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#### **What Can Corporations Teach Governments About Democratic Equality?**

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# WHAT CAN CORPORATIONS TEACH GOVERNMENTS ABOUT DEMOCRATIC EQUALITY?

BY TOM W. BELL\*

## I. INTRODUCTION

Politicians and commentators tend to portray the one-person/one-vote principle as fundamental to democratic government. Business corporations and other private entities, in contrast, tend to operate on the principle of one-share/one-vote, a practice that allows one person to exercise more control than another over their collectively owned institution.<sup>1</sup> How can we explain that difference?

In times past, we might have pointed to the differing ends of public and private governance. Whereas public democracies aim at promoting the common good of an entire polity, private entities aim at more-narrow goals, such as generating profit or managing a jointly owned residence. As business corporations and related institutions have grown larger and come to offer a wider range of services, however, the distinction between public and private governance has grown blurry. The largest cooperative residential corporation in the United States, Brooklyn's Co-Op City, houses more than 50,000 shareholder-tenants and provides them with utilities, roads, stores, offices, schools, parks, security, and other services normally associated with a municipal provider.<sup>2</sup> The largest homeowners

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<sup>1</sup> See, e.g., American Bar Association, *Model Business Corporation Act* sec. 7.21 (2010) ("[U]nless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting").

<sup>2</sup> Elsa Brenner, "Everything You Need, in One Giant Package," *New York Times*, April 6, 2008, at <http://www.nytimes.com/2008/04/06/realestate/06live.html?pagewanted=all&r=0> (visited October 14, 2012).

association in the United States, Highlands Ranch, Colorado, includes over 30,000 homes and 90,000 residents.<sup>3</sup> In all respects but its origins and legal status, it resembles a conventional municipality. Many voices call for expanding access to private government. Soon, private developers may build and manage entire “startup cities” in the developing world.<sup>4</sup>

The burgeoning success of proprietary communities suggests that they have something to teach their political counterparts. But how can the private sector fulfill the principles of democratic equality so esteemed by the public sector? By affording full protection to all rights holders, as individuals and owners alike.

The one-person/one-vote approach popular in political contexts works best for protecting the kinds of personal rights — freedoms of conscience, speech, and innumerable others — to which each of us has equal claim. But that should not end our pursuit of democratic equality. Corporate law’s one-share/one-vote principle works best for protecting property rights — specifically, the property rights of those who invest in a community.

This essay argues that an egalitarian democracy should include both forms of vote. Each resident of a polity should enjoy equal access to *corrective* democratic procedures, allowing the people to defend their individual rights by submitting officials and laws to popular veto. Each of a polity’s shareholders should enjoy equal access to *constructive* democracy, allowing them to manage the creation and management of their jointly owned community. This double democracy combines both public and private methods of governance, giving equal treatment to personal rights of residents and the property rights of owners. Respect for democratic equality demands nothing less.

This is not just a matter of fundamental fairness. Business corporations, residential cooperatives, and similar institutions demonstrate how aligning control with ownership can help a community flourish. Conventional cities and other polities suffer from not being owned by anyone, yet used by everyone. Can they be saved? It is not easy to see how private developers could turn around a civic disaster like present day Detroit, Michigan even if they made an effort — the unprecedented, expensive, and politically risky venture.<sup>5</sup> The sort of startup cities planned in Honduras and elsewhere in the world might, however, offer

<sup>3</sup> Highlands Ranch Community Association, “Home Owner Overview,” <http://hrcaonline.org/HomeOwners/HomeOwnerOverview.aspx> (describing it as “the largest homeowners association in the United States”) (visited October 14, 2013); Highlands Ranch Community Association, “HRCA Overview,” <http://hrcaonline.org/HRCAInfo/Overview.aspx> (claiming to have 93,471 residents, 30,200 homes, and 3,356 apartments) (visited October 14, 2013).

<sup>4</sup> See *infra* sec. VI.B.

<sup>5</sup> Difficult, but not impossible. For a proposal to effectively privatize governance of part of Detroit, see Rodney Lockwood, *BELLE ISLE: DETROIT’S GAME CHANGER* (Raleigh, NC: lulu.com, 2013).

a chance to put the principles of corporate governance to work in a new kind of hybrid democracy.<sup>6</sup>

This essay focuses on business corporations because they offer familiar and well-studied examples of jointly owned private entities governed by the one-share/one-vote rule. They are not the only or even best examples of private alternatives to public institutions, though. The typical publicly traded business corporation has no more contact with its shareholders than sending them distributions (if any) and occasionally inviting a vote. Cooperative residential corporations, because they house their shareholders and provide them with services normally provided by a municipality, offer a more telling contrast. The success of one-share/one-vote in the context of cooperative residential corporations suggests that the same rule might work in cities, too. Most of the law and commentary about corporations concerns generic business ones, and this essay largely follows suit.

This essay focuses on municipalities because they typically assume a corporate form, making them especially apt contrasts for business corporations,<sup>7</sup> and because the largest sorts of private communities have come to rival cities in terms of numbers of residents and the services offered to them.<sup>8</sup> Many of the same points made here about cities, also apply to other polities — counties, states, nations, and others. Political institutions lack owners in any conventional sense of the word. If they are democracies in the usual sense, polities use elections to distribute governing power on a one-person/one-vote basis. Observations about cities made herein thus apply, *ceteris paribus*, to other political institutions.

Section II discusses the non-owned status of cities, establishing not only that they and other polities lack owners but that they suffer neglect and exploitation as a result. In that, as Section III explains, cities differ from business corporations and other private entities, where instead various parties own various percentages of the undivided whole and exercise corresponding control over their common government. Section IV explores why one-person/one-vote governance proves so popular for political institutions; Section V does the same for the one-share/one-vote governance

<sup>6</sup> For more on the Honduran reforms, see Tom W. Bell, "No Exit: Are Honduran Free Cities DOA?" *The Freeman*, November 26, 2012, at [http://www.fee.org/the\\_freeman/detail/no-exit-are-honduran-free-cities-doa](http://www.fee.org/the_freeman/detail/no-exit-are-honduran-free-cities-doa) (describing the failure of the first effort) (visited October 14, 2013); Tom W. Bell, "Startup City Redux Honduras: from RED to ZEDE to ... Freedom?" *The Freeman*, June 27, 2013, at [http://www.fee.org/the\\_freeman/detail/startup-city-redux](http://www.fee.org/the_freeman/detail/startup-city-redux) (describing the success of the second) (visited October 14, 2013).

<sup>7</sup> William A. Fischel, *The Homeowner Hypothesis: How Home Values Influence Local Government Taxation, School Finance, and Land-Use Policies* (Cambridge, MA: Harvard University Press 2001), 23: ("City governance is more like that of business corporations than it is like state government").

