." So we structured in [fees] in-lieu [of physical units] from the beginning.... But we didn't set a price tag on it, which is totally crazy! If I could go back and do that again I most certainly would. But, you know, we just -- we just messed up.... We just didn't get enough of the right kind of advice when we were doing that.

Moreover, while the development agreement between the original developer and the city indicated, "The Developer shall provide affordable housing as set forth in ... the Community Benefits Program" (emphasis added), the 2003 revision changed "provide" to "construct or cause to be constructed," without defining the latter phrase.

The amended and restated development agreement was more specific. That agreement (in both draft form and final version) defined "Construct or Cause to be Constructed" and "develop or cause to be developed" to include:

participation by Developer [i.e., L.A. Arena Land Company, Flower Holdings, LLC, and any subsequent assignees or transferees of either entity] in the construction of affordable housing units within the Project or off-site through providing equity, long-term forgivable or below-market loans, grants, subsidies, land or any combination thereof, in an amount equal to ... at least $40,000 per

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81 LASED CBA, supra note 49, sec. IX.B.1.
82 LASED Development Agreement, supra note 49, sec. 3.1.3.11.
affordable housing unit for units for which a building permit has not already been issued as of the date of the [participation by Developer].”

The developer's contribution to affordable housing, as a percentage of the total cost of such housing, is detailed below in Table 2. According to Sandra McNeill (2014a), "the actual benefit generated [by this amount] is just so minimal ... it's not sufficient to fill a gap on affordable housing projects. I mean $40,000, it's just crazy." Moreover, the developer and any subsequent assignees or transferees could also fulfill their affordable housing obligations by providing "the sum needed to satisfy a gap in financing ... for affordable housing units for which a building permit ha[d] already been issued." Every two units thus created would relieve the developer (along with its subsequent assignees or transferees) of the obligation to create one affordable unit required under the CBA.

Coalition members perceived another affront when they learned that Figueroa South Land, LLC, an assignee of the original developer, planned to fulfill its affordable housing obligation by contributing $8 million dollars to the development of 200 dormitory-style housing units by the Young Women's Christian Association (YWCA) (Fixmer 2005; Perlmutter 2005, 2). Participants in the federal Jobs Corps program would occupy the units (Perlmutter 2005, 2),

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84 Amended and Restated Development Agreement by and among the City of Los Angeles, the L.A. Arena Land Company, Inc., Flower Holdings, LLC, FIDM Residential, Inc., and Figueroa South Land, LLC, as approved by the Los Angeles City Planning Commission on Aug. 18, 2005, attachment 6, sec. 1.1.3(ii)(a) (Council File No. 01-1817-S6) [hereinafter Amended and Restated Development Agreement, Planning Commission Final Version]; Amended and Restated Development Agreement by and among the City of Los Angeles, the L.A. Arena Land Company, Inc., Flower Holdings, LLC, FIDM Residential, Inc., and Figueroa South Land, LLC, as adopted by the Los Angeles City Council on Sep. 21, 2005, attachment 6, sec. 1.1.3(ii)(a) (Council File No. 01-1817-S6) [hereinafter Amended and Restated Development Agreement as Adopted].

85 Amended and Restated Development Agreement, Planning Commission Final Version, supra note 84, attachment 6, sec. 1.3.3(ii)(b); Amended and Restated Development Agreement as Adopted, supra note 84, attachment 6, sec. 1.3.3(ii)(b).

86 Amended and Restated Development Agreement, Planning Commission Final Version, supra note 84, attachment 6, sec. 1.1.4.1; Amended and Restated Development Agreement as Adopted, supra note 84, attachment 6, sec. 1.1.4.1.

87 Amended and Restated Development Agreement, Planning Commission Final Version, supra note 84, attachment 6, sec. 1.3.3; Letter from Robert Perlmutter to Hon. Ed Reyes et al. (2005) at 2 (Council File No. 01-1817-S6).

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which would be located outside of the Los Angeles Sports and Entertainment District. As an attorney for the coalition explained, because the "individuals housed [in the proposed project would] be 16 to 24 year[s] old ... most, if not all, tenants relocated by the STAPLES Project" would be excluded from a project that would do "nothing to increase or improve the affected community's supply of much-needed family housing" (Perlmutter 2005, 3) (emphasis original).

The coalition opposed the project before the city council's Planning and Land Use Committee, and it threatened litigation, contending that the proposal would violate both the California Environmental Quality Act and the CBA (Perlmutter 2005). (The CBA required the developer and its successors-in-interest to "give priority consideration to creation of projects suitable for families [in connection with any off-site affordable units]," and it indicated that "priority shall be given to selecting persons relocated in connection with the development of the STAPLES Center to be tenants in any affordable units" (see Perlmutter 2005, 3).)

With a vote pending in the city council concerning project subsidies and tax abatements estimated by the city administrative officer and the chief legislative analyst to have a nominal gross value of $266 million (Fujioka and Miller 2005), the original developer helped to broker an agreement acceptable to both the coalition and Figueroa South Land, LLC (Haas 2012). Under the final version of the amended and restated development agreement, the YWCA project would still fulfill some (and possibly all) affordable housing obligations of Figueroa South Land, LLC or its "affiliates" (as defined by the agreement). But, if Figueroa South Land, LLC or its

88 Amended and Restated Development Agreement, Planning Commission Final Version, supra note 84, attachment 6, sec. 1.3.3.
89 See, e.g., Lizette Hernandez, City of Los Angeles Speaker Card, Sept. 6, 2005 (Council File No. 01-1817-S6).
90 LASED CBA, supra note 49, sec. IX.B.5.
91 Ibid., sec. IX.B.6.
92 Amended and Restated Development Agreement as Adopted, supra note 84, attachment 6, sec. 1.3.3.2. ("An affiliate of Figueroa South Land LLC is any entity in which WDD California, Inc. or its successor has an ownership or management interest." Ibid., attachment 6, sec. 1.3.3.2.)
affiliates built more than 650 market-rate units within the Los Angeles Sports and Entertainment District, the firm (or at least one its affiliates) would pay $10,000 for each additional unit, up to a maximum of $700,000, to "the Land Trust," consisting of "[t]he Figueroa Corridor Land Company, the Figueroa Corridor Community Land Trust, or a non-profit, tax-exempt corporation designated by the Coalition to hold funds for these entities." (The nonprofit Figueroa Corridor Community Land Trust was established as a "permanent steward of land and land leases for affordable housing and other community needs," and the Figueroa Corridor Land Company is a nonprofit "vehicle for purchasing, holding and entitling Land Trust properties" (Essel 2011, 3; see also Curtin and Bocarsly 2008, 383–384.).)

In addition, the final agreement created a special provision for contributions in lieu of affordable housing units to the Land Trust or to "[n]on-profit, tax-exempt entities with an established history of at least 5 years experience with affordable housing development within a three (3) mile radius of Figueroa and 11th streets [sic] in Los Angeles." Such a contribution of $40,000 would satisfy any obligation of the developer, its assignees, or its transferees to "cause [an affordable housing unit] to be constructed," provided that the Land Trust (or another qualifying entity) "enter into an agreement with the CRA or with City, which includes," among other provisions, "adequate assurance that affordable housing units shall be constructed within a reasonable period, but in any event within 5 years (subject to extension by the Director [of Planning])." In other words, a contribution of $40,000 could relieve the developer, its

93 Ibid., attachment 6, secs. 1.3.3.2 – 1.3.3.3.
94 Ibid., attachment 6, sec. 1.3.3.1.b. McNeill (2014b) indicates that the Land Trust received $200,000 from the Moinian Group, a successor-in-interest of the original LASED developer.
95 Amended and Restated Development Agreement as Adopted, supra note 84, attachment 6, sec. 1.3.3.1.c.
96 Ibid., attachment 6, sec. 1.3.3.c.(iv).
assignees, and its transferees of any obligation to ensure that an affordable unit required under
the CBA was actually built.97

(3) Housing Outcomes

Table 2 compiles data concerning affordable housing units constructed in fulfillment of
the developer's obligations under the CBA. As of June 30, 2013, 380 market-rate units had been
completed as part of the Los Angeles Sports and Entertainment District (Riccitiello 2013b, attachment C). Under the CBA, then, the developer was also obliged to have developed seventy-
six affordable housing units or to have "cause[d]" that number of units to have been developed.

From one perspective, the developer had more that fulfilled this obligation. A March
2013 report to the City on behalf of the developer claimed credit for 120 affordable units in four
projects (D. A. Goldberg 2013, 5–8). Indeed, at that time, the developer had made financial
contributions to completed projects including 365 affordable units (Table 3). (The 2013 report
does not claim the credits to which the developer is entitled for the YWCA project, completed in
2012 (Enterprise Community Partners, Inc. 2014).)

From another perspective, however, the developer had not developed any affordable units
and had "caused" only a fraction of the 365 units in Table 3 to be developed. The data compiled
in Table 2 indicate that the developer's contribution to the total development cost of each
completed affordable housing project credited to the LASED market-rate units ranged from 8%
to 12%. The sources cited for Table 2 indicate that the vast majority of funding for these projects
came from federal, state, and local government programs and from banks fulfilling their
obligations under the federal Community Reinvestment Act. Notably, the report to the city on

97 The developer, its assignees, and its transferees could also relieve themselves of any obligation to "cause [an]
affordable unit] to be constructed" via a contribution to the City of Los Angeles Housing Department of $116,792,
subject to annual revision based on the percentage change in the Engineering News-Record Construction Cost Index.  
Amended and Restated Development Agreement as Adopted, supra note 84, sec. 1.1; ibid., attachment 6, sec. 1.2.
behalf of the LASED developer does not indicate either the amount of the developer's financial contribution (Table 2[a]) or the total development cost (Table 2[e]) for any affordable housing project credited to LASED (see D. A. Goldberg 2013, 5–8). A 2013 report from the successor to the Community Redevelopment Agency concerning implementation of the LASED CBA states: "Need verification of type and extent of Developer participation (investment) in these [affordable housing] projects" (Ricciutello 2013b, attachment C, 2).

To the extent possible, I have culled relevant data from a variety of other sources, but I have been unable to locate precise data concerning the LASED developer's contributions to either the 30-unit Casa Shalom or the 62-unit Grand & Venice, which occurred after construction had commenced for each project (D. A. Goldberg 2013, 6–7). The amended and restated development agreement specified no minimum contribution in the case of affordable housing projects for which a building permit had been issued at the time of the LASED developer's contribution. 98 In both cases, the LASED developer provided bridge financing (D. A. Goldberg 2013, 6–7). (In such instances, the amended and restated development agreement required the Community Redevelopment Agency to certify the LASED developer's contribution, 99 but I have been unable to obtain documentation of such certification via a public records request and correspondence with officials at the successor to the Community Redevelopment Agency.)

Table 3 details the unit type and income limits of affordable units in Table 2. All 365 of these units were restricted to individuals or households earning no more than 60% of Area Median Income, and 275 were restricted to individuals or households earning no more than 50% of Area Median Income. Based on the amended and restated development agreement, the LASED developer is eligible for 250 affordable housing credits, which would satisfy its

98 Amended and Restated Development Agreement as Adopted, supra note 84, attachment 6, sec. 1.1.3(ii)(b).
99 Ibid., attachment 6, sec. 1.1.3(ii)(b).
affordable housing obligations associated with 1,250 market-rate units.100

The discourse concerning the LASED CBA also dramatically overstates the role of the LASED developer and understates the role of government in creating the associated affordable housing. The following quotations from, respectively, a joint press release from AEG and FCCEJ, the *Los Angeles Times*, and the *Journal of the American Planning Association* are characteristic:

• Gilda Haas, of FCCEJ, said: "This agreement is historic. It is the first time that a developer in Los Angeles has taken the full breadth of community issues into consideration, including housing, employment and quality of life. The reason it was possible is because our coalition includes that diversity and because STAPLES Center was willing to negotiate with us." Because of these extensive community benefits, Haas said the community organizations will support and endorse the plans for the downtown district. The Community Benefits Plan is expected to provide ... hundreds of units of affordable housing. (LA Arena Land Company 2001)

• Developers -- including billionaire Philip Anschutz and media mogul Rupert Murdoch, who are also owners of the arena -- agreed to build affordable housing ... Developers agreed to dedicate 20% of total units--between 100 and 160--to low-income residents. (Romney 2001b) (emphasis added)

• 20% (160 units) of onsite housing to be affordable for at least 30 years, with 30% targeted to families earning up to 50% of AMI, 35% targeted to families earning 51-60% AMI and 35% to families earning 61–80% of AMI. (Wolf-Powers 2010, 147) (emphasis added)

To contend that the "Community Benefits Plan" itself provided "hundreds of units of affordable housing" is implausible in light of the evidence presented in Table 2. The suggestion that the LASED developers "agreed to build affordable housing" is similarly misleading, as is the claim that the CBA required any of the onsite housing to be affordable. (Given that most of the units built to date under the CBA are dormitory facilities unsuitable for families earning any

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100 Under the amended and restated development agreement, each credit noted in Table 2[c] entitles the LASED developer to build five market-rate units in the project. See *Amended and Restated Development Agreement as Adopted, supra* note 84, attachment 6, sec. 1.1.1.
percentage of AMI, Wolf-Powers' repeated reference to "families," which echoes the language of the LASED CBA,101 is similarly misleading.)

