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Contractual Communities in the Self-Organising City

Freedom, Creativity, Subsidiarity

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Introduction: Contractual Communities in the Self-Organising City

The Focus of Attention: Contractual Communities

In our cities, both "land-use regulation" and "territorial collective services" have traditionally been guaranteed through the coercive efforts of public administrations. In the case of the former (land-use regulation), this is effected via the imposition of public rules that lay down detailed sets of prohibitions and obligations for the citizen; in the case of the latter (territorial collective services), this happens through public levies and top-down decisions in terms of the type of services, and by what means they are provided.

In more recent times, greater space has been taken by different forms of private land-use regulation and collective service provision, which we will call "contractual communities". These contractual communities are territory-based organisational forms (i.e., tied to a specific tract of land) by which members join on the basis of a contract unanimously underwritten, and in light of the benefits it will guarantee them. More precisely, the contract establishes a set of commitments and rights for the members of the said contractual community. Among those commitments is respect for the rules of cohabitation (rules governing the use of property and spaces, and rules about conduct and general procedures), along with the onus to pay some kind of monetary contribution to ensure the proper functioning of the contractual community itself. Meanwhile, among the rights entailed by the members is the availability of a package of services in return.

The term "contractual community" needs clarification. As is well known, the term "community" is implied in a variety of senses.[1] One "non-ideological" way of using it (MacCallum 1970) is to define a community through three components: (i) a common territory bounded by identified limits; (ii) certain common interests; (iii) an integrative system of organisation that regulates the activities required for

[1] For the long history of the term "community", see for instance Bruhn (2005, pp. 29–48).

the community's working and continuity (and which, in particular, establishes both individual and common resources).[2] In our case, these aspects are made explicit in an agreement, that is, via a voluntarily accepted "contract" (using this term in an ample and general way): which is why we propose to use the term contractual communities. In this sense, they are "communities of choice", and not "communities of fate" or "of chance".[3]

Moreover, the very existence of contractual communities is evidence of a psychological and socioeconomic setup that is actually far more complex and layered than is generally believed. On this score, one can on the one hand observe how, in certain circumstances, self-interested behaviours can actually lead to advantageous forms of cooperation, even in the absence of any outside public authority to coerce and monitor (Axelrod 1984; Taylor 1987). On the other hand, it should be noted that not all human behaviour is perforce always self-serving; as Nelson (2005, p. 108) observes, economic theories based strictly on self-interest "seem to underestimate the influence of shared norms and collective enthusiasms in human behaviour".

Recently this type of contractual community has begun to show up again particularly in the United States.[4] Similar cases have occurred elsewhere, such as Canada (Townshend 2006) and Europe, for example in Great Britain (Blandy 2006).[5]

Three Principal Types: Leasehold Contractual Communities, Freehold Contractual Communities, Commonhold Contractual Communities

Basically, there are three types of contractual communities (bearing in mind that here we are referring exclusively to "territorially based" social organisations[6]).

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[2] In this perspective, "close personal ties are not a requirement of the definition, but neither are they excluded by it" (MacCallum 1970, p. 3).

[3] Compare with Wiseman's (2010) idea of "rule-bound communities".

[4] In 1970, fewer than 1 percent of U.S. people lived in a residential community association. Today more than 20 percent live in an association-governed community. Fully half of the new housing building in USA between 1980 and 2000 was in a residential association (Nelson 2009a). For an overview of the trend in one of the state—California—that experimented a great increase of this phenomenon, see Gordon (2004). All of these numbers are raising very rapidly. (See Appendix, tab. 1, for further details).

[5] The phenomenon is cropping up also in Latin America and in Asia, though exclusively in certain form of contractual community (elementary and often reductive forms of contractual communities, largely owing to the tough conditions and the unstable juridical contexts). On the diffusion of forms of contractual community in various countries worldwide, see the recent works of Atkinson and Blandy (2006), and Glasze et al. (2006).

[6] It is important to stress our choice on this particular focus, because otherwise the possibilities multiply.

The first of these three types may be termed a "leasehold contractual community", and it entails a single owner of a building or piece of land, who lets part of it out. A classic example is afforded by the "proprietary communities":[7] in this case, the sole owner of a tract of land sets up the infrastructure and sections it out, letting out parts of it to individuals (who pay a fixed tariff), while continuing to take care of the management and enhancement of the complex.