<sup>8</sup> Donald J. Boudreaux and Randall G. Holcombe, "Contractual Governments in Theory and Practice," in David T. Beito, Peter Gordon, and Alexander Tabarrok, eds., *The Voluntary City* (Denver, CO: Independence Institute, 2002), 289–302, at 294 (offering examples of large private communities).

typical of business corporations, residential cooperative corporations, and related private entities.

Having shown the merits of both the one-person/one-vote rule and the one-share/one-vote rule in each their traditional, respective applications, the essay then turns, in Section VI, to explaining how the two might work together. This results in a sort of double democracy. The one-person/one-vote rule protects personal individual liberties by recognizing a public right to veto abusive laws or personnel. The one-share/one-vote rule protects the property rights of those who own the city *qua* corporation, encouraging them to build it and allowing them to direct its governance.

The essay concludes that respect for democratic equality demands that we treat all rights the same. Subjecting individual personal liberties to the exclusive dictates of property owners would risk oligarchic abuse. Subjecting private property to the whims of the majority would derogate owners' rights, causing private and public woe. A well-rounded democracy must include safeguards both for individuals' personal rights and owners' property rights.

## II. THE NON-OWNED STATUS OF CITIES

Who owns a city? Let us set aside poetic fancies. Sticking to the dry law of property, we have to answer the question: Nobody.

No single person or group of people holds title to the city as a whole. Private parties own pieces of it, of course — the homes and buildings that line city streets, for instance. But that does not give them ownership of the whole city. Nobody owns shares in the city *qua* municipal corporation. That puts the municipal corporation in sharp contrast to many other types of corporations, such as business corporations and residential cooperatives.

The conventional city, though a municipal corporation, has no shareholders. It is hardly alone in that. Charitable, educational, and related tax-exempt corporations also lack shareholders. These kinds of legal entities, because they do not seek profits, have no occasion to make distributions. Cities and other tax-exempt organizations thus do not recognize a class of people holding fractional shares of the entirety of the entity's assets — people called the "shareholders" of a business corporation. Instead of private profit, these tax-exempt organizations pursue the public good; instead of shareholders who govern on a one-share/one-vote basis, cities have citizens who govern on (something roughly approximating) a one-person/one-vote basis.<sup>9</sup>

Some readers might argue that cities in fact *do* have owners — not in terms of legal theory, but in terms of practical politics. On that view, the people who control a city, whether state politicians, local voters, city

<sup>9</sup> Their counterparts, in the case of those private tax-exempt entities, are called "members." Not holding fractional shares of the entity these members, like residents of a city, vote on a one-person-per-vote basis in matters of corporate governance.

politicians, or civic bureaucrats, effectively own it.<sup>10</sup> But even on a functional analysis, political control does not afford the same rights that property does.

Should any doubt remain on that count, the remainder of this section sets up the pins and knocks them down. Subsection A explains why nobody can claim to have exclusive rights, that hallmark of property, in a city. Subsection B does likewise with regard to other rights that, in the traditional account, comprise property's "bundle of sticks."

Other readers might happily concede that the municipal corporation lacks owners, embracing it as common knowledge and celebrating it as an essential and desirable feature of civic government. "Isn't that the whole point of a public institution?" They might ask. Perhaps so. But the non-owned status of the city leaves it something of an orphan. With no owners, the city lacks for guardians who regard its welfare as inextricably linked to their own. Readers already convinced that nobody owns a city might want to skip ahead to subsection C, which discusses how lack of ownership can doom a city.

#### *A. No exclusive rights to a city*

By most accounts, property comprises a bundle of rights.<sup>11</sup> Foremost among the rights that characterize property: the right to exclude others.<sup>12</sup> The United States Supreme Court described the right to exclude as "one of the most essential sticks in the bundle of rights that are commonly characterized as property,"<sup>13</sup> in *Kaiser Aetna v. United States*, and as "the hallmark of a protected property interest," in *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*.<sup>14</sup> The right to exclude characterizes property — but not conventional cities, those political and public institutions.

The openness of the city marks one of its most fundamental distinctions from private gated communities. The city's streets, sidewalks, and parks stand open to the public; its common networks — its sidewalks, roads, subways, utilities, and the like — stand open to anyone who satisfies the applicable rules of use (and due to imperfect enforcement of property rights, many people who do not). Cities own some property open only to city personnel, of course — city offices, vehicles, drains, and so forth.

<sup>10</sup> See, e.g., Fischel, *The Homeowner Hypothesis*, 30 (describing homeowners as akin to "the primary shareholders of municipal corporations").

<sup>11</sup> See, *Black's Law Dictionary*, 6th ed. (St. Paul, MN: West Publishing, 1990), 1216 (defining "property" as: "In the strict legal sense, an aggregate of rights which are guaranteed and protected by government").

<sup>12</sup> See, Thomas W. Merrill, "Property and the Right to Exclude," *Nebraska Law Review* 77 (1998): 730–55 at 731 ("[T]he right to exclude others is a necessary and sufficient condition of identifying the existence of property").

<sup>13</sup> 444 U.S. 164, 176 (1979).

<sup>14</sup> 527 U.S. 627, 673 (1999).

That shows only that a city *qua* legal person can own its own property, though. It is not to say that any other person, natural or otherwise, owns a share of the undivided entirety of the city.

Granted that some rights associated with city government — the sole right to occupy the mayor's seat, for instance, or to not be terminated from the police force without cause and due process — can be enjoyed solely on an individual basis. The same might be said of the many various parcels of private real estate that line city streets. Some people enjoy exclusive rights to *some parts* of the city, true. But nobody owns any exclusive rights to the city as a whole.

### *B. Other property rights lacking from cities*

What about the other rights in the bundle that makes up property? Cities do not have very good claim to bestowing those rights on anyone, either. For instance, some scholars have described the right to *enjoy* property — to occupy or to profit from it — as one of its most fundamental attributes.<sup>15</sup> As with the right to exclusive use, however, the city affords the right to enjoy its benefits only sporadically and piecemeal. Whereas you can go anywhere you please in your own home, you can visit only specially designated areas of the city. And whereas you can claim your *pro rata* share of any gains to be had from owning stock in a commercial corporation, whether by way of distributions or equity value, nobody expects a city to enjoy gains in excess of costs, much less to disgorge those gains to gratified taxpayers. Shareholders not only expect distributions from business corporations; they demand them.

Legal authorities have characterized the power of alienation — by which the owner of a piece of property can destroy it or transfer title to another — as one of property's most fundamental attributes.<sup>16</sup> But can anyone give up or give away their rights to a city? The question hardly makes sense. You cannot alienate what you do not own in the first place. The same mismatch mars claims that rights in a city can be acquired, preserved, or protected against takings for public use — rights that owners of property exercise as a matter of course.<sup>17</sup> Moving to a city or otherwise winning some political power over its fate hardly equates to acquiring it and, no title having been obtained, there is nothing to preserve or protect from takings.

<sup>15</sup> See, Adam Mossoff, "What Is Property? Putting the Pieces Back Together," *Arizona Law Review* 45 (2003): 371–443 at 390–403 (arguing for a theory of property that does not emphasize exclusion rights over use rights).