Nevertheless, the coalition's interest in securing affordable housing via the CBA is understandable, given the problems plaguing the Community Redevelopment Agency at the time. As a 2004 audit from the city controller would demonstrate, in 2001 the agency was doing "a poor job ensuring that the public receives the benefits promised in exchange for subsidies given to private developers" (Chick 2004a, 1; see City of Los Angeles, Office of the Controller 2004b). In particular, the controller noted, the agency had failed to obtain half of all annual reports required from the owners or operators of agency-subsidized housing in order to "verify that the units created for low to moderate income housing are actually being used for that purpose" (Chick 2004a, 1). The housing provisions of the LASED CBA attempted to compensate for this failure. (Section III, below, discusses subsequent changes at the Community Redevelopment Agency itself.)

101 LASED CBA, supra note 49, sec. IX.B.2.
Table 2: Affordable Housing Units Completed as of April 1, 2014 in Fulfillment of the Los Angeles Sports and Entertainment District CBA

<table>
<thead>
<tr>
<th>Project</th>
<th>LASED Developer Contribution (LDC)</th>
<th>Affordable Units</th>
<th>LDC per Credit</th>
<th>Total Development Cost (TDC)</th>
<th>LDC as % of TDC</th>
</tr>
</thead>
<tbody>
<tr>
<td>[1] James Wood Apartments</td>
<td>$2,400,000</td>
<td>60†</td>
<td>$39,344</td>
<td>$20,789,580†</td>
<td>12%</td>
</tr>
<tr>
<td>[2] Pascual Reyes Town Homes</td>
<td>$520,000</td>
<td>13</td>
<td>$40,000</td>
<td>$6,119,088</td>
<td>8%</td>
</tr>
<tr>
<td>[3] Casa Shalom</td>
<td>Unknowna</td>
<td>30</td>
<td>Unknowna</td>
<td>$8,300,000</td>
<td>Unknowna</td>
</tr>
<tr>
<td>[5] YWCA Dormitory Units</td>
<td>$8,000,000</td>
<td>200</td>
<td>N/A</td>
<td>$77,183,000</td>
<td>10%</td>
</tr>
</tbody>
</table>

This table displays information for affordable housing projects that have received funding via developer participation pursuant to the Development Agreement by and among the City of Los Angeles, the L.A. Arena Company, Inc., and Flower Holdings, LLC (2001), as amended, and the Community Benefits Program included as Appendix 4 thereto. It does not include $650,000 in interest-free loans, described above in note 77 and accompanying text. The data were assembled from the sources indicated below. Each source is followed by at least one associated row-column entry in square brackets. Some entries have multiple sources.

**Notes:**

* The developer's report to the city indicates the name of this project as "Mercy Housing" (D. A. Goldberg 2013, 6–7). According to state and federal government records, as well as the website of the non-profit Mercy Housing, Inc., "Grand & Venice" is the name of the project with 62 units affordable to low-income households located at the address indicated in the developer's report (see California Tax Credit Allocation Committee 2004, tab. A-5; Mercy Housing 2014; U.S. Department of Housing and Urban Development 2014).

† Excludes one manager's unit credited to developer.

tt As of March 2013, the developer had claimed no credit for these units (see D. A. Goldberg 2013), although these units may entitle the developer to up to 200 credits according to the Amended and Restated Development Agreement by and among the City of Los Angeles, the L.A. Arena Land Company, Inc., Flower Holdings, LLC, FIDM Residential, Inc., and Figueroa South Land, LLC (2005), attachment 6, sec. 1.1.3.2 (Council File No. 01-1817-S6).

‡ Earlier estimate from Los Angeles Housing Department (2005, 5) is $16,826,381.

a. Saito and Truong (2014, table 1) indicate $1,015,000 in interest-free loans, but do not indicate whether (or when) the loan principal was repaid.

b. Saito and Truong (2014, table 1) indicate a $1,155,000 forgivable loan, but do not indicate whether (or to what extent) the loan was forgiven.

**Sources:** 1010 Development Corporation (2010) [3-e]; Benbow (2006a, 2–3) [2-a, 2-b, 2-e]; Benbow (2006b, 2) [5-b, 5-c]; California Tax Credit Allocation Committee (2004, tab. A-5) [4-e]; Enterprise Community Investment, Inc. (2008) [1-a, 1-b, 1-e]; Enterprise Community Investment, Inc. (2011) [5-b]; Goldberg (2013, 6–7) [1-b, 1-c, 2-c, 3-b, 3-c, 4-b, 4-c]; Los Angeles Housing Department (2005, 5) [1-a, 1-b]; Riccitiello (2013b, attachment C. 2) [3-a, 4-a]; Smith and Ducey (2010, 5–7) [5-a, 5-e]; U.S. Department of Housing and Urban Development (2014) [4-b].
Table 3: Affordable Units in Projects Completed in Fulfillment of the LASED CBA as of March 31, 2014, by Type and Income Limit

<table>
<thead>
<tr>
<th>Unit Type</th>
<th>Income Limit (as % of Area Median Income)</th>
<th>30%</th>
<th>40%</th>
<th>50%</th>
<th>60%</th>
<th>TOTALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dormitory</td>
<td></td>
<td>140</td>
<td>0</td>
<td>60</td>
<td>0</td>
<td>200</td>
</tr>
<tr>
<td>1 BR</td>
<td></td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2 BR</td>
<td></td>
<td>0</td>
<td>19</td>
<td>28</td>
<td>41</td>
<td>88</td>
</tr>
<tr>
<td>3 BR</td>
<td></td>
<td>0</td>
<td>10</td>
<td>18</td>
<td>25</td>
<td>53</td>
</tr>
<tr>
<td>4 BR</td>
<td></td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>24</td>
<td>24</td>
</tr>
<tr>
<td>TOTALS</td>
<td></td>
<td>140</td>
<td>29</td>
<td>106</td>
<td>90</td>
<td>365</td>
</tr>
</tbody>
</table>

Notes: "BR" abbreviates "bedroom" and "bedrooms." Of the dormitory units, 140 were restricted to Extremely Low Income households and 60 were restricted to Very Low Income households, as defined by the California Department of Housing and Community Development (2013a, 4).

Sources: 1010 Development Corporation (2010); Benbow (2006, 2–3); Enterprise Community Investment, Inc. (2008); Goldberg (2013, 6–7); Riccitiello (2013a, 4); U.S. Department of Housing and Urban Development (2014).

c. Parks and Open Space

Did the LASED CBA provide "a million-dollar investment in parks and green space," as the joint press release from FCCEJ and AEG claimed (LA Arena Land Company 2001)? As in the case of housing, the CBA promises less than the press release suggests. This subsection briefly outlines the relevant provisions of the CBA. It then discusses the relationship of these provisions to other agreements and to generally applicable state and local laws.

Under the LASED CBA, the LASED developer agreed to pay $50,000 to $75,000 for an open space needs assessment and to "fund or cause to be privately funded at least one million dollars ($1,000,000) for the creation or improvement of one or more parks and recreation facilities."102 The needs assessment would occur within ninety days of the city council's adoption of the ordinance authorizing the LASED development agreement, and "the park and recreation

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102 LASED CBA, supra note 49, sec. III.D.1; see also ibid., sec. III.C ("Parks and Open Space Needs Assessment").
facilities created or improved pursuant to [the CBA] [would] be completed within five years of completion of the Needs Assessment." 103

The LASED developer conducted the needs assessment and contributed at least $1,000,000 to park and recreation facilities within the requisite time frame (D. A. Goldberg 2013, 3). The developer contributed at least $500,000 to improvements at Hope and Peace Park (Figure 15), a Los Angeles Department of Recreation and Parks facility in Pico Union. The developer also contributed at least $500,000 to the Venice Hope Recreation Center (Figure 16), which opened to the public in October 2013 (Valenzuela 2014, 1) and is located roughly half a mile south of the Staples Center arena.

Whether these contributions have resulted in a net increase in funds for parks and recreation facilities in the area is unclear. Under the LASED CBA, the developer agreed "to pay all fees required by the Los Angeles Municipal Code, Chapter I, Article 7, Section 17.12, 'park and recreation site acquisition and development provisions,' subject to offsetting credits as allowed by that section and/or state law and approved by the city" (emphasis added). 104 That section of the Los Angeles Municipal Code indicates, "In lieu of ... the payment of a fee ... improvements [may] be made to an existing city park or ... recreational facility[,]" 105 In other words, the LASED developer's contribution of $1,000,000 may entitle it to a corresponding credit against open space fees owed to the city under the municipal code and the regulations of the Community Redevelopment Agency. 106

Under the CBA, moreover, the coalition pledged to

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103 Ibid., sec. III.D.2.
104 Ibid., sec. III.B.
106 Under section 19.12 of the Third Implementation Agreement to the Disposition and Development Agreement by and among the City of Los Angeles, the Community Redevelopment Agency of the City of Los Angeles, L.A. Arena Land Company, Inc., Flower Holdings, L.L.C., and L.A. Arena Company, LLC (2002) [hereinafter Third Implementation Agreement], the LASED developer was obliged to pay an ostensibly supplemental open space fee:
"support Developer's application for [such] credit ..., provided that Developer's applications for credits are based on publicly accessible space and facilities."\textsuperscript{107}

In order to determine whether the developer requested or obtained such credits, I have corresponded with government officials and submitted public records requests. Thus far, my correspondence with officials from the Los Angeles Department of City Planning, the Department of Recreation and Parks, and the Mayor's Office has not yielded any relevant information. A senior operations officer of the successor entity to the Community Redevelopment Agency indicated that the developer had obtained credits for the $1,000,000 required by the LASED CBA. I sent two follow-up e-mails reiterating my request for supporting documents, but an auto-reply to the second of these emails indicated that the senior operations officer had left the CRA successor entity two weeks after our initial conversation. I have also

\textsuperscript{107} LASED CBA, supra note 49, sec. III.B.
submitted formal public records requests to the Los Angeles Department of City Planning and the successor entity to the Community Redevelopment Agency, but neither request yielded any relevant documents.

Whether or not the LASED developer has received credits against other open space fees, the CBA may have expedited projects that could otherwise have been indefinitely delayed. As a 2008 audit from the City Controller indicated:

The downtown area ... has seen significant growth in the last the five years in terms of the number of new condo constructions and other subdivisions. As a result, [open space fee] collections have increased significantly over the last five years. However, very little progress has been made over the last five years to provide open space and recreational amenities for the downtown area residents. Of the $12 million the Department [of Recreation and Parks] indicated it has allocated or earmarked for projects within [the city council district containing the LASED] since fiscal year 2003-2004, only $1.3 million has been spent for improvements to existing facilities over the last five years. No new park land has been acquired and only two rehabilitation projects were completed in the downtown area. (City of Los Angeles, Office of the Controller 2008, 3)

Thus – as in the case of housing – even if the CBA provision ensured only that effectively public monies were expended in a timely fashion on parks and recreational facilities, it may have been a valuable addition. In any case, it ensured that the money would be spent in areas with the greatest need for parks and recreational facilities. Nevertheless, if the LASED developer has received credits as a result of the funds provided under the CBA (as appears to be permitted under the provisions of the agreement and local law), then omission of this possibility from prior discussions of the CBA has been misleading with respect to the magnitude of the developer's contributions. Even if the developer has not received credits, prior analysis of the CBA has inaccurately described the problem that the relevant provision solved, which was not the city's lack of funds, but its failure to expend the funds in a timely fashion where they were most needed.
Figure 15: Hope and Peace Park

Photo Credit: Author (2012)
d. Traffic, Parking, and Safety Improvements

According to the joint press release from FCCEJ and AEG, the LASED CBA would result in a "substantial investment in traffic, parking and safety improvements" (LA Arena Land Company 2001). On its website, SAJE hails the creation of "the City's first poor people's Preferential Parking District ... dedicating evening parking for local residents" (Strategic Actions for a Just Economy 2014a). The Partnership for Working Families (2014a) indicates that the LASED CBA included "developer funding for a residential parking program for surrounding neighborhoods" (emphasis added). Critics of the CBA for the Atlantic Yards project in Brooklyn, New York (discussed in Chapter Six) have suggested that its lack of a parking permit program constitutes a significant difference from the LASED CBA (see, e.g., Oder 2011; 2012).
This subsection describes the LASED CBA's parking permit program and then briefly addresses the LASED developer's response to other community concerns related to traffic and safety.

The parking permit program is somewhat more modest than the above claims suggest. As the report to the city on behalf of the LASED developer explains:

In compliance with Section IV.A of the Community Benefits Program, the Developer has assisted the Figueroa Corridor Coalition for Economic Justice (the "Coalition") in seeking the establishment of a residential permit parking program. In July 23, 2003, the City Council approved the preferential parking district. In addition to assisting with the establishment of the parking district, the Developer also entered into an agreement with the City to provide funding consistent with the terms of the Community Benefits Program to defray the cost of the parking program to residents in the permit area. (D. A. Goldberg 2013, 4)

The preferential parking district approved by the City Council on July 23, 2003 consists of one block of Francisco Street and one block of Georgia Street, just north of the Staples Center arena (Figure 18). During certain hours, street parking within the district is limited to residents living in the district and their guests. According to the Los Angeles County Office of the Assessor's (2014) parcel database, the district contains only one residential building, consisting of thirty-two one-bedroom units. Aerial imagery indicates that roughly half the land in the permit area is dedicated to off-street surface parking lots (Figure 18). As of April 6, 2014, the cost of an annual preferential parking permit was thirty-four dollars (City of Los Angeles, Parking Violations Bureau 2014).