The second type is the "freehold contractual community", by which a group of citizens individually own various parts of a complex, and other parts with some form of collective arrangement. The most interesting example of this is the so-called "homeowners association". In such cases a set of living units (apartments) individually owned, and a range of common area owned collectively, are managed by a body specifically appointed to the task by the community members. Members automatically enter the association at the time of purchase, accepting thereby a set of certain rules concerning the use of the spaces and buildings, and the obligation to periodically pay a regular levy to the association. Another example of this second type is "cohousing";[8] yet another type of a simpler and more traditional kind is the standard "condominium".

The third type, which may be identified by the term "commonhold contractual community", involves a form of collective ownership that entails privileges and obligations for its members regarding the use of that property. A classic example is the "housing cooperative", whereby the entire building is collectively owned. It is the cooperative that owns the land, buildings, and common areas. Cooperative members each own a cooperative share. Members have the right to occupy and use a particular dwelling unit. Cooperative members (democratically) elect a board of directors. Members pay—usually monthly—carrying charges to the cooperative that cover operating expenses. Another example of this third type are certain forms of the so-called "commons".

The three types differ in terms of their ownership regime: the property is undivided and owned by a single owner (leasehold contractual communities), or it is divided between various owners and a part is kept in common (freehold contractual communities), or the entire unit is owned by a collective (commonhold contractual communities).

In the three cases under consideration, "reciprocity" is a founding constituent, but not exclusive. The creation of a contractual community tends to be in the mutual interest of the parties concerned: the components of a contractual community become such in virtue of this reciprocity. This clearly does not rule out that a contractual community can be advantageous to outsiders as well, both in indirect and general terms (e.g., in the case of positive externalities generated by activities

[7] Other terms that recur in the literature are "multiple-tenant income properties", and "entrepreneurial communities".

[8] The cohousing model might be considered a variant (on a smaller scale and more simplified) of the homeowners association model. Generally, the cohousing model requires participation from the initial design stage and layout of the building complex. See Meltzer (2000), Fenster (1999) and Brunetta and Moroni (2010).

undertaken by members for their own benefit[9]), and in direct and specific terms (e.g., instances of explicit "solidarity" toward outsiders).

In this book we will carry out a theoretical and empirical study primarily of the first two aforementioned types, and look at proprietary communities and homeowners associations in particular (Chaps. 1 and 2).[10] The reasons for choosing these are several. First of all, after being disregarded for some considerable time, these forms of contractual communities are enjoying a comeback, particularly in the United States; secondly, the organisational systems in question can be adapted to a wide variety of territorial situations and scales, and are therefore of general interest; thirdly, in recent times a heated critical debate has begun on them. Whereas the reasons for not dedicating special attention to the third version of contractual community[11]—and particularly to the housing cooperatives—are as follows: in the first place, this type is traditionally present in various countries and is moreover exempt from particular dynamics; in the second place, that organisational form is more circumscribed in its use; in the third place, the recipe has been studied at length, without generating any disputation/conflict worth noting.[12]

Before closing, some further clarification is necessary. Today's society is generally considered to consist of three distinct sectors: the state sector; the market sector; and the associative, non-profit sector. The phenomenon of contractual communities straddles the last two sectors: some contractual communities are profit communities, other are non-profit communities, and other have elements of both. This aspect suggests a revision should be made of the traditional three-sectors distinction.[13]

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[9] Such as contractual communities that safeguard certain features of the landscape for the benefit of members, with positive effects for non-members.

[10] Note that the names used to encapsulate both these phenomena are "private communities", "private governments", and "common interest developments".

[11] Nonetheless linked to the same category of the others, and equally interesting in the context of the outlook adopted here.

[12] On the housing cooperatives, see Sazama (2000), Bliss (2009) and Woodin et al. (2010). For an ample discussion of various form of "commons" see the renowned work by Ostrom (1990).

[13] A simpler distinction between only *two* sectors could work better: on the one hand the coercive public sector, that is the sphere of *coercive state action*; and on the other the voluntary private sector, that is the sphere of *voluntary activity of individuals*, whether they be spurred by profit or other forces, whether individually carried out or in groups (Foldvary 1994). The former sphere is governed by the typical features of sovereignty, authority, unilateral decision-making, law; the latter expresses consensual arrangement, voluntariness, multilateral agreement, and contracting (*ibid.*). In this sense, the case of the "commons" is (together with the forms of contractual communities we will consider in depth in this book), an element, an instance, of the second sphere/sector.