<sup>16</sup> See, *Restatement (3rd) of Property: Servitudes* (Philadelphia, PA: American Law Institute, 2000), secs. 3.4, 3.5 (documenting the common law's traditional repugnance for unreasonable restraints on alienation of property, whether direct or indirect).

<sup>17</sup> For a fuller explanation of these attributes of property, as well as an explanation of why they do not apply to copyright, see Tom W. Bell, *Intellectual Privilege: Copyright, Common Law, and the Common Good* (Arlington, VA: Mercatus Center, 2013), chap. 5.



### C. *The problem of not being owned*

Political theorists have long observed that non-owned resources suffer overuse. As Garrett Hardin put it in his seminal essay on the topic, "Freedom in a commons brings ruin to all."<sup>18</sup> Hardin wrote with environmental concerns foremost in mind but the same general concept applies to a city: If nobody owns it, anyone can exploit it. What theory suggests, experience confirms; consider, for example, the bleak wastes of present-day Detroit.<sup>19</sup>

Not every city is a Detroit, of course, and no city suffers complete neglect. Instead of owners, cities rely on hired guardians and civically minded volunteers to protect their assets from unrestrained exploitation. Those devices seem fated always to permit a great deal of nibbling around the edges, however, and they often allow private interests to consume great chunks of the public good.<sup>20</sup> Privately owned corporations likewise suffer from the imperfect enforcement of property rights, resulting in tragedies of the commons ranging from stolen office supplies to stolen retirement accounts. We speak here of questions of degree, and on that basis it seems fair to say that cities suffer comparative disadvantages from not being owned.

## II. THE OWNED STATUS OF BUSINESS CORPORATIONS AND OTHER PRIVATE ENTITIES

Which types of corporations have owner-shareholders? Large, publicly traded business corporations like IBM, Inc. or Apple, Inc. do, of course. That hardly exhausts the options, though. Small, closely held commercial corporations have shareholders, too. The smallest of them have only one.<sup>21</sup> Large corporations can easily have as many shareholders as large cities have residents.<sup>22</sup> Politics looking for lessons in democratic equality would thus do well to consider how the rules of corporate governance both give shareholder majorities control over a firm's management and protect the rights of minority shareholders.

<sup>18</sup> Garrett Hardin, "The Tragedy of the Commons," *Science* 162, December 13 (1968): 1243–48, <http://www.sciencemag.org/content/162/3859/1243.full> (visited October 14, 2013).

<sup>19</sup> Jena McGregor, "What killed Detroit? Let's not forget the 'who'," *Washington Post*, July 19, 2013, <http://www.washingtonpost.com/blogs/on-leadership/wp/2013/07/19/what-killed-detroit-lets-not-forget-the-who/> (visited October 14, 2013) (describing how political mismanagement resulted in waste of Detroit's assets).

<sup>20</sup> See, e.g., Simon Winchester, *A Crack in the Edge of the World* (New York: Harper Collins, 2006), 223–29 (describing how rampant corruption in San Francisco's government made the city especially vulnerable to the Great Quake of 1906).

<sup>21</sup> Richard D. Freer and Douglas K. Moll, "Principles of Business Organizations" (St. Paul, MN: West Publishing, 2013), 313: ("In all states, there can be as few as one" shareholder of a close corporation).

<sup>22</sup> The Indian conglomerate, Reliance Industries Limited, by some accounts the most widely held corporation in the world, has approximately three million shareholders. Wikipedia, "Reliance Industries," [http://en.wikipedia.org/wiki/Reliance\\_Industries](http://en.wikipedia.org/wiki/Reliance_Industries) (visited January 31, 2014).



Politics can also learn from other kinds of commercial firms that, while not classified as business corporations, have functional equivalents of shareholder-owners. These jointly owned and operated entities include:

- Business trusts
- Limited partnerships and related statutory creations
- Cooperative corporations

The first category includes the (so-called) Massachusetts business trust<sup>23</sup> and statutory analogues designed to correct perceived deficiencies in the common law form of the business trust.<sup>24</sup> Though called “beneficiaries” instead of “shareholders,” the owners of these trusts govern them via fractional shares and proportional voting mechanisms much like the voting mechanisms used to govern corporations.<sup>25</sup> A common law business trust could thus incorporate the Model Business Corporation Act by reference, including its one-share/one-vote rule.<sup>26</sup> Other legislatively created legal persons governed by similar mechanisms include limited partnerships, limited liability partnerships, limited liability limited partnerships, and limited liability companies. Instead of “shareholders,” the law calls the owners of these entities “(limited) partners”<sup>27</sup> or “members.”<sup>28</sup>

Cooperatives represent yet another noncorporate legal person wherein members own fractional interests of the whole.<sup>29</sup> Of their many varieties, cooperative residential corporations with tenant-shareholders who exercise management rights in proportion to ownership prove most interesting for present purposes.<sup>30</sup> In that, they resemble the more widely known and

<sup>23</sup> J. Dennis Hynes and Mark J. Loewenstein, *Agency, Partnership, and the LLC: The Law of Unincorporated Business Enterprises*, abridged 7th ed. (Newark, NJ: LexisNexis, 2008), 4 (explaining that other states also recognize the entity).

<sup>24</sup> See, e.g., Del. Code Ann. Tit 12 secs. 3801–3862 (2006); Uniform Law Commission, *Uniform Statutory Trust Entity Act* (2009) (offering a uniform statute governing the use of statutory trusts as a mode of business organization), <http://uniformlaws.org/Act.aspx?title=Statutory%20Trust%20Entity%20Act> (visited October 9, 2013).

<sup>25</sup> Hynes and Loewenstein, *Agency, Partnership, and the LLC*, 5.

<sup>26</sup> American Bar Association, *Model Business Corporation Act* (2010). The MBCA has been adopted by twenty-four U.S. states.

<sup>27</sup> Accuracy demands that anyone speaking of the owners of a limited partnership include the modifier, as such entities also include general partners. Because all their partners enjoy the same legal protections, in contrast, limited liability partnerships and limited liability limited partnerships do not need to qualify their owners as “limited” partners. See, e.g., State of Missouri, “Missouri Business Portal, Frequently Asked Questions: Partnerships” (2007): <http://www.business.mo.gov/faq.asp?je=0&s=4&> (visited October 14, 2013) (describing various partnership-based entities).

<sup>28</sup> *Ibid.*, “Corporations,” <http://www.business.mo.gov/faq.asp?je=0&s=3&> (describing various corporation-based entities).

<sup>29</sup> Wikipedia, “Cooperatives,” <https://en.wikipedia.org/wiki/Cooperative> (visited September 25, 2013).