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108 See Los Angeles City Council File No. 03-1484.
Figure 17: Preferential Parking District

Sources: Los Angeles City Council File No. 03-1484 (district boundaries); Google Earth (principal image, dated April 16, 2013); Apple Maps (context map image).
The CBA requires few other investments traffic or safety improvements. The sole condition in the CBA related to traffic requires the developer to "establish a traffic liaison to assist the Figueroa Corridor community with traffic issues related to the Project." The CBA did not address more substantive concerns that the coalition raised in its comments on the draft environmental impact report (López Mendoza 2001), including the construction of additional speed bumps and the creation of a detailed parking plan. These concerns were also largely excluded from the city's mitigation plan (Figure 18). With respect to other safety measures, the CBA indicates only that "[t]he Developer shall encourage the South Park Western Gateway Business Improvement District to address issues of trash disposal and community safety in the residential areas surrounding the Project." As the report to the city on behalf of the LASED developer explains, in compliance with this provision, "The Developer has actively encouraged and supported the efforts of the South Park Business Improvement District ("BID") to address issues of trash disposal and community safety in the residential areas surrounding the project" (D. A. Goldberg 2013, 5). This business improvement district covers the LASED, but very little of the area served by FCCEJ (Figure 19).

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110 LASED CBA, supra note 49, sec. IV.B.
111 Ibid., sec. IV.C.
### Figure 18: Status of Selected Coalition Requests Related to Traffic in the Final Mitigation Monitoring and Reporting Program

<table>
<thead>
<tr>
<th>Coalition Requests</th>
<th>Status in Mitigation Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clean fuel shuttles from project to nearby transit stops</td>
<td>Excluded</td>
</tr>
<tr>
<td>Carpool incentives for employees</td>
<td>Included</td>
</tr>
<tr>
<td>Carpool incentives for visitors</td>
<td>Excluded</td>
</tr>
<tr>
<td>Alternative-fuel refueling stations for 5% of total project parking capacity</td>
<td>Partially Included*</td>
</tr>
<tr>
<td>Traffic study evaluating impact of project on residential neighborhoods</td>
<td>Partially Included†</td>
</tr>
<tr>
<td>Addition of speed bumps on nearby residential streets</td>
<td>Excluded‡</td>
</tr>
<tr>
<td>Bicycle racks on site for visitors and employees</td>
<td>Included</td>
</tr>
<tr>
<td>Additional onsite parking</td>
<td>Excluded</td>
</tr>
<tr>
<td>Detailed parking plan</td>
<td></td>
</tr>
</tbody>
</table>

**Notes:**
* Alternative fuel refueling stations to be provided for 0.1% of total project parking capacity.
† Traffic study to be conducted only if unanticipated impacts occur.
‡ Speed bumps may be added if the traffic study occurs and recommends them.

**Sources:** López Mendoza (2001) (coalition requests); City of Los Angeles, Department of City Planning (2001b) (status in mitigation plan).
Figure 19: South Park Business Improvement District Boundaries

Sources: U.S. Geological Survey (image); Leavitt (2006, 262) (FCCEJ coverage boundaries); South Park Stakeholders Group (2012, 10) (business improvement district boundaries); Cartography by author.

e. Neighborhood Change

The first component of the Los Angeles Sports and Entertainment District opened in October 2007 (Hawthorne 2007), and two of the planned hotels opened in 2010 (D. A. Goldberg 2013, 2). As of June 30, 2013, 380 market-rate units had been completed (Ricciello 2013b, attachment C), and another 1,815 were planned.\textsuperscript{112} In 2010, AEG announced plans to develop a professional football stadium adjacent to a remodeled Convention Center (Bruck 2012, 48), for which the city council provided key approvals (including up to $300 million in bonds) in 2012

\textsuperscript{112} Author correspondence with Los Angeles Department of City Planning.
(Fine 2012). While an influx of new residents to downtown Los Angeles helped fuel the city's population growth between 2000 and 2010, parts of Pico Union and Historic South-Central covered by the coalition lost population during this period (Figure 20).\(^\text{113}\) (Figure 12 identifies the neighborhoods surrounding the LASED and the extent of the coalition's coverage area.)

The northern portion of the site itself has been transformed in the past decade (see Figure 5; Figure 21), although the parcels along the east side of Figueroa Street remained undeveloped as of this writing. According to the Los Angeles Department of City Planning, the project's central plaza (Figure 22), which entitles the developer to credit against generally applicable open space fees,\(^\text{114}\) "could be a central gathering place for the neighborhoods near the project site for residents and visitors. Other communities have commonly used large public plazas as a central unifying theme in their communities" (City of Los Angeles, Department of City Planning 2001b, 248). Gross et al. (2005, 54) suggest that, along with park and recreational facility described above in subsection B.2.c, "this public plaza should provide a concrete benefit to the community surrounding the Staples project, and one closely tailored to the particular needs of the Figueroa Corridor community."

But application of criteria developed by planning scholars such as Loukaitou-Sideris and Banerjee (1993), Kayden (2000), and Németh and Schmidt (2007) suggests that such an outcome is unlikely. Advertising and surveillance mechanisms are pervasive in the plaza (Figure 22), which also lacks design features, such as a variety of seating types and a diversity of microclimates, conducive to activities other than consumption of the goods and services offered

\(^{113}\) Such migration may have been driven by rising rents, although I have been unable to track tract-level rent burdens from 2000 to 2010, due to changes in the data collected by the Census Bureau (see U.S. Census Bureau 2011b, 17–18).

\(^{114}\) See Third Implementation Agreement, supra note 106, sec. 19.12 (Open Space Maintenance Fee); Los Angeles City Planning Department (2006, 17) (discussing alternatives for compliance with generally applicable open space fee requirements).
for sale in the surrounding buildings. (Much of the seating that exists is reserved for private facilities, such as restaurants \(\text{see, e.g., Figure 23}\).) Although the plaza is oriented towards a public street, the only destinations across that street are the Staples Center and the Convention Center \(\text{see Figure 21}\). Because it largely discourages chance encounters, the plaza is not the sort of "everyday public space" that Margaret Crawford (2008, 34–35) lauds as a distinctive contribution of Los Angeles to urban design \(\text{see Chapter One, sec. III.D}\). As former Community Redevelopment Agency Chief Executive Officer Cecilia Estolano (2012) explains, "Staples and L.A. Live, really, those are about the community benefits [concerning jobs and housing], it's less about the planning stuff."
Figure 20: Neighborhood Change

2010 Census Tract Population

Population Change, 2000-2010

Figure 21: Northern Portion of Los Angeles Sports and Entertainment District

Source: Google Earth (imagery date, April 16, 2013).
Figure 22: Los Angeles Sports and Entertainment District Public Plaza

Photo credit: Flickr user prayitno (n.d.)

Figure 23: Public Space in the Los Angeles Sports and Entertainment District

Photo credit: Author (2012)
f. Citywide Benefits and Costs

As of 2005, the city administrative officer and the chief legislative analyst estimated the net present value of subsidies from the city and the Community Redevelopment Agency for the convention center hotel in the LASED at $66 million: $62 million in waived transient occupancy taxes over 25 years ($246 million gross, discounted at 10%) and $4 million in fee waivers (Fujioka and Miller 2005). (Since the original authorization of debt for the Convention Center, the city council had increased the transient occupancy tax at least three times to cover cost overruns (Santana 2012, 16), and the rate rose from 4% in 1967 to 14% in 1993.115) The $66 million excludes the cost to the city of a $16 million loan to the hotel developer, foregone revenue for leases of city property, all subsidies associated with the other components of the LASED, and annual operating and debt service subsidies for the Convention Center. For 2010-2011, the Convention Center's annual expenses were $75.8 million, and its revenues were $26 million (Santana 2012, 8). The city covered the $49.8 million shortfall from its general fund (Santana 2012, 8). As of 2005, the city's consultant estimated that the convention center hotel in the LASED would result in an additional $10.3 million in additional annual tax revenue to the city (Fujioka and Miller 2005, 8–9).

Absent from the city's cost-benefit analyses is any sustained discussion of non-economic considerations. Given that the officials responsible for these analyses are also responsible for preparing the city's budget and managing its financial risk, this lacuna is hardly surprising. Nevertheless, given that the net financial benefit to the city from the entire undertaking is extraordinarily (and inherently) uncertain, the exclusion of other, equally uncertain, considerations is not obviously appropriate. Nor is it clear whether the LASED CBA introduced

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115 Los Angeles Mun. Code, sec. 21.7.3.
non-economic concerns to the project or simply reinforced (and further legitimated) its transactional character. Chapter Six discusses both of these issues.

III. Community Benefits Agreements and Government Policy after the Los Angeles Sports and Entertainment District

In the wake of the LASED CBA, the concept of the community benefits agreement, along with the substance of the Hollywood & Highland and LASED agreements, became increasingly linked with official redevelopment policy. LAANE’s executive director, Madeline Janis (then Madeline Janis-Aparicio), joined the Community Redevelopment Agency’s board in 2002 (Daunt and McGreevy 2002), and the agency adopted Contractor Responsibility and Living Wage policies in 2003. The latter policy, as the agency’s erstwhile chief executive officer, Cecilia Estolano (2013, 3) explained:

applied to developers or contractors receiving $100,000 or more in financial assistance from CRA/LA and to service contractors with a contract for $25,000 or more over three months. Companies subject to the policy were required to pay non-construction employees the wage set forth in the City of Los Angeles’ Living Wage Ordinance and to provide compensated days off and health benefits or pay a higher wage if health benefits were not provided.

In August 2005, the agency revised its housing policy, expanding the requirements associated with projects receiving its financial assistance and substantially strengthening the monitoring and enforcement of those requirements. The following month, newly elected Mayor Antonio Villaraigosa created a left-leaning majority among the agency’s seven commissioners, re-appointing Madeline Janis and adding Joan Ling, an affordable housing developer, Brenda Shockley, the president of a South Los Angeles nonprofit community development corporation,

\[116\] See Los Angeles City Council File No. 03-1245.
\[117\] See Los Angeles City Council File No. 05-1792; Community Redevelopment Agency of the City of Los Angeles (2005).
and John Perez, the political director for United Food and Commercial Workers Union Local 324 (McGreevy 2005a; 2005b; Estolano 2013, 3).

The agency adopted additional policies in the ensuing years (prior to its dissolution in 2012 (see Chapter Four, p. 187)) that were consistent with the goals of the CBAs described above (Janis 2013). The agency further expanded its mission to maintain and create affordable housing, developing new policies for the rehabilitation of residential projects\textsuperscript{118} and settling a lawsuit with an agreement to minimize the loss of affordable housing in the downtown Central City redevelopment project area.\textsuperscript{119} It also adopted policies requiring certain recipients of its subsidies to hire individuals with low incomes or other disadvantages from nearby areas.\textsuperscript{120} Following a series of audits by the city controller, the agency adopted dozens of reforms to improve its documentation of subsidies and its standards for loan underwriting.\textsuperscript{121} Through the increased use of requests for proposals, the agency sought to promote the priorities of its executives (Janis 2008). These included: shifting subsidies from retail projects, which generated relatively low-paying jobs, to industrial development (see, e.g., S. G. Goldberg and Estolano 2008); reducing harmful environmental impacts from new development (Community Redevelopment Agency of the City of Los Angeles 2008a); and increasing the use of non-automotive transportation (Community Redevelopment Agency of the City of Los Angeles 2008a).

Project-specific CBAs have continued to supplement these policies. LAANE, for example, was involved in negotiating a 2004 CBA for Hollywood & Vine, a mixed-use

\textsuperscript{118} See Los Angeles City Council File No. 08-2722.
\textsuperscript{119} See Los Angeles City Council File No. 06-1801; Community Redevelopment Agency of the City of Los Angeles (n.d.); Essel (2012, 4).
\textsuperscript{120} See Los Angeles City Council File Nos. 06-1801, 08-0499, 08-0499-S1; Community Redevelopment Agency of the City of Los Angeles (2006; 2008b).
\textsuperscript{121} See Los Angeles City Council File Nos. 04-2183, 04-2183-S1, 04-2183-S2, 04-2183-S3, 10-0181.
residential/hotel/retail development roughly a mile east of Hollywood & Highland (Figure 1). This agreement involved local hiring requirements for permanent jobs, which the Community Redevelopment Agency had been unable to require as a matter of citywide policy due to opposition from one of its commissioners (Janis 2013). It also obligated the developer to ensure that 20% of the units in the project would be income-restricted, exceeding the Community Redevelopment Agency's requirements. Nevertheless, LAANE decreased its involvement in project-specific CBAs. As Roxana Tynan (2013) explains, "We felt like we were moving on to broader policy and that we had gotten the sort of political and organizing benefits from doing project-by-project agreements." SAJE and United Neighbors in Defense Against Displacement (UNIDAD), which is a "campaign … launched by the Figueroa Corridor Coalition for Economic Justice" (Strategic Actions for a Just Economy 2014b), have participated in CBAs concerning a large-scale residential development project and the expansion of the University of Southern California (McDonnell 2011; Strategic Actions for a Just Economy 2013). Sandra McNeill (2014a), however, expresses significant reservations about these agreements and the LASED CBA:

I just have really fundamental critiques about doing public policy in this way. You know, I’ve been personally involved in three significant community benefits agreements that all have a private complement to them, or are entirely private. And it’s just such a bad way to do business…. A CBA should be tactical, honestly…. If you don’t have any options, you use them. I really don’t believe that organizations should construct themselves around the concept that it’s a good idea to negotiate a whole bunch of private CBAs. Because this stuff is what the public should be doing.

123 Hollywood and Vine Legacy CBA, supra note 122, sec. V.
Gilda Haas (2012, 272–275) provides a similar note of caution, averring that "[w]hat people want is not the leftovers of high-end real estate development," and that "[i]n many ways, good CBAs are defensive maneuvers that offer limited proof of what is possible."

**Conclusion**

The emergence of CBAs in Los Angeles is inseparable from the transformation of organized labor since the 1990s. That transformation itself has a variety of sources, including technological and regulatory shifts, demographic change, and the role of social movement unionism in California. Viewed in this light, evaluating CBAs as distinct from neutrality and collective bargaining agreements may be misleading. Nevertheless, this is precisely the approach that much prior analysis has adopted. The implementation of the LASED CBA indicates that, evaluated as an isolated document, this agreement has delivered less than some proponents suggest. Despite its shortcomings, the LASED CBA may have succeeded as an ad hoc solution for existing pathologies of urban governance, such as the Community Redevelopment Agency's failure to monitor the affordability of subsidized housing or the Recreation and Parks Department's failure to expend its funds expeditiously.
Chapter Six

Evaluating CBAs and Seeking Alternatives

Proponents suggest that CBAs can serve as mechanisms of procedural inclusion, transparency, accountability, and distributive justice. Based on these criteria, section I evaluates the efficacy of prominent CBAs in Los Angeles and New York City. CBAs do not address the reasons for the endurance of opaque, exclusive, and inequitable features of the underlying regulatory system. Section II discusses several mechanisms that might more effectively address these features of the regulatory system at the local level. But, these features arguably endure because they are not very salient to most people and because they benefit those with the most direct power to change them. For this reason, section II also proposes changes in planning education and practice that could surmount some hurdles to more democratic land-use regulation.

I. Evaluating CBAs

This section discusses theory and evidence concerning four rationales for CBAs: procedural inclusion (sec. I.A), transparency (sec. I.B), accountability (sec. I.C), and distributive justice (sec. I.D). Because CBAs coexist with the formally public legal arrangements discussed in Chapter Four, I describe evidence from both Los Angeles and New York City to assess whether different formal institutions are associated with different CBA outcomes and processes. Table 1 includes the seven projects discussed in this section. In addition to the four projects described in the preceding chapter, it includes three projects from New York, all involving CBAs: Atlantic Yards, a mixed-use development in Brooklyn including a professional sports arena and housing, the Gateway Center, a shopping mall in the Bronx, and the new Yankee Stadium, a professional baseball stadium in the Bronx.

Contrasts between the two cities are a longstanding theme of commentary concerning CBAs. Gross (2009, 224) explains that "CBAs negotiated in New York City have been widely
disparaged by the public and the legal community, engendering controversy and criticism not evident among CBAs in other areas of the country." Salkin and Lavine (2008b, 123) describe "New York City's bleak track record in fostering CBAs as compared to the successes of [CBA supporters'] Californian counterparts." The evidence suggests that while such evaluations are warranted with respect to the CBAs alone, the dichotomy is less stark in light of the broader constellation of policies relevant to redistribution in the two cities.

Table 1: Agreements Analyzed

<table>
<thead>
<tr>
<th>Project</th>
<th>Year of Agreement</th>
<th>Incorporated into Public Document</th>
<th>Project Complete</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staples Center</td>
<td>1997</td>
<td>N/A</td>
<td>Yes</td>
</tr>
<tr>
<td>Hollywood &amp; Highland</td>
<td>1999</td>
<td>N/A</td>
<td>Yes</td>
</tr>
<tr>
<td>Los Angeles Sports &amp; Entertainment District</td>
<td>2001</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Hollywood &amp; Vine</td>
<td>2004</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Atlantic Yards</td>
<td>2005</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Gateway Center</td>
<td>2006</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Yankee Stadium</td>
<td>2006</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Notes: * No separate CBA. ** The CBAs for the Hollywood & Vine project are Hollywood Interfaith Sponsoring Committee, Yucca Residents' Group, and Legacy Partners 2480, LLC (2004) and Hollywood Interfaith Sponsoring Committee, Yucca Residents' Group, and Gatehouse Hollywood Development, L.P. (2004). A substantively similar, but less detailed, summary of the benefits described in these agreements is included as exhibit H of the Disposition and Development Agreement by and between the Community Redevelopment Agency of the City of Los Angeles and Gatehouse Hollywood Development, L.P. for Hollywood & Vine (2004), which was subsequently restated and amended. See Los Angeles City Council File Nos. 03-2674 & 03-2674-S2.

A. Procedural Inclusion

Do CBAs make a city's decision-making process more inclusive? Saito (2012, 134) indicates, "Community organizing and education projects [related to the LASED CBA] mobilized local residents, even non-citizens. Involvement in organizations overcame lower
socioeconomic status by facilitating the acquisition of organizational, communication, and leadership skills and encouraging political participation" (internal citations omitted). Leavitt (2006, 266) indicates that the LASED CBA entailed "[c]ommunity input at all stages of [the] development process," and that "community involvement [with the CBA was] deep." Subsection A.1 describes some motivations for CBAs as mechanisms of procedural inclusion, and subsection A.2 discusses relevant evidence from the LASED CBA and an agreement concerning the Gateway Center.

1. Motivations for CBAs as Mechanisms of Procedural Inclusion

Animating some participants in CBAs is the goal of building a social movement - "a set of opinions and beliefs in a population which represents preferences for changing some elements of the social structure and/or reward distribution of a society" (McCarthy and Zald 1977, 1217–1218; see, e.g., Haas 2012). On this view, expanded participation may be desirable, in part, because it fosters commitment to further change among the participants who would have otherwise been excluded. Such participation can build both cognitive support, which provides reasons to participate in further efforts to foster social change, and material support, which expands capacity to participate in such efforts (see Pierson 1993). (Given the perception that large-scale urban development projects are frequently the product of "back-room" deals, expanded participation may also legitimate the resulting agreements from the perspective of some people who are not involved in the process, potentially contributing to broader support for a given social movement (Tarrow 1983, 31–34).)

The goal of developing cognitive support seemingly undergirds Gilda Haas's explanation that "good CBAs are defensive maneuvers that offer limited proof of what is possible" (Haas 2012, 275). (Haas was a member of the negotiating team for the LASED CBA (see Chapter Five, - 283 -
sec. II.B.1). Building cognitive support for social change by adducing a series of such proofs is, according to Saul Alinsky, a key role of community organizers. Such individuals, he contends, "begin to build confidence and hope in the idea of organization and thus in the people themselves: to win limited victories, each of which will build confidence and the feeling that 'if we can do so much with what we have now just think what we will be able to do when we get big and strong'" (Alinsky 1971, 114). Under this view, participation in "limited" victories such as the LASED CBA is a necessary condition for the development of social movements.

By promoting "local knowledge," acquired through lived experience rather than instrumental rationality, moreover, CBAs might add to the political agenda issues that had been previously obscured by processes of putatively expert administration (see Corburn 2005, chap. 7). A CBA process might contribute to the development of a social movement if it "integrates the search for local knowledge with community-building and capacity-building too," resulting in "a community 'skills inquiry' … that provides a subtle means of developing working relationships of trust and confidence among community members" (Forester 2008, 100).

CBAs could also generate the kind of material support that may foster social movements. Some such support may derive from the specific benefits formally guaranteed by a CBA. For example, the Land Trust funded in part by the LASED CBA may help to prevent displacement of some households, enabling their members to participate in neighborhood activities. Material support may also be a product of skills acquired during negotiation processes. As Jacqueline Leavitt explains (2006, 264), SAJE and other coalition members hoped to use the LASED CBA process to develop "leadership capacity" among residents of the neighborhoods surrounding the project (see Chapter Five, sec. II.B.1).
2. Evidence Concerning CBAs as Mechanisms of Procedural Inclusion

Although CBAs extend the promise of greater inclusion in the land-use planning process than formal venues for public participation (Baxamusa 2008), the experience with CBAs (or documents labeled as such) has been mixed. Some CBAs, such as the LASED CBA, have provided more opportunities for participation than conventional planning processes. Others, such as the CBA for the Gateway Center, have been less successful in this regard. Even in the case of the LASED CBA, however, it is unclear how many of the potential benefits described above in subsection A.1 have resulted from the more inclusive process.

The process culminating in the LASED CBA has been hailed as a model of procedural inclusion (see, e.g., Gross, LeRoy, and Janis-Aparicio 2005; Leavitt 2006; Saito 2012). As described in Chapter Five (sec. II.B.1), that process involved:

- Door-to-door organizing in low-income communities of color surrounding the project;
- Pre-negotiation meetings with affected residents to establish an agenda;
- The establishment of a team of negotiators with sufficient expertise, as determined by a Steering Committee;
- The presence of four affected residents and a Spanish-language translator in all negotiating sessions (because the negotiating team did not itself include affected residents);
- Frequent conferral between the affected residents present in the negotiation sessions and their neighbors.

It appears that the LASED CBA negotiation was a necessary condition for the inclusion of low-income residents of color, who had previously been excluded from planning processes for large-scale redevelopment projects.

The process culminating in the Gateway Center CBA provides a vivid contrast. The Bronx borough president's office selected over a dozen organizations to craft a CBA for the...
Gateway Center.\(^1\) (Each of New York City's five boroughs has a president, and each borough president has authority over land-use approvals that can be influential, although it is largely advisory.\(^2\)) Participants claimed to have received little, if any, guidance. "We'd go to meetings among ourselves and talk in circles," said 161st Street Merchants Association president Pasquale Canale (quoted in Haddon 2006). According to Miquela Craytor, former executive director of Sustainable South Bronx, one of the groups invited to participate, "the people that were actually empowered with the position to negotiate wasn't the community. It was really the elected officials who took info from the community, but the community wasn't really the ones across the table from Related, the developer" (Economos 2011, 31). Jesse Masyr, an attorney representing Related Companies for the Gateway Center project, largely corroborates this account, indicating that he "basically negotiated with the elected officials ... I mean there were community groups, but bullshit, [the project] was negotiated with elected officials" (Economos 2011, 31). At least some of the participating organizations received the resulting agreement via e-mail on the morning that the city council was scheduled to vote on the project (Haddon 2006). The borough president's office selected only three organizations to sign the agreement. A spokesperson for the borough president explained, "We chose three people that were heavily involved" (quoted in Haddon 2006).

Despite the relatively inclusive nature of the LASED CBA negotiation, the fruits of that inclusion are ambiguous. Haas (2012, 278) suggests that a CBA should be evaluated based on "how deeply it is connected to a larger campaign strategy and how deeply it is rooted in deeply shared larger longer-term goals." Based on these criteria, the LASED CBA may be a success.

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\(^1\) Haddon (2006) indicates that "18 community development corporations, Bronx organizations and other local stakeholders were selected by the borough president's office to begin brainstorming about an agreement."

\(^2\) See N.Y. City Charter §§ 82, 197-a.
But, based on the status of those longer-term goals, which Haas (2012, 273) identifies as "reducing inequality and increasing democracy in the city," its success is far less clear.

B. Transparency

Do CBAs promote transparency? Is transparency an intrinsically desirable goal? Gross et al. (2005, 22) suggest that the answer to both questions is "yes":

CBAs help the public, community groups, government officials, and the news media monitor a project's outcome. Having all the benefits set forth in one place allows everyone to understand and assess the specific commitments made by a developer. They can then compare those benefits to benefits provided in similar projects in the past. They can also compare benefits offered by developers who are competing for the right to build on a particular piece of land. Transparency is an undeniable good-government value.

Gross et al. (2005, 69–72) propose a number of mechanisms for promoting transparency, such as reporting requirements and incorporation of a CBA into a formally public document. Both mechanisms are features of the LASED CBA. Subsection B.1 discusses the motivations for transparency, suggesting that the characterization of transparency as "an undeniable good-government value" obscures inherent tensions between deliberation and accountability, and between redistribution and allocative efficiency. Subsection B.2 describes the evidence concerning CBAs, indicating that such agreements do little to mitigate (and may exacerbate) the opacity of urban redevelopment processes.

1. Motivations for CBAs as Mechanisms of Transparency

The view that government should be transparent – that is, "open to public scrutiny" – is an enduring pillar both of liberal democratic theory and popular discourse. Calls for transparency resound across the ideological spectrum. As Mark Fenster (2006, 889) notes, "Contentious political campaigns and popular political consciousness seethe with allegations that government
officials engage in secret, corrupt activities (if not full-scale conspiracies) and overflow with promises that sufficient organization, popular will, and correct leadership will finally provide citizens with the responsive, trustworthy, and above all, knowable government they deserve" (emphasis original).