<sup>30</sup> That is the predominant form of cooperative residential corporation (*ibid.*), but not the only one; those run on the Rochdale Principles stick to the one-person/one-vote pattern more common in politics. Wikipedia, “Rochdale Principles,” [https://en.wikipedia.org/wiki/Rochdale\\_Principles](https://en.wikipedia.org/wiki/Rochdale_Principles) (visited September 25, 2013).

studied condominium associations, whose members likewise own fractional and often unequal shares of common areas.<sup>31</sup> Because condominiums include areas not owned in common, however, they offer a less apt example of a private counterpart to a public entity.

Cooperative residential communities rival cities in size and the range of services they provide. The largest of them, Co-Op City, in New York City's Bronx borough, provides over 50,000 shareholder-tenants with housing, utilities, roads, stores, offices, schools, parks, places of worship, security, and others amenities normally associated with a municipality.<sup>32</sup> Far from an enclave for the rich, Co-Op City serves a distinctly middle class and racially diverse population; census figures classify about 55 percent of the residents as black, 25 percent as Hispanic, and 20 percent as white.<sup>33</sup> It resembles, in other words, a typical urban community — except that its residents own it.

### III. WHY ONE-PERSON/ONE-VOTE?

The Declaration of Independence calls it “self-evident, that all Men are created equal . . . with certain inalienable Rights,” among which it includes “Life, Liberty, and the Pursuit of Happiness.”<sup>34</sup> The one-person/one-vote principle affirms that proposition by affording each member of a given polity an equal say in matters of common governance. It does so imperfectly, of course. Despite its name, the one-person/one-vote principle can leave many people, such as noncitizen residents or disenfranchised felons, to suffer the effects of government without enjoying any corresponding right to take part in elections. Nor does the principle give each person a vote on every matter of common concern. Some rights, thanks to their inalienability, fall outside the electoral process, protected as sacrosanct despite the will of the majority.<sup>35</sup>

Politics is not the place to expect consistency, much less perfection. As a matter of general principle, though, one-person/one-vote promotes democratic equality by giving each person whose inalienable rights the government might put at risk the same amount of power to control the government through electoral processes. Because each citizen has the same rights, in other words, each citizen gets the same vote.

<sup>31</sup> See Yoram Barzel and Tim R. Sass, “The Allocation of Resources by Voting,” *Quarterly Journal of Economics* 10, no. 5 (1990): 745–71 (describing governance structures used by condominium associations).

<sup>32</sup> Elsa Brenner, “Everything You Need, in One Giant Package,” *New York Times*, April 6, 2008, [http://www.nytimes.com/2008/04/06/realestate/06live.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2008/04/06/realestate/06live.html?pagewanted=all&_r=0) (visited October 14, 2012).

<sup>33</sup> *Ibid.* “Of the complex’s 55,000 current residents, more than 8,300 are over 60 years of age. About 55 percent are black, 25 percent Hispanic and 20 percent white, census figures show.”

<sup>34</sup> *Declaration of Independence*, para. 2, 1 Stat. 2 (1776).

<sup>35</sup> See, e.g., *U.S. Constitution*, Amendments I–IX; XIV.

The one-person/one-vote principle has so much intuitive appeal that, at least in public discourse, it seldom receives critical analysis. Politicians tend to invoke it as an unquestioned good, as in Nelson Mandela's proclamation that "Africans require, want, the franchise on the basis of one-man/one-vote."<sup>36</sup> Closer to home, United States Senator Barbara Boxer recent asserted, "Every citizen of this country should be guaranteed that their vote matters, that their vote is counted, and that in the voting booth, their vote has as much weight as that of any CEO, any member of Congress, or any President."<sup>37</sup>

Once we advance beyond mere platitudes, however, it quickly becomes evident that the one-person/one-vote principle does not represent the only or best approach to governance. For one thing, as the next section details, it stands in sharp contrast to the one-share/one-vote rule that typifies the governance of business corporations and other private institutions. Furthermore, as the remainder of this section documents, even in political contexts the one-person/one-vote principle does not prove as universal as its popular invocation might suggest.

Subsection A describes how the United States Supreme Court's jurisprudence on voting rights leaves one-person/one-vote more of an aspiration than a reality. Subsection B describes how special assessment districts and special purpose districts abandon the principle entirely, opting instead for the political equivalent of one-share/one-vote. Together, they demonstrate that one-person/one-vote democracies affirm equality only roughly and subject to many exceptions.

#### *A. The Supreme Court's limited support of one-person/one-vote*

Courts have struggled to enforce the one-person/one-vote principle with anything like the sort of mathematical rigor that the phrase suggests. The law has developed in cases disputing the allocation of votes across electoral districts, which by their nature vary in population. The United States Supreme Court, despite making concessions to practical politics, has given some bite to the principle of one-person/one-vote. It found the principle inherent in both Article I of the Constitution, which requires that Congressional representatives be chosen "by the people of the several States"<sup>38</sup> and "apportioned among the several States . . . according to their respective Numbers,"<sup>39</sup> and in the Fourteenth Amendment, which requires that no state "deny to any person within its jurisdiction the equal

<sup>36</sup> Brian Resnick, "Nelson Mandela's First Television Interview," *National Journal*, June 26, 2013, <http://www.nationaljournal.com/politics/nelson-mandela-s-first-television-interview-20130626> (visited October 14, 2013) (quoting interview).

<sup>37</sup> Office of Senator Barbara A. Boxer, *Press Release: Sens. Clinton, Boxer, Rep. Jones, Others Unveil Major Election Reform Bill*, February 18, 2005.

<sup>38</sup> U.S. Constitution, Article I, sec. 2 cl.1.

<sup>39</sup> *Ibid.*, cl. 2.

protection of the laws."<sup>40</sup> From those provisions, the Supreme Court concluded in *Westberry v. Sanders*<sup>41</sup> that "as nearly as practicable one man's vote in a congressional election is to be worth as much as another's."<sup>42</sup> In like fashion, the Court in *Reynold v. Sims* held that districts drawn up for state legislatures also had to be roughly equal in population.<sup>43</sup> The Court in *Board of Estimate of City of New York v. Morris* imposed the same requirement on municipal elections.<sup>44</sup>

Those and other decisions have paid homage to the principle of one-person/one-vote, granted. Read in context, however, they do not stand for the proposition that federal, state, and local election must give equal weight to each person's vote. How could they, given that the Constitution itself assigns every state, regardless of how many voters it contains, two popularly elected senators?<sup>45</sup> Despite the rhetorical power of the one-person/one-vote principle, therefore, it evidently stops well short of demanding perfect equality. Courts have instead held that the principle mandates that districts drawn up for the purpose of holding popular elections provide each voter with roughly the same political power.

Do conventional polities fail to pay adequate respect to the principles of democratic equality? Regardless, newer forms of political governance entirely turn their back on the idea. As the next subsection describes, courts have completely exempted some democratic processes from the one-person/one-vote rule.

### *B. Special political districts' abandonment of one-person/one-vote*

Though most people tend to associate political democracies with the one-person/one-vote principle, the connection does not hold universally. In fact, the United States includes a growing number of special districts that allocate votes in a manner that more resembles corporate than public governance. Scholars of these political oddities call them "special purpose districts" when implemented at the state level and "special assessment districts" at the city level, but the same principles apply throughout.<sup>46</sup> In any case, voting power gets allocated not on a one-person/one-vote basis but instead according to how much of a given voter's property falls within the district's jurisdiction. In that, special political districts mimic the one-share/one-vote rule followed by business corporations and related private entities.

<sup>40</sup> *Ibid.*, Amend XIV, sec. 1.

<sup>41</sup> 376 U.S. 1 (1964).

<sup>42</sup> 376 U.S. 1, 8 (1964).

<sup>43</sup> 377 U.S. 533 (1964).

<sup>44</sup> 489 U.S. 688 (1989).

<sup>45</sup> *U.S. Constitution*, Amendment XVII.

<sup>46</sup> See Kenneth A. Stahl, "Neighborhood Empowerment and the Future of the City," *University of Pennsylvania Law Review* 161 (2013): 939–1008, at 963 (contrasting the two kinds of districts).

Consider for instance the special purpose districts at issue in the Supreme Court cases of *Salyer Land Co. v. Tulare Lake Basin Water Storage District*<sup>47</sup> and *Ball v. James*.<sup>48</sup> Both districts in these cases imposed mandatory fees on landowners who received water from the districts and allocated the right to vote for district directors on the basis of the amount of property — measured according to assessed valuations in the former case<sup>49</sup> and acreage in the latter<sup>50</sup> — a given voter had within the district. Though challengers accused each district of violating the principle of one-person/one-vote, the Supreme Court upheld both on grounds that, in contrast to general purpose electoral districts that affect all voters equally, these special purpose districts did little more than provide water and threatened to have a disproportionate impact on the landowners singled out to pay district fees.<sup>51</sup>

In like fashion, the Second Circuit in *Kessler v. Grand Central District Management Association* upheld as constitutional a special assessment district established by New York City to fund the provision of services in the neighborhood surrounding Grand Central Station.<sup>52</sup> As in *Salyer* and *Ball*, the district at issue in *Kessler* allocated the power to vote for district directors in proportion to the amount of property each voter had within the district.<sup>53</sup> And, as in *Salyer* and *Ball*, the court in *Kessler* found this deviance from the one-person/one-vote principle constitutional on grounds that the district had narrow functions and had much more of an impact on landowners than on the public at large.<sup>54</sup>

Although *Salyer* and *Ball* proved more influential as a matter of law, the sort of district at issue in *Kessler* — a municipally created and administered business improvement district (“BID”) — has proven more popular in practice. The United States now has nearly 1,000 BIDs, with 67 in New York City alone and others in almost every one of the fifty largest cities, including Los Angeles, Chicago, Houston, Philadelphia, Atlanta, San Francisco, Seattle, and Washington, DC.<sup>55</sup> No longer can political institutions in the United States claim to uphold one-person/one-vote as sacrosanct. Instead, they have in many cases come to follow corporate law in allocating voting power in proportion to ownership.

<sup>47</sup> 410 U.S. 719 (1973).

<sup>48</sup> 451 U.S. 355 (1981).

<sup>49</sup> 410 U.S. at 725.

<sup>50</sup> 451 U.S. at 359.

<sup>51</sup> *Salyer*, 410 U.S. at 728; *Ball*, 451 U.S. at 370. See also *Southern California Rapid Transit District v. Bolen*, 822 P.2d 875, 877 (Cal. 1992) (holding constitutional a special purpose district formed for the purpose of building a rapid transit system and empowered to allocate voting rights based on the amount of land owned within a district).

<sup>52</sup> 158 F.3d 92 (2nd Cir. 1998).

<sup>53</sup> *Ibid.*, 97.

<sup>54</sup> *Ibid.*, 108.

<sup>55</sup> Wikipedia, “Business improvement district,” [http://en.wikipedia.org/wiki/Business\\_improvement\\_district](http://en.wikipedia.org/wiki/Business_improvement_district) (visited October 14, 2013).

## IV. WHY ONE-SHARE/ONE-VOTE?

Though not originally the norm, the one-share/one-vote model now predominates in business corporations and related private entities.<sup>56</sup> Why? As explained by Barzel and Sass in their groundbreaking study of condominium governance, tying management control to proportionate ownership affords greater returns on investments than a simple one-person/one-vote rule would.<sup>57</sup> On that analysis, the one-share/one-vote rule has come to predominate the governance of business entities because it affords them a competitive advantage. In commerce as in nature, only the fit survive.<sup>58</sup>

Investors do not need abstract theory to help them decide where to put their money, though. They know as a simple matter of fairness that a corporation governed by the one-person/one-vote rule would force them to make a disproportionate sacrifice to the collective good. What rational investor would agree to buy half of a corporation in return for only one vote among thousands in questions of its governance? Without the one-share/one-vote rule, business corporations would never attract enough capital to get off the ground. That practical observation alone suffices to render moot critiques premised on the notion that property rights deserve less protection than other rights. All the philosophizing in the world will not convince investors to put their rights at the mercy of the majority's whims.

The same form of equitable argument that supports one-person/one-vote in political contexts supports one-share/one-vote in commercial ones. The arguments differ only in the values they seek to protect. Properly understood, however, both one-person/one-vote and one-share/one-vote promote equality in terms of equal treatment for equal rights.<sup>59</sup>

The one-person/one-vote rule promotes equality only insofar as each voter faces the same gains and losses from collective governance. That holds true in terms of protecting individual and human rights; a rich man's freedom of conscience is worth no more than a poor man's, for instance. But the one-person/one-vote rule disserves equality when it comes to protecting property. There, a rich man would face a greater risk of loss

<sup>56</sup> Fischel attributes this historical change, which happened in the mid-1800s, to growth in diversification options and share liquidity, which mitigated the concerns of minority shareholders in business corporations that they would suffer oppression by majority shareholders. Fischel, *The Homeowner Hypothesis*, 34–35.

<sup>57</sup> Barzel and Sass, "The Allocation of Resources by Voting."

<sup>58</sup> For an analogous explanation of how evolutionary pressures shape social morality, see Gerald Gaus, "The Egalitarian Species," in the present volume.

<sup>59</sup> This approach does not, however, aim to directly promote equality of status or other outcomes; it allows for the presence of inequalities, so long as they do not arise from violations of rights. Why not? See, Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 160–64 (explaining how liberty upsets patterns).

from bad governance than a poor man would.<sup>60</sup> With regard to protecting property rights, therefore, the one-share/one-vote rule does a better job of promoting equality than the one-person/one-vote rule does.

The discussion above illustrated that, despite the rhetorical appeal of the one-person/one-vote principle, it never binds political institutions to achieving perfect equality and often does not bind them at all.<sup>61</sup> Do similar caveats apply to real world applications of the one-share/one-vote principle? No and yes.