The apparent consensus concerning the value of transparency, however, belies important ideological distinctions. From a libertarian perspective, an active state is inherently opaque (and inherently oppressive) (see, e.g., Hayek 1944, chap. 5–6). Under this view, which resonates in public choice theory (see Chapter One, secs. IV.A.2, IV.B.3), the state's purported monopoly on certain forms of coercive authority makes its administrative bureaucracies particularly prone to impairing Pareto-optimal exchange. Greater transparency is therefore tantamount to a reduced ambit of state action, which is in turn tantamount to greater liberty. From a Rawlsian egalitarian perspective, transparency is an essential element of a just society, ensuring "that citizens are in a position to know and to accept the pervasive influences of the basic structure [of institutions] that shape their conceptions of themselves, their character and ends" (Rawls 1993, 68). Although the concept of transparency is sufficiently abstract to accommodate both the libertarian goal of less government and the Rawlsian goal of more comprehensible institutions, concrete measures to promote one of these goals may thwart the other. The evidence discussed in subsection B.2, below, suggests that CBAs do little to resolve this tension.

Privatization, which is largely coterminous with the libertarian goal, may undermine the egalitarian goal by formally removing certain activities from the sphere of state action and by obscuring the role of the state in transactions labeled as "private." To be sure – as the discussion below suggests – existing rules governing administrative procedure and the disclosure of public records may increase understanding of social institutions only modestly, at best. But, unless such
rules are entirely ineffective, by rendering them inapplicable, privatization promotes the libertarian version transparency at the expense of the liberal egalitarian variant (see Feiser 1999; 2000; see also Freeman 2003, 1301–1310, 1322–1323). More subtly, as discussed in Chapters One (sec. II) and Two (sec. IV.C), the rhetoric of privatization may obscure the state's ineluctable entwinement in every agreement, whether labeled "public" or "private," undermining knowledge of pervasive influences on institutional structure.

Conversely, promoting the Rawlsian goal of transparency would conflict with the libertarian ideal, inasmuch as the Rawlsian variant entails more extensive government action with fewer pretensions to neutrality. If inequalities in material resources exacerbate misunderstandings concerning the function of institutions, redistribution is a prerequisite for liberal egalitarian transparency. Moreover, the ideal of the neutral state, which is central to libertarian liberalism, may militate against the provision of knowledge concerning "the pervasive influences of the basic structure [of institutions] that shape [citizens'] conceptions of themselves, their character and ends" (Rawls 1993, 68). Neutral criteria arguably do not exist for the analytical decisions necessary to identify this "basic structure" and its modalities of influence (cf. Rawls 1988; Sandel 1998).

Indeed, formally neutral "open government" laws may be of little help even for answering less abstruse questions about the distribution of resources and influence. In other words, they may not improve the comprehensibility of public policy, i.e., individuals' "capacity to relate [the disclosed information] to the decisions they face" (Fung, Graham, and Weil 2007, 59; see also Innes and Booher 2010, 98). To be sure, disclosure laws requiring government agencies to make their records available for public scrutiny are neutral inasmuch as they provide all citizens with equal rights of access to documents. Similarly, requirements governing
administrative and legislative decision-making mandate the creation of certain records and provide equal rights of access to specified formal administrative and legislative proceedings.

But, the resulting records and procedures generally are not designed to answer either the questions that Rawls describes or more prosaic variants of these questions. The volume of information disgorged under public records laws and the complexity of the disclosed documents favors parties with extensive resources, and the formal equality of procedural rules coexists with a substantially unequal distribution of political influence. Disclosure programs targeting specific constituencies could be more effective means of promoting comprehensibility (Fung, Graham, and Weil 2007), as could more participatory approaches to decision-making emphasizing the co-production of technical knowledge (Susskind and Elliott 1983; Fung 2004; Innes and Booher 2010). But such approaches may necessitate dispensing with the ideal of government neutrality (Forester and Stitzel 1989; Sandel 1996), requiring a role for the state that is seemingly incompatible with the transparency of libertarian minimalism.

Nevertheless, "open government" laws may not be particularly conducive to the form of transparency invoked by libertarian minimalists either. Unless the substantial costs of information disclosure programs result in elimination of even larger public expenditures, such costs increase the size of government. Exceptions to "open government" laws, moreover, apply to some of the government activities that most distress libertarian minimalists, including certain meetings concerning real estate transactions and the exercise of eminent domain.  

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5 See, e.g., Cal. Gov. Code § 54956.8 (2012) ("a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease"); ibid. § 54956.9 ("Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.... For purposes of this section, "litigation" includes any adjudicatory
2. Evidence Concerning CBAs as Mechanisms of Transparency

The following subsections assess both the transparency of the CBAs analyzed for this dissertation. Subsection 2.a addresses formal transparency, and subsection 2.b addresses comprehensibility. The evidence suggests that CBAs have not substantially increased the transparency of redevelopment and, in some cases, have exacerbated opacity.

a. Formal transparency

Formal transparency of a CBA would require, at a minimum, access to the agreement itself and opportunities for members of the public to monitor implementation of the agreement. Unless a CBA is incorporated into a formally public document, there may be no way to compel disclosure. Nevertheless, some CBAs (including the LASED CBA) are widely available and some redevelopment agencies have repeatedly failed to comply with disclosure requirements, suggesting the importance of motives other than legal compliance for both public officials and the parties to a CBA. The reporting requirements contained in a CBA may not compel public disclosure of the reports and, even when a CBA includes public reporting requirements, the parties may not adhere to the requirements. In this regard too, however, CBAs are not obviously inferior to many public agencies.

Organizations such as LAANE provide access to CBAs with which they have been involved. As a result, agreements such as the LASED CBA are available online via the Partnership for Working Families (2014a), "a national network of leading regional advocacy proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.").

6 The Hollywood & Highland agreement, described in Chapter Five (sec. I), is not available via Partnership for Working Families (2014a). Commentators such as Gross (2012) would likely not characterize this agreement as a
organizations" of which LAANE is an affiliate (Partnership for Working Families 2014b; 2014c). Although, as Vicki Been (2010, 24) contends, "there are no safeguards in place [for CBAs] other than those the groups [involved] impose upon themselves," the access to CBAs provided by LAANE and the Partnership for Working Families suggests that such groups may impose meaningful safeguards out of altruism, reputational concerns, or some mix thereof (see Janis 2012, 3). In many instances, these informal constraints may promote formal transparency more effectively than legal requirements (Anechiarico and Jacobs 1996), as the failure of some redevelopment agencies to disclose public information suggests. 7 Moreover, when a CBA is incorporated into a formally public document, as was the case with the LASED CBA, 8 it is subject to state freedom of information laws. 9 (As discussed in Chapter Five, however, private parties to the LASED CBA apparently have not complied with certain reporting requirements of that agreement.)

As some CBAs from New York indicate, parties to CBAs (or agreements labeled as such) do not invariably hold themselves to the same standards as organizations such as LAANE and

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8 See LASED Development Agreement, supra note 3, sec. 3.1.3.4.

the Partnership for Working Families. The resulting lack of accessibility is exacerbated when, as in New York, CBAs are not incorporated into formally public documents. The Gateway Center agreement is apparently not available online (or in any other public forum) as of April 20, 2014. A purported copy of the agreement indicates that the most financially valuable benefit provided by the developer is $3 million dollars for a hiring referral system and workforce development programs. At least $1.8 million of these funds were paid to the Bronx Overall Economic Development Corporation (BOECD) for administration of a "Fast Track Unit" to implement a hiring referral system (Egbert 2009). According to a New York Daily News report:

BOEDC's lawyer ... stressed [that] his client was under no obligation to publicly disclose any information about the program. He said, despite it's [sic] close association with the Bronx borough president's office, BOEDC is a private nonprofit corporation. Its administration of the Fast Track Unit, he said, was under a private contract with no public disclosure requirements. (Egbert 2009)

The only copy of the CBA that I have been able to locate concerning another project in the Bronx – the new Yankee Stadium – is an undated and unsigned version containing numerous drafting errors. This document is available online from Good Jobs New York, an organization

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11 New York Yankees et al., Participation and labor force mitigation and community benefits program related to the construction of the new Yankee Stadium (2006) [hereinafter Yankee Stadium CBA]. The errors of punctuation, capitalization, and grammar in the following portions (pp. 2, 8) are characteristic:

"The Fund" shall mean the Bronx Community Trust Fund established pursuant to Section VIII of this agreement and responsible for the annual distribution of these [sic] philanthropic benefits to the Bronx Community.

"The Fund Advisory Panel" shall mean the panel chaired by a person of prominence and shall be appointed by the Yankees, the Bronx Borough President and other Bronx Elected Officials in consultation with and approval from the New York City Council Bronx Delegation [sic] [recte .] ... The Fund shall be administered by an individual of prominence selected by The Fund Advisory Panel shall be appointed by the Yankees, the Bronx Borough President and other Bronx elected officials in consultation with and approval from the New York City Council Bronx Delegation.
with ties to LAANE. The executive director of Good Jobs New York has criticized the putative community benefits associated with the Yankee Stadium agreement as "whitewash" (Damiani and Croft 2008). The most financially valuable benefit under the agreement consists of "cash grants to duly constituted Bronx resident not-for-profit institutions and community-based organizations" totaling $800,000 annually (for 40 years), to be administered by an ambiguously defined entity, seemingly with close ties to at least one of the elected officials who signed the agreement.

The fund has been dogged by allegations of ineptitude and impropriety. A New York Times report revealed that, seventeen months after the first deposit from the Yankees was due, "none of that money had been distributed [to community groups], and the group responsible for administering it had never met[,] ... had not chosen a permanent chairman, [and had not] registered as a charity with either the Internal Revenue Service or the state attorney general's office" (T. Williams 2008). The next year, an attorney hired to administer the fund claimed that the fund's chairman, Serafin U. Mariel, deposited the fund's receipts from the Yankees in a non-interest-bearing account at a bank that Mariel co-founded (Santos 2009). A 2011 investigation by three New York Post reporters revealed that beneficiaries of the fund included for-profit

The agreement does not define the terms "Bronx Community," "person of prominence," "individual of prominence," "Bronx Elected Officials," "other Bronx Elected Officials," or "New York City Council Bronx Delegation." The third of the three paragraphs quoted above contains a grammatical error that renders it unintelligible, obscuring responsibility for selection of the administrator of "The Fund." 

See http://www.goodjobsny.org/sites/default/files/docs/yankees_deal.pdf (last visited April 20, 2014). Good Jobs New York is a project of Good Jobs First (Damiani 2005, 4). The latter organization, according to the executive director of Good Jobs New York, "provided support for the CBAs negotiated in California and continues to act as a clearinghouse for information on CBAs" (Damiani 2005, 4). Good Jobs First co-published Gross et al. (2005) with the California Partnership for Working Families, which is a collaborative effort of four organizations including LAANE.

Yankee Stadium CBA, supra note 11, sec. VIII.a.

See note 11, supra.
businesses, such as a clothing vendor and a boxing gym, as well as several non-profits whose tax-exempt status had been revoked by the Internal Revenue Service (Giove, Sheehan, and Buiso 2011). The Post indicated that the fund's treasurer declined to provide the fund's annual reports, some of which the reporters obtained from unnamed sources.

b. Comprehensibility

Gross et al. (2005, 22) indicate that CBAs promote transparency because "[h]aving all the benefits set forth in one place allows everyone to understand and assess the specific commitments made by a developer." In other words, they suggest that a CBA improves comprehensibility, enabling individuals to better understand how a given development project might affect their material wellbeing. To the extent that CBAs are components of broader organizing campaigns, one might also hope that CBAs would help people to assess "the basic structure [of institutions] that shape [citizens'] conceptions of themselves, their character and ends" (Rawls 1993, 68). In other words, CBAs might make the constellation of institutions relevant to redevelopment projects more comprehensible.

The evidence from the LASED CBA discussed in the following subsections, however, suggests that even a well drafted CBA backed by a broad coalition does little to improve the comprehensibility of either a developer's commitments or the institutional framework for urban redevelopment. Aspirational goals, a pervasive feature of CBAs, can produce confusion about the guarantees such agreements provide. The regulatory morass of urban redevelopment further thwarts comprehensibility, as does the lack of competition associated with many cities'
approaches to redevelopment. CBAs can exacerbate the former problem and do not mitigate the latter.

(1) Aspirational goals

Aspirational goals concerning wages are a common feature of CBAs (see Table 2). The relevant provisions typically require a developer to make "reasonable efforts" to ensure that a specified percentage of jobs satisfy certain minimum criteria concerning wages and benefits. In the case of the LASED CBA, "Whether or not the Living Wage Goal is being met [five and ten years from the date of the CBA], the Developer shall be considered to be in compliance with [the Living Wage Program] if it is in compliance with [provisions of the CBA concerning the reporting of employment data and the selection of tenants for the project]." 