When it wants to, the private sector has no trouble delivering on promises to give each share of a collectively owned organization exactly one vote in questions of common governance. Corporations face nothing like the discrepancies that inevitably arise between the populations of various electoral districts — discrepancies that have convinced the Supreme Court to demand no more than rough fulfillment of the one-person/one-vote principle in political contexts. Furthermore, though the court decisions and statutes regulating the governance of corporations and other jointly owned and managed business entities do include provisions protecting those who own minority stakes from majority owners using the one-share/one-vote rule to unfair effect, these protections do not work by directly attacking voting mechanisms but instead by providing for judicial review of questionable governance practices.<sup>62</sup> The one-share/one-vote rule so common in private contexts thus appears to have more sticking power than its political counterpart, the one-person/one-vote principle.<sup>63</sup>

It bears noting, however, that corporations and similar entities do not always implement the one-share/one-vote mechanism in its purest form. Instead, they sometimes issue classes of shares that have more or fewer voting privileges than common stock.<sup>64</sup> They have presumptively good reasons to do so, however, and must always convince would-be investors that the shares have other redeeming features, so the occasional use by private firms of weighted or non-voting stocks does not raise the same concerns about equity that deviation from the one-person/one-vote principle

<sup>60</sup> The principle of declining marginal utility, by the lights of which a poor man suffers more from loss of one dollar than a rich man does, offers a counterargument to treating property rights as distinct from and inferior to personal rights, which are susceptible to exactly the same analysis. Someone who speaks a great deal in theory suffers less from censorship than a relatively laconic person, for instance. In other words, the principle of declining marginal utility gives no reason to treat property rights differently from personal rights.

<sup>61</sup> See *supra*, sections IV.A–IV.B.

<sup>62</sup> See, Robert C. Illig, “Minority Investor Protections as Default Norms: Using Price to Illuminate the Deal in Close Corporations,” *American University Law Review* 56 (2006) 275–366, at 296–305 (describing the operation of the oppression and appraisal causes of action).

<sup>63</sup> For a rare, idiosyncratic, and perhaps the sole, exception, see *State ex rel. Leavell v. Nelson*, 387 P.2d 82, 99 A.L.R.2d 231 (Wash. 1963), where the court interpreted local law, drafted with agricultural cooperatives rather than residential cooperatives in mind, to limit stockholder members to one vote each in the election of corporate trustees, regardless of the number of shares owned.

<sup>64</sup> Freer and Moll, “Principles of Business Organizations,” 386.



does when it occurs in political contexts. The caveats that always apply to real-world applications of the one-person/one-vote rule thus either do not apply to real world applications of the one-share/one-vote principle or, if they do apply, do not raise the same normative concerns.

## V. DOUBLING UP ON DEMOCRACY, IN THEORY AND PRACTICE

Even the most ardent defenders of democracy admit to its limitations. As Winston Churchill put it, with characteristic wit and candor, "Democracy is the worst form of Government except all those other forms that have been tried from time to time."<sup>65</sup> Note, however, that Churchill's criticism compared democracy only to other forms of political organization that have been tried; he by no means ruled out other, better approaches to the problem. It also bears noting that purely majoritarian processes prove rare in all but very small polities; representative democratic processes, such those used to elect members to the U.S. Congress, prove more common in practice. Democracy comes in many flavors, the appeal of which depends on various institutional and cultural factors. This is not the place for an exhaustive survey and critique, but rather for describing yet another approach to the problems of democratic government. In particular, this section proposes improving on existing forms of government not by getting rid of democracy but by doubling up on it.

Specifically, subsection A draws on the above analysis of how the principle of one-person/one-vote and the principle of one-share/one-vote each promote, in their own way, democratic equality, to describe a form of government that includes both. How can a polity put both forms of democracy to good use? By using one-person/one-vote elections to correct government abuses and one-share/one-vote elections constructively, to determine policies, rules, and personnel. Given the difficulties of implementing that kind of double democracy in a traditional polity, which as described above has no owners and thus no shares, readers may regard it as a purely theoretic ideal. In fact, however, as described in subsection B, recent developments in so-called "startup" cities — particularly as recently provided for in Honduran law — make this new and improved form of democracy a practical possibility.

### A. *Why combine corrective democracy with constructive democracy?*

This section argues for a form of democracy that uses one-person/one vote to correct government abuse of individual rights and one-share/one-vote to construct good public policy. The above comparison of how democratic processes work in the public and private sectors shows that

<sup>65</sup> *Oxford Dictionary of Quotations*, 6th edition, ed. Elizabeth Knowles (Oxford: Oxford University Press, 2004), 221.

both voting mechanisms have their advantages and disadvantages. It remains here to describe why and how to combine them in a hybrid kind of double democracy.

One-person/one-vote justly wins widespread rhetorical support (even as actual political institutions enforce it only imperfectly) because it shows due regard for each individual's equal right to life, liberty, and the pursuit of happiness. In particular, democratic processes typically aim to uphold the principles of anonymity, ensuring that voters can exercise their electoral rights without fear of reprisal, and of neutrality, ensuring that each vote gets (roughly) the same weight. Both principles merit respect; both can easily be accommodated by the corrective voting procedure described herein. It takes only a bit of administrative competency to assure anonymous voting, after all, while the very wide franchise that corrective democracy allows and its use of a direct rather than representative process allows it to lay better claim to ensuring neutrality than conventional democracies can boast of doing.

Even so improved a form of democracy will of necessity prove incomplete, however. The one-person/one-vote rule proves a poor way to manage complex joint ventures, as evidenced both by the widely bemoaned inefficiencies of democratic politics and by the fact that business corporations and related private enterprises, which face intense competitive pressures to operate efficiently or perish, have abandoned it. The lesson: even the best form of one-person/one-vote does a better job defending the rights of the people than it does running the government. It works best as a sword—not as a scepter.

Instead of one-person/one-vote, corporations and related business entities govern themselves by the one-share/one-vote rule. This helps them raise capital and run efficiently, true — but it stands for something more. The one-share/one-vote rule embodies an underappreciated form of democratic equality: that of treating each property owner's rights with equal respect.

Subjecting property rights to popular vote, as polities too often threaten to do, risks subjecting a minority's fortunes to the majority's will. Despite the short-term political appeal of allocating private property by public whim, ample historical examples, most of them ending in tragedy, demonstrate the destructive effects of redistributing wealth on a one-person/one-vote basis.<sup>66</sup> The one-share/one-vote rule, in contrast, encourages investment and good stewardship.

One-share/one-vote would prove inadequate as the sole means of governing a polity, however. Political institutions have residents and citizens,

<sup>66</sup> Friedrich A. Hayek, *The Constitution of Liberty* (Chicago, IL: University of Chicago Press, 1960), 306–23; Aristotle, “Politics, Books V and VI,” in Jonathan Barnes, ed., *Vol. II, The Complete Works of Aristotle*, trans. B. Jowett (Princeton: Princeton University Press, 1984), 2066–2100.

each of whom has certain inalienable rights. These they enjoy in equal measure, regardless of wealth. If it served as a polity's only democratic process, the one-share/one-vote rule would threaten to leave individual liberties at the mercy of oligarchic command. Suppose that wealthy investors, controlling most of the constructive votes in a double democracy, enacted rules that treated average citizens with contempt — denying them the right to wear finery in public, for instance. The corrective vote would allow the people to reassert their rights by striking down the offensive law.

Does that mean the masses could vote away even protections for property rights? In theory, perhaps so — but seldom in actual practice. First of all, though we can imagine a polity that exposes each and every rule — even rules that go to the most fundamental principles — to popular review, it is not likely that investors would agree to subject the very definition of their assets to popular vote. More likely, successful polities would set certain foundational rules, such as the definition of property, outside corrective voting procedures, much as the U.S. Constitution subjects certain rules to amendment only via super-majoritarian processes. Even in a polity without such procedural safeguards, however, it is not likely that the people would vote themselves into anarchy by negating such fundamental rules as those that define property. Even hardened thieves like to have their own property rights respected, after all.

A well-rounded democracy should employ both one-person/one-vote and one-share/one-vote mechanisms. Building this kind of double democracy is not as simple as combining political elections with corporate ones, however. As a means of correcting government abuse, the kinds of democratic processes currently in widespread use give voters both too much and too little power.

Conventional political democracies give the people too much power because they give each natural person an equal say in redistributing others' property, whether by voting directly for such transfers or by voting for representatives who support redistribution. Conventional political democracies give the people too little power when they deny the vote to non-citizen residents, felons, youths, and other individuals who, despite suffering the effects of abusive government, fall outside the franchise it recognizes. Democracy can do a better job of respecting equality.<sup>67</sup>

Nor can polities implement double democracy by simply adopting the one-share/one-vote rule that governs business corporations and other private entities. The problem? As noted above, nobody owns a polity.<sup>68</sup> Without owners, there can be no shares; without shares, no voting on the basis of one-per-share. Whereas extant polities could easily adopt the sort

<sup>67</sup> See Tom W. Bell, "Can We Correct Democracy?" *The Freeman*, June 4, 2013, at [http://www.fee.org/the\\_freeman/detail/can-we-correct-democracy](http://www.fee.org/the_freeman/detail/can-we-correct-democracy) (visited October 14, 2013).

<sup>68</sup> *Supra*, sec. II.

of corrective democracy advocated here, they would struggle to establish the kind of property rights necessary to support constructive democracy. If they privatized New York City, who would get shares and how much would each shareholder get? The mind boggles.

A city built from scratch would not face the same hurdle, however. It could build in ownership from the start, the same way that homeowners' associations, condominiums, and cooperative residential corporations do. Nor is that merely a matter solely for theoretical conjecture. As the next subsection describes, "startup" cities may soon afford a real-world opportunity to put double democracy to the test.

### *B. Prospects for implementing double democracy*

A chorus of commentators has in recent years come to predict, and often to call for, radical innovations in government. Inspired by Hong Kong, which successfully brought English common law to Chinese shores, Economist and entrepreneur Paul Romer has advised countries in the developing world to create new cities governed by laws exported from overseas.<sup>69</sup> Proponents of seasteading want to avail themselves of the ocean's ungoverned expanses to "allow the next generation of pioneers to peacefully test new ideas for government."<sup>70</sup> "The world is going to see an explosion of countries in the years ahead,"<sup>71</sup> Netscape founder and venture capitalist Marc Andreessen recently claimed.

Still more recently, Parag Khanna reported in the *New York Times* that the United States National Intelligence Council, which advises the director of the Central Intelligence Agency, had described a scenario in which by 2030 governments have "given up on real reforms and had subcontracted many responsibilities to outside parties, which then set up enclaves operating under their own laws."<sup>72</sup> Khanna added that this "describes much of how global society already operates."<sup>73</sup> In anticipation of how private sector methods might transform government the way that Silicon Valley has transformed technology, some herald the rise of "startup cities," new polities where "the entrepreneurial spirit of the

<sup>69</sup> Paul Romer, *Why the world needs charter cities* (TED, July 2009), at [http://www.ted.com/talks/paul\\_romer.html](http://www.ted.com/talks/paul_romer.html) (visited October 14, 2013) (calling for developing countries to import governing methods from exemplars overseas).

<sup>70</sup> The Seasteading Institute, "About," <http://www.seasteading.org/about/> (visited October 14, 2013).

<sup>71</sup> Hamish McKenzie, "Marc Andreessen: 'The world is going to see an explosion of countries in the years ahead,'" *Pandodaily*, October 3, 2013, at <http://pandodaily.com/2013/10/03/marc-andreessen-the-world-is-going-to-see-an-explosion-of-countries-in-the-years-ahead/> (visited October 14, 2013).

<sup>72</sup> Parag Khanna, "The End of the Nation-State?" *New York Times*, October 12, 2013, at <http://www.nytimes.com/2013/10/13/opinion/sunday/the-end-of-the-nation-state.html> (visited October 14, 2013).

<sup>73</sup> *Ibid.*

poor can be unleashed by bringing good law and governance to developing nations."<sup>74</sup>

Honduras has rushed to the cutting edge of this worldwide trend toward outsourcing and experimentation in government.<sup>75</sup> In June of 2013, it passed legislation authorizing the creation of special economic development and employment zones (called "ZEDE" from their Spanish name). The ZEDE will have wide ranging autonomy to pass and administer their own laws.<sup>76</sup> Specifically, the legislation empowers the head administrator of the ZEDE, the Technical Secretary, to enter into long-term agreements entrusting the provision of all services to outside parties.<sup>77</sup>

Honduran lawmakers clearly intend the ZEDE to adopt governing principles different from those that apply in the rest of the country. The legislation expressly requires ZEDE courts to follow the common law, for instance — an innovation for that traditionally civil law country.<sup>78</sup> At the same time, Honduran lawmakers took care in a number of provisions to ensure that the ZEDE will respect the constitutional and fundamental human rights of their residents.<sup>79</sup> A startup city implementing corrective democracy would suit that policy well. Lawmakers also made provision for ZEDE regions created wholly from scratch, on government or privately owned land in rural areas, an approach that would make it comparatively easy to implement the sort of one-share/one-vote mechanisms advocated here under the heading of constructive democracy.<sup>80</sup> Only time will tell exactly how Hondurans will use their newfound freedom to try new modes of government. Their ZEDE legislation certainly leaves room, however, to take double democracy from the realm of theory into practice.

### C. Follow-up questions and brief answers

This essay concerns the question of how to realize the ideals of democratic equality. Its answer matters to us because the voting mechanisms

<sup>74</sup> See, Startup Cities Institute, "About Us," [http://startupcities.org/?page\\_id=74](http://startupcities.org/?page_id=74) (visited October 14, 2013).

<sup>75</sup> See Brian Doherty, "The Blank Slate State," *Reason*, June 2013, at <http://reason.com/archives/2013/05/13/the-blank-slate-state> (visited October 14, 2013) (offering context and commentary on the Honduran situation).