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15 See, e.g., LASED CBA, supra note 3, sec. V.A.2. ("The Developer shall make all reasonable efforts to maximize the number of living wage jobs in the Project. The Developer and the Coalition agree to a Living Wage Goal of maintaining 70% of the jobs in the Project as living wage jobs.") (emphasis added); Hollywood and Vine Mixed-Use Development Project, Community Benefits Agreement, Gatehouse Hollywood Development, L.P., sec. III.A.2, http://www.forworkingfamilies.org/sites/pw/files/documents/CBAGatehouseFINAL5-7-04.pdf (last visited May 15, 2014) ("The Developer shall use reasonable efforts to ensure that, at all times, at least seventy percent (70%) of On-Site Jobs are Living Wage Jobs.") (emphasis added); Gateway Center CBA, supra note 10, sec. VIII.1 ("To the extent the Developer functions as an employer for those aspects of the Development that are under the direct supervision and control of the Developer, it will be required to make all commercially reasonable efforts to maximize the number of Covered Jobs that pay Living Wages and be required to report to the Coalition on these efforts.") (emphasis added).

16 LASED CBA, supra note 3, sec. V.A.4.
### Table 2: Employment Provisions and Reported Outcomes as of December 6, 2013

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>[1] Staples Center DDA *</td>
<td>DDA</td>
<td>Yes **</td>
<td>Ambiguous **</td>
<td>Non-binding</td>
<td>Yes ***</td>
<td>Yes</td>
</tr>
<tr>
<td>[2] Hollywood &amp; Highland DDA *</td>
<td>DDA</td>
<td>Yes **</td>
<td>Ambiguous **</td>
<td>Non-binding</td>
<td>Yes</td>
<td>Unknown †</td>
</tr>
<tr>
<td>Los Angeles Sports &amp; Entertainment District</td>
<td>CBA</td>
<td>No ††</td>
<td>No ††</td>
<td>Non-binding</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>[3] Hollywood &amp; Vine CBA</td>
<td>CBA</td>
<td>No †††</td>
<td>No †††</td>
<td>Non-binding</td>
<td>Yes</td>
<td>Unknown †</td>
</tr>
<tr>
<td>[4] Atlantic Yards CBA</td>
<td>CBA</td>
<td>No</td>
<td>No</td>
<td>Non-binding</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>[5] Gateway Center CBA</td>
<td>CBA</td>
<td>No</td>
<td>No</td>
<td>Non-binding</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>[6] Yankee Stadium CBA</td>
<td>CBA</td>
<td>No</td>
<td>No</td>
<td>Binding</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>[7] Hollywood &amp; Vine CBA</td>
<td>CBA</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
</tr>
</tbody>
</table>

This table compares labor provisions and publicly reported outcomes for agreements associated with the projects listed in Table 1. Living wage supplements are noted only when the associated requirements exceeded statutory or administrative requirements. The data were assembled from the sources indicated on the following page, with each source preceded by the relevant row-column entry from this table.

**Notes:**
- N/A Not applicable
- * No CBA associated with project; "DDA" abbreviates "disposition and development agreement."
- ** See Chapter Five, pp. 226-227.
- *** Required as condition of certain subsidies, see Chapter Five, pp. 225-226.
- † The Community Redevelopment Agency of the City of Los Angeles, which was responsible for reviewing the relevant reports, no longer exists. See Chapter Four, p. 187. Former employees of the City of Los Angeles and the Community Redevelopment Agency who were directly involved with the Hollywood & Highland and Hollywood & Vine projects indicated that they did not know how to obtain the relevant reports and were not confident that such reports existed (Tynan 2013; Paxton 2014).
- †† The Community Redevelopment Agency of the City of Los Angeles, which was responsible for reviewing the relevant reports, no longer exists. See Chapter Four, p. 187. Former employees of the City of Los Angeles and the Community Redevelopment Agency who were directly involved with the Hollywood & Highland and Hollywood & Vine projects indicated that they did not know how to obtain the relevant reports and were not confident that such reports existed (Tynan 2013; Paxton 2014).
- ††† "The Developer, Tenants, and Contractors shall comply with the City's Living Wage Ordinance, set forth in the Los Angeles Administrative Code, Section 10.37, to the extent such ordinance is applicable." Development Agreement by and among the City of Los Angeles, the L.A. Arena Company, Inc., and Flower Holdings, LLC (2001), Appendix 4 [hereinafter LASED CBA], sec. V.A.1.
- †† †† †† "Quality Jobs" held by persons living in lower-income Census tracts, as described in pp. 225-226, based on data for 955 of 1,462 jobs (see Chapter Five, note 44 and accompanying text).
Sources:

1-a Disposition and Development Agreement by and among the Community Redevelopment Agency of the City of Los Angeles, the City of Los Angeles, and L.A. Arena Development Company, LLC (1997), sec. 13.4; City of Los Angeles, Office of the City Clerk (2000).
1-b See sources cited for 1-a.
1-d Ibid.
1-e Fikre (2000).
1-f Ibid.

2-a Disposition and Development Agreement by and between the Community Redevelopment Agency of the City of Los Angeles and TrizecHahn Hollywood LLC (1999), sec. 805(1) [hereinafter TrizecHahn 1999 DDA]; Living Wage Incentive Plan by and among the City of Los Angeles, the Community Redevelopment Agency of the City of Los Angeles, and TrizecHahn Hollywood LLC (1999) [hereinafter Living Wage Incentive Plan].
2-b See sources cited for 2-a.
2-c TrizecHahn 1999 DDA, op. cit., sec. 805(2); First Source Hiring Plan for Construction of Hollywood and Highland Project (n.d.) [hereinafter First Source Plan].
2-d First Source Plan, op. cit., sec. I.B.2
2-e See note †.

3-a LASED CBA, op. cit., sec. V.A.
3-b Ibid., sec. V.B.
3-c Ibid., sec. V; ibid., attachment 1.
3-d Ibid., secs. V.A.5, V.A.6.d, V.B.3, VIII.C; ibid., attachment 1, sec. V.
3-e See Chapter Five, pp. 246-247.

4-b See sources cited for 4-a.
4-e See note †.

5-a See Atlantic Yards Development Co., LLC et al. (2005), sec. IV.
5-b See ibid.
5-c See ibid.
5-d See ibid., sec. XI.C.

6-b See ibid.
6-c See ibid., sec. VI.B.3.g.
6-d See ibid., sec. VI.B.3.h.

7-a See New York Yankees et al. (2006).
7-b See ibid.
7-c Ibid., sec. III.
7-d Ibid., secs. III(d), V.10 [sic].
Even without mandatory living wage provisions, such reporting requirements may advance the interests of residents in the surrounding area. If implemented, they can enable community groups to monitor employment practices. In tandem with local hiring provisions, which also typically impose few (if any) enforceable requirements concerning employment outcomes, programs based on non-binding goals may provide an opportunity for groups to engage in ongoing dialogue with a project's operator.

But these potential benefits might be balanced against costs that are no less speculative. Janet Yellen (2007, 3), currently the Chair of the Board of Governors of the U.S. Federal Reserve System, has stated that the LASED CBA "stipulates that 70 percent of the jobs at the new center pay a living wage." As noted above, the agreement imposes no such requirement. Observers less sophisticated than Yellen (or her speechwriters) might share the confusion that her claim reveals, suggesting that aspirational goals diminish comprehensibility.

(2) Interaction with existing programs and regulations

Because CBAs interact with an extraordinarily intricate corpus of public programs and regulations, even the most exemplary CBAs do not clearly indicate the commitments that a

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17 See e.g., LASED CBA, supra note 8, attachment 1, secs. III.E & V.A(3):

Any Employer who has filled more than 50% of jobs available either during a particular six-month period with Targeted Job Applicants (whether referred by the First Source Referral System or not), shall be deemed to be in compliance with this First Source Hiring Policy for all hiring during that six-month period. Any Employer who has complied with remaining provisions of this First Source Hiring Policy is in compliance with this First Source Hiring Policy even it has not met this 50% goal during a particular six-month period.

... In the event an Employer has not met the 50% goal during a particular six-month period, the City may require the Employer to provide reasons it has not met the goal and the City may determine whether the Employer has nonetheless adhered to this Policy.


18 The available evidence also indicates that the LASED developer has not complied with the reporting requirements, thwarting assessment of even the non-binding living wage goal (see sec. I.C, below; Chapter Five, pp. 246-247).
developer has made above and beyond existing legal requirements. For example, published accounts of the LASED CBA have not clarified that its open space provisions may relieve the developer of its open space fee obligations under generally applicable law (see Chapter Five, p. 260 ff.). To be sure, these provisions were designed to correct a serious defect of public administration: the failure of the Los Angeles Department of Recreation and Parks to spend the open space fees that it collected, a failure that was particularly egregious in the areas with the direst need for parks and recreation facilities (see Chapter Five, p. 260 ff.). Nevertheless, to the extent that the LASED CBA's provisions concerning parks and recreation contribute to a misleading account of the incremental benefits attributable to that agreement, they diminish its comprehensibility.

So too do the housing provisions of the LASED CBA, as the inaccurate comments of sophisticated observers suggest. An article in the Los Angeles Times indicates that the LASED developer "agreed to build affordable housing ... [and] to dedicate 20% of total units--between 100 and 160--to low-income residents" (Romney 2001b) (emphasis added). Janet Yellen (2007, 3) claimed "the Agreement ensures that 20 percent of new housing units in the project area will be affordable to low-income households." An article in the Journal of the American Planning Association by University of Pennsylvania professor Laura Wolf-Powers (2010, 147) indicates that the CBA requires "20% (160 units) of onsite housing to be affordable for at least 30 years" (emphasis added).
Table 3: Housing Outcomes as of April 1, 2014

<table>
<thead>
<tr>
<th>Project</th>
<th>Market Rate Units</th>
<th>Affordable Units Included in Project</th>
<th>Other Affordable Units Funded via In-Lieu Fees</th>
<th>In-Lieu Fees as % of Total Development Cost of Affordable Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staples Center</td>
<td>Project plan included no housing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hollywood &amp; Highland</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Angeles Sports &amp; Entertainment District*</td>
<td>380</td>
<td>0</td>
<td>165 **</td>
<td>≈ 10%</td>
</tr>
<tr>
<td>Hollywood &amp; Vine</td>
<td>440 †</td>
<td>78 †</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>New York</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Atlantic Yards</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>Gateway Center</td>
<td>Project plan included no housing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yankee Stadium</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes:
* See Chapter Five, sec. II.B.2.b for sources.
** Excludes 200 dormitory-style units for YWCA and includes 92 units for which developer provided loans on unknown terms. See Chapter 5, Table 2. See also Chapter 5, Table 3 (income restrictions).
† 297 market-rate apartments and 143 "W Residences for Sale" (Legacy Partners 2014).
†† Legacy Partners (2014) indicates that the Hollywood & Vine project includes 78 affordable units, but information concerning the affordability restrictions for these units appears to conflict. The CBA by and between Hollywood Interfaith Sponsoring Committee, Yucca Residents’ Group, and Legacy Partners 2480, LLC (2004, 8) indicates "Total Rent for one-third of Affordable Units shall be based on a maximum household income of 50% of the Area Median Income[,] Total Rent for one-third of Affordable Units shall be based on a maximum household income of 80% of the Area Median Income[,] [and] Total Rent for one-third of Affordable Units shall be based on a maximum household income of 120% of the Area Median Income." A report of the Council of the City of Los Angeles, Housing, Community, and Economic Development Committee (2006, 1), adopted by the City Council in September 27, 2006 (City of Los Angeles, Office of the City Clerk 2006), indicates that all affordable units in the project would "be affordable to very-low income residents" (emphasis added). (According to the California Department of Housing and Community Development, "The maximum very-low income limit typically reflects 50 percent (50%) of MFI [median family income]" (Bates 2013, 1).)
‡ See pp. 306-307, below.
Each of these statements is incorrect, as discussed in Chapter Five. The LASED CBA does not require the LASED developer to build a single unit of affordable housing, because it permits the developer to satisfy its obligations via the payment of in-lieu fees. It does not ensure that any new housing units in the project area (i.e., onsite) will be affordable, because the required affordable housing can be built "within the Project or ... in redevelopment areas within a three-mile radius from the intersection of 11th and Figueroa Streets."19 Such misunderstandings, communicated in the Los Angeles Times, the Journal of the American Planning Association, and a speech by the erstwhile President and CEO of the Federal Reserve Bank of San Francisco (now the Chair of the Board of Governors of the U.S. Federal Reserve System), indicate that the LASED CBA does not "allow[] everyone to understand and assess the specific commitments made by [the] developer" (Gross, LeRoy, and Janis-Aparicio 2005, 22).

These misunderstandings also arguably bespeak a more general confusion about the provision of the relevant community benefits, because they obscure the crucial role of the state in the development of the affordable housing associated with the LASED. As noted in Chapter Five, the vast majority of funding for such housing comes from a combination of direct public subsidies, tax expenditures (such as the Low Income Housing Tax Credit), and banks fulfilling their obligations under the Community Reinvestment Act. Thus, as Suzanne Mettler (2011, 13, 27) notes of public policies that "provide goods and services ... through a variety of indirect mechanisms," CBAs may exacerbate popular assumptions "that markets are more autonomous and effective than they are in actuality, and they may well fail to give government due credit for addressing society’s problems."

19 LASED CBA, supra note 3, sec. IX.B.4.
(3) Uncompetitive development processes

Although CBAs could theoretically facilitate comparison of "benefits offered by developers who are competing for the right to build on a particular piece of land" (Gross, LeRoy, and Janis-Aparicio 2005, 22), this advantage is unlikely to materialize without substantial changes in the redevelopment process. The saga of the Staples Center and the LASED, detailed in Chapter Five, is typical of large-scale urban development projects, inasmuch as there was no meaningful competition among developers. Instead, the single developer under consideration fostered competition between the City of Los Angeles and the City of Inglewood.) CBAs do not increase competition among developers for large-scale redevelopment projects, and the absence of such competition thwarts the sort of comparison that Gross et al. describe as a form of transparency.

C. Accountability

CBAs could help residents hold both developers and governments responsible for promises made concerning a development project, and they are frequently characterized as mechanisms of "accountable development" (see, e.g., Liegeois and Carson 2003; Beach 2008, 78; Cummings 2008, 59; Salkin and Lavine 2008a, 297). (Leavitt (2006, 264) indicates that the terms "CBA" and "accountable development" are "interchangeably used.") Subsection C.1 briefly discusses the motivations for using CBAs as mechanisms of accountability, and subsection C.2 presents evidence from Los Angeles and New York.

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20 See, e.g., Bagli and Chan (2005) ("Despite a higher cash offer from a rival bidder, the Metropolitan Transportation Authority voted yesterday to enter into exclusive negotiations to sell the developer Bruce C. Ratner the rights to build an arena for the Nets and office and residential buildings over a railyard in Downtown Brooklyn."); Barrett (2002) (detailing behind-the-scenes preparation for the new Yankee Stadium, prior to the public approvals process); deMause (2006) (same); Siegmund Strauss v. Strategic Development Concepts, 10 Misc.3d 1067(A), 2006 WL 20391 (N.Y. Sup. 2006) (no public bidding process before disposition of the Bronx Terminal Market lease to the developer of the Gateway Center).
1. Motivations for CBAs as Mechanisms of Accountability

Low-income communities have historically borne the brunt of negative externalities from urban redevelopment projects due, in large part, to a lack of clout with government officials (Teaford 2000, 446–451), and concerns of such disparate impacts continue to resonate. Even if public officials are attentive to the interests of historically marginalized communities, they may be ineffective monitors of redevelopment projects. As Rachel Weber (2000, 117–118) explains, "corporations can use their bargaining leverage to dilute the terms of individual subsidy agreements and give themselves maximum flexibility. Likewise, government officials may be reluctant to impose obligations or enforcement provisions on the corporations on whom they depend." Because CBAs may provide an opportunity for those who stand to benefit from the guarantees of a developer (or a government) concerning a particular project, they could align the incentives to monitor the implementation of a guarantee with the ability to do so.

2. Evidence Concerning CBAs as Mechanisms of Accountability

The following subsections present evidence concerning accountability mechanisms in the LASED and Atlantic Yards CBAs. Subsection 2.a discusses provisions in both CBAs that are seemingly designed to increase accountability by creating incentives and opportunities for potential beneficiaries to monitor developers. (The LASED CBA has been more successful in this regard than the Atlantic Yards CBA, although the available evidence suggests that even the LASED CBA has had only mixed success.) Subsection 2.b describes the use of the LASED CBA to make the developer accountable for formally public obligations concerning the provision and improvement of open space.
a. Accountability for Developer Guarantees

Although the LASED CBA may have been necessary to ensure that the developer fulfilled its guarantees concerning public benefits, it has not been sufficient. For example, one of the few binding commitments concerning jobs in the LASED CBA requires the developer to "provide an annual report to the City Council's Community and Economic Development Committee on the percentage of jobs in the [LASED] that are living wage jobs[,] ... containing project-wide data as well as data regarding each employer in the Project." As described in Chapter Five, the available evidence indicates that the developer has not fulfilled this obligation. The LASED developer has fulfilled its obligations under the CBA concerning housing, parks and open space, and the preferential parking district. While all of these actions were required by separate agreements with government entities, the CBA may have provided the impetus for the city to include at least some of the relevant terms in these separate agreements.

Agreements labeled as CBAs in New York have been less effective contributors to developer accountability. The most financially valuable benefits from two such agreements – those concerning the Gateway Center and Yankee Stadium – are arguably not community benefits at all, having accrued to private non-profit entities with close ties to the elected officials responsible for the purported CBAs. The putative benefits from the Atlantic Yards CBA are at least superficially more similar to those included in the LASED CBA.

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21 LASED CBA, supra note 3, sec. V.A.5.
22 See LASED Development Agreement, supra note 3, sec. 3.1.3.11 ("Affordable Housing"); Los Angeles Municipal Code, Ch. 1, Art. 7, § 17.12 ("Park and Recreation Site Acquisition and Development Provisions"); Third Implementation Agreement to the Disposition and Development Agreement by and among the City of Los Angeles, the Community Redevelopment Agency of the City of Los Angeles, L.A. Arena Land Company, Inc., Flower Holdings, L.L.C., and L.A. Arena Company, LLC (2002), sec. 19.12 ("Open Space Maintenance Fee"); City of Los Angeles, Department of City Planning (2001a, 273–274) ("The Applicant shall fund up to $100,000 for ... the implementation of any residential permit parking district programs requested by the neighborhoods and approved by LADOT.").
Implementation of the Atlantic Yards CBA, however, has been problematic. Although the Atlantic Yards CBA included a provision requiring the use of an independent compliance monitor,24 several signatories received criticism for obtaining financing from the developer (L. Robbins 2012; D. Rosenblum 2013).25 The CBA was signed in June 2005, but no compliance monitor had been hired as of September 2012 (L. Robbins 2012).

The developer's affordable housing obligations under the Atlantic Yards CBA were ambiguous. (Notably, New York City officials were negotiating separately with the developer concerning affordable housing, and some commentators have implied that the CBA impeded this process (see, e.g., Rutenberg 2009; Been 2010, 26 n. 98).) The CBA indicated, "50% of the residential units built at the [Atlantic Yards] Project [would be] affordable to low- and moderate-income families."26 But, an attachment to the CBA indicated, "50% of the 4,500 rental housing units built on the Project site will be affordable to families in [specified] income tiers" (emphasis added).27 As of 2009, the developer planned to build up to 6,430 housing units.28 Of these units, 2,250 (i.e., a minimum of 35%, rather than 50%) would be income-restricted.29

Even 35% would be a substantially larger proportion than the 20% required under the LASED CBA. But the Atlantic Yards CBA permits up to 40% of the income-restricted units to be targeted to households earning more than 100% of an administratively determined area median income (AMI).30 The project, moreover, has received substantially larger subsidies than the LASED – the New York City Independent Budget Office (2009) estimated the 2009 net

24 Atlantic Yards Development Co., LLC et al. (2005), sec. III.D [hereinafter Atlantic Yards CBA].
25 The executive director of Good Jobs New York has criticized the Atlantic Yards CBA (Damiani 2005). Good Jobs New York has expressed support for the Los Angeles CBAs, but has also criticized the Yankee Stadium agreement. See notes 11-14, supra, and accompanying text.
26 Atlantic Yards CBA, supra note 24, sec. VI.B(1).
27 Atlantic Yards CBA, supra note 24, exhibit D, annex A.
28 New York State Urban Development Corporation d/b/a Empire State Development Corporation (2009, 7).
29 Ibid.
30 Atlantic Yards CBA, supra note 24, exhibit D, annex A.
present value of direct budgetary and opportunity costs, excluding commercial and housing development incentives, as $686.5 million.

As of April 18 2014, the Atlantic Yards project included no housing, affordable or otherwise (Bagli 2014), and the sole housing tower under construction in the project was slated to include relatively few units affordable to low-income families. Of the 363 units in the tower, 73 (i.e., 20%) would be targeted to households earning no more than 50% of AMI. Although the CBA repeatedly refers to units affordable to "families," only 10 of these 73 units would have two bedrooms, while 63 would be 1-bedroom and studio apartments. (The CBA does not define "family," which the New Oxford American Dictionary (3rd ed.) defines as "a group consisting of parents and children living together in a household.") An additional 108 units would be targeted to households earning 100% to 160% of AMI. Of these 108 units, 82 would be one-bedroom and studio apartments, and 26 would be 2-bedroom apartments, with 16 of those 26 targeted to households earning 160% of AMI.

b. Accountability for Government Guarantees

If a government is unable or unwilling to fulfill its obligations to the public, then a CBA might provide an opportunity for community groups to make a private developer responsible for such obligations. As Jerilyn López Mendoza (2014), one of the attorneys involved in negotiating the LASED CBA explains, this was an important goal of the coalition, particularly with respect to open space: "what we wanted was funds that the coalition could have control of, which is

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32 Ibid., exhibit 1.
33 Atlantic Yards CBA, supra note 24, sec. 1 (p. 3); ibid., sec. VI.B(1); ibid., annex A.
35 Ibid.
36 Ibid.
37 Ibid.
Quimby funds, which disappeared into [the Los Angeles Department of Recreation and Parks], and no one ever saw again." (The "Quimby Act" is the colloquial name for a state law enabling local governments to require developers to provide land or equivalent fees for parks (Fulton and Shigley 2005, 185).) An audit by the city's controller supports López Mendoza's claim concerning the handling of such fees by the Department of Recreation and Parks (City of Los Angeles, Office of the Controller 2008). López Mendoza's explanation suggests that the coalition's goal was not to increase the developer's obligations to provide open space fees beyond those required under existing law, but to ensure that the fees were expeditiously committed "to help address the deficit of park space in the Figueroa Corridor community." The implementation of the open space provision in the LASED CBA demonstrates both the promise and the peril of this strategy.

As required by the CBA, the developer funded a needs assessment, which included "two community outreach meetings and two youth meetings, with a total of over 300 individuals participating, as well as several meetings with the Community Redevelopment Agency, the Department of Recreation and Parks, the Los Angeles Unified School District and stakeholders in the local community" (D. A. Goldberg 2013, 3). The CBA also required the developer to "fund or cause to be privately funded at least one million dollars ($1,000,000) for the creation or improvement of one or more parks and recreation facilities ... in a manner consistent with the results of the Needs Assessment." Although the CBA specified that the developer would "have no responsibility for operation or maintenance of any park and recreation facility created or

39 LASED CBA, supra note 3, sec. III.A.
40 Ibid., sec. III.C.
41 Ibid., sec. III.D.1.
improved pursuant to this agreement," it made the developer responsible for ensuring that 
"[t]he park and recreation facilities created or improved pursuant to this agreement [i.e., the CBA 
would] be completed within five years of completion of the Needs Assessment."43

The needs assessment, completed in November 2002, identified two projects to be funded 
by the developer: improvements to Hope and Peace Park, an existing small park operated by the 
Department of Recreation and Parks, and Venice Hope Recreational Center, a planned 24,000 
square-foot facility for at-risk youth, which would be jointly developed by Community 
Redevelopment Agency and the California Hospital Medical Center (Benbow 2005, attachment 
C). The developer committed $500,000 to each project (Benbow 2005, attachment C).

Thus, although the goal of the CBA was to circumvent ineffective or unresponsive 
government agencies, the implementation of the parks and recreation program hinged on 
government agencies. Work on Hope and Peace park, including the creation of a play area and 
improvements to the lighting, landscaping, and an existing basketball court, was scheduled to be 
complete by spring 2006 (Benbow 2005, attachment C), but was not finished until June 30, 2007 
(City of Los Angeles, Department of Public Works/Bureau of Engineering 2010, 4–40) – four 
years and seven months after the completion of the needs assessment. While the completion of 
Hope and Peace Park complied with the timeline established in the CBA, the Venice Hope 
Recreational Center did not open to the public until October 2013 (Valenzuela 2014, 1) – nearly 
eleven years after completion of the needs assessment. This long delay indicates that, while the 
CBA helped to ensure that funds owed by the developer under state and local law would be spent 
on projects important to the coalition, its formal assurances concerning timely completion of the 
projects were, at most, only partially effective.

42 Ibid., sec. III.D.1.
43 Ibid., sec. III.D.2.
D. Distributive Justice

Rationales for CBAs typically involve at least one of two conceptions of distributive justice. One conception is essentially the notion of allocative efficiency undergirding normative public choice theory. In this conception, CBAs are a form of compensation for the "displacement, pollution, and degrad[ation of] local commercial centers" that may result from large-scale redevelopment projects, and they can prevent "low-income people [from] experienc[ing] none of the benefits and all of the costs of new development in their neighborhoods" (Liegeois and Carson 2003, 174-175). Under this view, CBAs are not redistributive. Instead, they prevent redistribution of resources from low-income people to higher-income people. A second conception resonates with the redistributive commitments of both egalitarian liberalism and communitarianism. In this conception, "the main purpose of economic development is to bring measurable, permanent improvements to the lives of affected residents, particularly those in low-income neighborhoods" (Gross, LeRoy, and Janis-Aparicio 2005, 5) (emphasis added). Under this view, if a redevelopment project increases the size of the economic pie, low-income people should obtain a slice of that pie disproportionately larger than their earlier share.