<sup>76</sup> Decreto No. 120–2013, 12 June 2013, Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE), La Gaceta, Diario Oficial, num. 33,222, p. 57, 6 September 2013 (Hond.).

<sup>77</sup> *Ibid.*, art. 12(2), (3).

<sup>78</sup> *Ibid.*, art. 14.

<sup>79</sup> *Ibid.*, art. 9 (requiring equal rights and freedom from discrimination with the ZEDE), art. 10 (guaranteeing protection of constitutional and human rights), art. 16 (establishing special courts to enforce human rights), art. 33 (requiring freedom of conscience, religion, labor protection, and freedom of association within the ZEDE), art. 35 (protecting labor rights), art. 41 (requiring criminal sanctions against human trafficking, genocide, terrorism, child pornography, child exploitation and organized crime), and art. 43 (protecting the property rights of indigenous peoples and special communities of descendants of escaped slaves).

<sup>80</sup> *Ibid.* art. 25–27, 38–39.

we choose for our cities and other polities have a powerful influence on how well they function, and indeed if they function at all. Yet even the best implementation of democratic equality would not alone suffice to ensure good government. Many pressing and interesting questions thus remain unanswered by this essay, falling as they do outside its relatively narrow scope. This section somewhat makes amends for that necessary but frustrating reticence, however, by very quickly raising and answering some questions that experience has taught often follow from discussions of how startup cities might improve on extant governments. Though this may not satisfy the curious, it will at least reassure them that their queries have not been ignored.

1. *What role does freedom of entry and exit play in promoting democratic equality?* Though a good voting system can go very far in promoting democratic equality, freedom of entry and exit provide important additional protections for personal and property rights. Freedom of entry ensures that people can opt into the sort of governing systems that appeal to them — that they will not be imprisoned in another jurisdiction against their will and that, subject to any conditions required at their terminus, that they can move to a better jurisdiction. So understood, freedom of entry helps guarantee that governments respectful of democratic equality can both attract the citizens they deserve and justly bind them to uphold the same values. Freedom of exit, in contrast, helps to defend democratic equality by allowing those who suffer from its want to escape the government that fails to provide it.

Institutions can fail for many reasons. Even a theoretically ideal voting system might fail, for instance, in a culture that condones fraud and violence. Because freedom of entry and exit provide powerful checks on bad government, they provide powerful protections for democratic equality.

2. *What law should apply in a startup city devoted to democratic equality?* In practice, a host jurisdiction might impose limits on the substantive law that a startup city can adopt. If given the chance, though, a startup city devoted to democratic equality would want to adopt laws that support both kinds voting — constructive and corrective — described in this paper. Developed countries already have well-tested and reasonably good laws in place, typically in their rules for political elections and corporate governance, which a startup city could borrow and plug into its own legal system. If the host country objects to having the laws of a foreign sovereign apply on its soil, however, or if the startup city simply wants the to use the most widely adopted, neutral, and well-respected rules, it could draw on privately published Restatements and Uniform Laws, good sources not only for laws pertaining directly to democratic equality but also for laws of more general import.

3. *How would a city sensitive to both individuals' personal rights and owners' property rights resolve disputes?* By default, this three-element judicial process would be used to solve all disputes arising under the startup

city's laws: First, following private best practices, the parties would each choose an arbitrator. Those two arbitrators would choose a third, creating a fair and balanced three-judge panel. Second, the arbitrators would have to choose a remedy offered by one of the parties — no compromise splits. Third, the losing party would pay all costs.

This three-element process offers a fair and efficient procedure to resolve disputes over both personal and property rights. It would apply by default only, though. Mutually consenting parties could agree to a wide range of other ways to resolve their disputes.

4. *Who would own the shares of a double democracy?* At first, investors would own most of the shares of the kind of startup double democracy described here. Over time, however, and according to a regular vesting schedule, residents would come to own shares, too.

Residents would always enjoy equal representation, on a one-person/one-vote basis, in corrective elections. That would safeguard their individual and personal rights. Under a vesting program — one specifically designed to give residents a proprietary interest in their city — those who live in the city would furthermore come to own more and more of its shares over time. Long time residents would thus have comparatively greater say in constructive democratic processes, allowing them to translate their local expertise into good government. Investors and residents alike would both benefit from such an arrangement. Aligning incentives generates civic harmony. Indeed, giving residents ownership in their city might have so powerfully beneficial an effect that it encourages the adoption of policies forbidding residents from transferring their shares to non-residents, or perhaps to any third parties at all, allowing redemption of the city's shares only in the event that residency terminates.

The ratio between investor-held and resident-held shares would fluctuate over time, depending on the character of resident populations, periodic infusions of capital, and other factors. Over time, in all likelihood, more residents would enjoy more influence over city government, encouraging more democratic quality.

## VI. CONCLUSION

The title of this essay, which suggests that corporations could teach governments how to improve on democratic equality, perhaps gives governments too little credit. True, business corporations provide a convincing demonstration of how representation based not on head counts but on proportional ownership of a shared asset can encourage efficiency and protect investments. But corporations hardly have a monopoly on the device; political institutions such as special assessment and use districts have already implemented voting systems that stray from the one-person/one-vote principle. Furthermore, the advantages of the one-share/one-vote rule go only so far. Voting qualifications developed for conventional



commercial corporations are not likely to give as much weight to protecting individual rights and human dignity as the best political institutions do, and as all political institutions should.

Corporations can teach governments something about democratic equality. Governments can teach corporations something too, though. Corporations and similar business entities demonstrate the advantages of allocating some votes — in particular, votes over issues affecting property rights — on a proportionate basis. This represents an underappreciated form of democratic equality, one that promotes both simple fairness and managerial efficiency.

Constructive democracy, where control of a collective legal entity varies in proportion to the amount owned, offers a relatively fair and efficient mechanism for using votes to guide common government. Traditional polities, in contrast, threaten to discourage economic growth by subjecting the allocation of property rights to popular vote. It does not do justice to the power of democracy to discuss it solely in terms of the will of the majority. A fuller appreciation of democracy shows it to have two complementary aspects: a constructive side, governed by the principle of one-share/one-vote, and a corrective side, governed by the principle of one-person/one-vote. A well-rounded democracy should combine both.

When it comes to questions of how much constructive control voters should have over a jointly owned institution, principles of democratic equality demand that each share have the same value. This is not simply a matter of respecting property. Only constructive democracy, based on the principle of one-share/one-vote, can afford equal treatment to owners.

Constructive democracy will not suffice to protect individual rights, however — even conventional corporate law recognizes the need to protect minority shareholders. Making degree of ownership the first and last word in governing a polity — a legal person that has not just investors but residents — would risk letting the wealthy trammel the liberties of the poor. Here, the private sector can learn from the public one, giving each person in any privately owned community an equal vote in defending his or her rights from government abuse through corrective democratic procedures.

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