1. Motivations for CBAs as Mechanisms of Distributive Justice

CBAs could, in theory, promote either allocative efficiency or redistribution. To the extent that CBAs are contracts, the standard arguments concerning the allocative efficiency of contract apply (see Chapter One). CBAs could also promote redistribution through some combination of social movement catalysis, legitimation of organized labor, and ensuring government compliance with existing redistributive laws. As Turner and Hurd (2001, 12) explain, "current efforts to build social movement unionism, by opening up possibilities for
involvement and mobilization, may help lay the groundwork for the next social movement wave." Although this potential outcome is hazy and speculative, CBAs could contribute more concretely to redistribution if they simply legitimate the current activities of labor unions. One motivation for the turn toward "social movement unionism" entails expanding popular support for labor unions by addressing redistributive goals that may not directly promote current members' material interests (Osterman 2006; Applegate 2007). If CBAs help to improve public opinion concerning organized labor, then they could contribute to the redistribution that occurs by dint of powerful labor unions. (Notably, some subsidies for large-scale urban redevelopment projects may be necessary to compensate developers for the higher cost of union labor that is associated with the construction and operation of such projects.) As described above in subsection I.C, CBAs could also promote redistribution by serving as means of accountability for the enforcement of existing laws.

2. Evidence Concerning CBAs as Mechanisms of Distributive Justice

The evidence from the LASED CBA suggests that such agreements can reduce transaction costs and information asymmetries, thereby potentially improving allocative efficiency. There is little doubt that the developer predicted that the CBA would reduce its transaction costs. Moreover, the parks provision of the CBA suggests that the developer was able to make the coalition better off without making itself worse off, to the extent that its expenditure was credited towards fees required by local law. If no other parties were harmed by this provision of the CBA, then it produced a Pareto improvement. Such an improvement seems attributable to a reduction in information asymmetries between the developer and the coalition, stemming from the negotiations. Notably, however, a Pareto-efficient outcome could involve substantial gains for the developer and few (or no) gains for the coalition, relative to the counter-
factual status quo. Interviews conducted by Saito and Truong (2014, 3) indicate that "in comparison to the subsidies [LASED developer] AEG received, community members note that the cost of the CBA for the developer is small, or 'pebbles,' as one immigrant stated."

Evidence from Los Angeles suggests that CBAs can promote redistribution by serving as means of accountability for the enforcement of existing laws. (I am unaware of any evidence clearly indicating the impact of CBAs on social movements or on public opinion concerning labor unions.) The park improvements and recreation facility resulting from the LASED CBA demonstrate one way that CBAs, considered as standalone documents, could produce such an outcome. CBAs could also contribute to enforcement and implementation of local labor laws. Although the publicly available evidence does not shed light on the efficacy of the LASED CBA in this regard, this goal appears to have been one reason for LAANE's involvement in CBAs. The City of Los Angeles did not vigorously enforce its living wage ordinance, enacted in 1997, which required certain employers receiving financial assistance from the city to pay employees a statutorily specified wage exceeding the state's minimum. 44 Through agreements involving projects such as the Hollywood and Highland, LAANE sought to promote redistribution by improving implementation of the city's living wage law (S. Luce 2004, 122).

Alternatively, CBAs could impede redistribution. Vicki Been (2010, 26) contends that "[a] jurisdiction-wide approach to the local government's needs is likely to be more comprehensive, better planned, and better integrated with the local government's other initiatives." This claim assumes that "comprehensiveness" and "better integrat[ion]" are

44 Los Angeles City Ord. No. 171547 (1997); Los Angeles City Council File No. 96-1111-S1. In a "report card" submitted to the city council, living wage proponents gave the city's Bureau of Contract Administration a C-minus, citing problems including inadequate enforcement and outreach (S. Luce 2004, 84). In a report commissioned by the city, UCLA law professor Richard Sander indicated, "The [Bureau of Contract Administration's] performance in implementing [the living wage ordinance] has been so dismal to date that I am not optimistic that it can be remedied" (quoted in S. Luce 2004, 85).
normatively desirable goals, but both could conflict with redistribution and the development of social movements. As an empirical matter, if a local government does not assiduously implement redistributive policy, a CBA might be an effective corrective.

With respect to redistribution, the applicability of Been's critique could hinge on the broader constellation of local government entities. Notably, Been's example of a problematic CBA is not the LASED CBA, but the Atlantic Yards CBA. As described in Chapter Four, per capita social welfare spending is far greater in the City of New York than in the City of Los Angeles. As commentators including Wolf-Powers (2010) have noted, CBAs may be relatively ineffective in places with fewer slack resources for redistribution. These commentators have based this observation on poorer cities, where slack resources are relatively small due to an overall dearth of resources. But CBAs may also be less effective in more prosperous cities where slack resources are scarce because relatively significant resources are already devoted to redistribution. (One need not adopt a public choice perspective to believe that U.S. cities, as currently constituted, confront some constraints on redistributive policy due to capital mobility.)

The discrepancy between the redistributive policy of Los Angeles and that of New York long predates the emergence of CBAs. While the causes of this discrepancy are innumerable and debatable, one factor seems beyond dispute: New York State's fiscal policy is substantially more conducive to local redistribution than California's, inasmuch as New York State's revenues have long exceeded its revenue capacity by a magnitude larger than the analogous ratio for California (Yilmaz et al. 2007, tab. 2; Mahdavi 2013, tab. 3; see also U.S. Advisory Commission on Intergovernmental Relations 1993; Yilmaz et al. 2006). (Revenue capacity consists of "taxes the state would have collected if it had applied a set of representative tax rates (calculated as the national average rate for each type of tax)," plus "potential nontax revenue from such sources as
user charges, lotteries, income from sale of property, and interest income" (Yilmaz et al. 2007, 2) (emphasis original). Thus, restricting analysis of redistribution to the four corners of a CBA obscures the important role of both the broader economy and formal mechanisms of public finance in influencing distributive outcomes.

II. Better CBAs or Beyond CBAs?

Viewed as mechanisms of social movement catalysis, transparency, accountability, or redistribution, the CBAs described above have fulfilled few of their proponents' loftiest claims. In this section, I first describe two mechanisms that might improve CBAs: the use of trained facilitators and the creation of requirements concerning the disclosure of information by cities and subsidy recipients. I then discuss why these proposals face an unusually steep uphill battle, and I discuss changes in planning education and practice that may be more plausible and could diminish some obstacles to more democratic land-use regulation.

The presence of a trained convener, capable of addressing imbalances of power and information, could remedy some defects of CBAs (see Susskind and Cruikshank 1987). Camacho (2005b, 278), for example, proposes changes to state legislation that would give developers three options in applying for local approvals:

(1) to seek as-of-right development permit approval that is fully consistent with the local government's land use regulations and comprehensive plan; (2) to apply for approval of a negotiated zoning agreement, in which the local government and developer negotiate over agreement terms in publicly accessible forums utilizing collective information-gathering incorporating extensive public input, and in which agreements are restricted by substantive standards tying negotiations to project impacts; or (3) to apply for approval of a development agreement, in which the government, developer and other substantially affected parties negotiate over agreement terms in publicly accessible forums that utilize collective
information-gathering, public input, and require consensus approval by such parties.\textsuperscript{45}

The third option would entail extensive efforts to identify prospective participants (see Susskind and Thomas-Larmer 1999), joint fact-finding to identify relevant information (see Ehrmann and Stinson 1999), and extensive deliberation. Such a process would require planners to perform a mediating role (see generally Forester 1999).

Cities or states could also require subsidy recipients to disclose information concerning community benefits in a more comprehensible and timely fashion. As a condition of providing any subsidy, a city could require a recipient to provide one month's notice concerning any community benefits. The city could require the subsidy recipient to indicate the extent to which these benefits exceed existing requirements. If the community benefits include in-lieu fees for affordable housing, a subsidy recipient could be compelled to estimate the percentage of the total development cost of each affordable unit covered by the in-lieu fees. Such estimates should be based on a standard development cost formula promulgated by a city housing department and based on a national standard, such as the HOME Multifamily Underwriting Template published by the U.S. Department of Housing and Urban Development. The subsidy recipient's disclosure should also indicate whether the subsidy recipient has agreed to any living wage goals exceeding legal requirements and, if so, whether these goals are binding. The city should also require subsidy recipients to provide publicly available annual reports concerning the status of any living wage agreement, indicating the percentage of jobs that are "living wage jobs" as defined by the city. (If the community benefits include jobs characterized as "living wage jobs" that do not meet the city's criteria, then a subsidy recipient should be required to describe the deviation.)

\textsuperscript{45} "For the development agreement alternative, in circumstances in which consensus becomes infeasible, the developer could subsequently opt for the negotiated zoning process and final review by the local legislative body of the alternatives developed during deliberations" (Camacho 2005b, 278 n. 24).
Similarly, cities could provide more timely and comprehensible information concerning public costs and benefits. Subsidy programs could require release of an independent public cost estimate, at least one month prior to the approval of any relevant subsidy. Such an estimate would be produced by an independent city agency such as the New York City Independent Budget Office. (Under the New York City Charter, the mayor has no authority over appointment of the Independent Budget Office's director, the director has exclusive authority over the appointment and duties of the agency's personnel, and the mayor cannot reduce the agency's budget without proportionally reducing the budget of the mayoral Office of Management and Budget.46) These estimates should be prepared according to the generally accepted accounting principles contained in the most recent edition of the Federal Accounting Standards Advisory Board Handbook of Federal Accounting Standards and Other Pronouncements, as Amended. A professional association such as the Government Finance Officers Association of the United States and Canada should create national standards for such estimates, so that intra- and inter-city comparisons would be possible. Each estimate should be accompanied by a summary form, indicating the projected budgetary and opportunity costs to the city, public authorities, the state, and the federal government, along with the estimated direct and indirect benefits.

All of the mechanisms outlined above would serve educative purposes, which could complement activities that some groups involved in CBAs currently undertake. For example, SAJE and other community-based organizations seek "to provide people with the information, knowledge and critical conversations that can inform collective decision-making" (Haas 2011, 87). Such efforts typically focus on direct education of working-class residents, rather than public officials, and they frequently aim to puncture the mystique of technical expertise.

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46 New York City Charter § 259.
Efforts to change the study and practice of planning, however, could also promote popular education concerning land-use and development policy. In both New York and Los Angeles, CBAs are accretions on an exceptionally intricate corpus of regulation concerning the financing and design of large-scale development projects. The problems of CBAs are inextricably linked to this complexity and the resulting incomprehensibility of much public policy. Such complexity can have instrumental uses, including shielding arrangements from public scrutiny, circumventing limitations imposed by higher levels of government, and facilitating political blame-avoidance and credit claiming (see, e.g. Chapman 1998; Dardia 1998; see generally Lowi 1979; Weaver 1986). Both the complexity itself and its instrumental uses can undermine core principles of the Code of Ethics and Professional Conduct adopted by the American Institute of Certified Planners (2009), including planners' obligation to "provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers," and to "give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them."

While some CBAs examined in this dissertation may have mitigated certain problems of contemporary urban land-use regulation, they may have done so at a steep cost. The Los Angeles Sports and Entertainment District CBA, for example, appears to have helped community groups ensure the enforcement of existing laws and expedite required spending. Its benefit to community groups and organized labor as a mechanism of long-term mobilization is more uncertain. Particularly given the lack of documented material benefits produced by this CBA, its potential benefit as a source of mobilization is no less speculative than its potential costs, which have received far less attention. The available evidence suggests that the CBAs examined in this dissertation have not significantly improved the quality of information concerning the associated
development projects and, indeed, may have generated more confusion than clarity. Such confusion can undermine opportunities for people "to have a meaningful impact on the development of plans and programs that may affect them."

Notably, confusion concerning the guarantees contained in a CBA can occur despite – rather than because of – the actions of participants in CBA processes. In Los Angeles, for example, participating community groups and their allies expended considerable effort to disseminate relevant information. But CBAs are inextricably linked with an opaque welter of development policy instruments, such as fee waivers, tax abatements, loan guarantees, land write-downs, and tax-increment financing. Even with extensive expertise and ample time, the aggregate distributive consequences of these policies are difficult (if not impossible) to identify with any precision.

Planning scholarship concerning these approaches to economic development, however, generally focuses on their economic rather than political effects. The CBAs analyzed in this dissertation are not alternatives to such mechanisms, but supplements. And like these other, more traditional mechanisms of redevelopment, they recast redistributive policy in private terms. By obscuring the role of government in addressing social problems and hampering identification of the costs and benefits of policy decisions, such a project of recharacterization may impair political participation, producing regressive distributive consequences that many planners and community organizers, among others, would find troubling (see Howard 1997; Hacker 2002; Mettler 2011).

Standing alone, efforts by planning educators to emphasize the impact of privatized governance on democracy and distribution surely will not be enough to overcome the troubling

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47 As Rachel Weber (2013, 295) notes, for example, scholarly debates about tax-increment financing typically concern its effects "on development and property values."
incentives, described above, that may impel public officials to favor the associated policy mechanisms. Nevertheless, defining the effect of such mechanisms on local democracy as a problem worth the attention of planners is – unlike any of the other proposals sketched above – readily achievable. While we would be naïve to overestimate the potential influence of professional education, we would be cynical to discount it.
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