Two Precursors of the Idea of Contractual Community: Ebenezer Howard and Spencer Heath

In the history of ideas, the notion of contractual communities as forms of private systems for cohabitation and autonomous supply of collective services has surfaced several times, but without ever gaining a particularly wide acceptance. It is worth mentioning the importance that certain anarchist thinkers of the 1800s placed on self-organisation—thinkers who have far more in common that one might otherwise believe.[14] It is also important to emphasise here that nineteenth-century anarchist thinking cannot in all cases be labelled as utopian, nor were all anarchist notions of human nature "optimistic". By and large, anarchist thinkers actually adopted a decidedly realistic—even pessimistic—outlook on human nature, insisting that power must be decentralised because, otherwise, a strong concentration of power tends to become a threat (Clark 1978).

In this book we will focus in detail not on some of the more familiar anarchist thinkers, but on the two authors Howard (1898) and Heath (1957), who adopted a distinctly original approach to dealing with the issue of private organisation, and yet are not generally considered pioneers of the theme; indeed, their pioneering work into the theme has largely been overlooked: in Howard's case owing to the greater attention given to other aspects of his output, while in Heath's case his contribution has been almost totally ignored or misunderstood.

Howard and Heath are particularly relevant to the core of our discussion on contractual communities for three reasons in particular. First, their inquiries are highly original and prophetic. Second, because they grapple directly with the territorial aspects of the phenomenon of contractual organisation: unlike other authors, their analysis appropriately puts land-use at the very core of any form of voluntary organisation. Third, because their theories are comparable to the ideas of some of the most important thinkers who raised crucial questions—and to our mind still valid today—of land-use, such as Thomas Spence, Herbert Spencer, and Henry George.

[14] A frequently noted difference between anarchist authors is the fact that some of them focus more on individual enterprise, whereas others focus on group enterprise; despite the frequent attention given to this dichotomy, it is far from decisive: if one recognises the individuals' total freedom to choose, they can do so as they wish, opting for individual or group action (De George 1978). Another difference that is often cited concerns the fact that some anarchist writers are hostile toward capitalism, where others are not. At first this difference might seem more important, but it must be said that the anarchist writers who express disdain for capitalism are largely indicating a particular historical chapter of capitalism (specifically the type in the later 19th century) rather than the market system per se. Furthermore, it is by no means easy to make a clear-cut distinction between the "market" and "non-market" type of voluntary individual action, particularly for those adopting an anarchist viewpoint in which the central features is solely freedom of action.

As we shall see, Heath proposes a pure model of proprietary community (Chap. 6); while Howard puts forward a sort of intermediary model lying midway between this type and the homeowners association (Chap. 5).

Concluding Observations: Seeking a Middle Path

As we shall see, the literature on contractual communities so far consists largely of profoundly critical writings that raise numerous concerns about the phenomenon (Chap. 3). Some other writers, on the contrary, have taken a wholly positive, acritical approach toward contractual communities. In this book we intend to follow a middle path as it were, that aims to take a serious look at the phenomenon of contractual communities, and avoids taking an overly alarmist view while steering clear of equally unwarranted apologies.[15] As Hyatt (1997, p. 312) writes about contractual communities: "There are problems and there are opportunities. There is a genuine need for honest questioning and realistic responses".

In this perspective we will propose a non-anarchical approach that nevertheless permits ample leeway for all possible forms of contractual community (Chap. 4). We believe that cases in which coercive action by a public agency was deemed indispensable have been unjustly overstated; whereas the potential of voluntary self-organising processes has been seriously understated (Moroni 2011a, 2011b). A clear example of this bias can be seen in the fact that the traditional theory of public goods,[16] as the theory that identifies cases in which the supply of certain goods can only be via top-down methods, is far less applicable than is generally affirmed.[17] Many goods that are traditionally considered (non-rivalrous and non-excludable) public goods requiring state intervention are on the contrary easily granted by private action. As Foldvary (1994, p. 25) observes, a large part of the literature on public goods "ignores the fact that most civic goods are provided within some bounded area and affect the demand for the use of that space". The crucial point is that territorial collective goods are clearly excludable. "If the goods are provided consensually by the site-owner (or by an association of title

[15] We started exploring the phenomenon of contractual communities in this perspective in Brunetta and Moroni (2007).

[16] The well-known idea (Samuelson 1954, 1955) is that there are certain types of (public) goods with two specific features (distinguishing them from other types): non-rivalry and non-excludability. The first implies that the consumption of a good on the part of the individual does not impair its availability to another; the second is that it is not possible to prevent individuals from enjoying certain goods without paying. For this reason, Samuelson claimed that the market would never be able to supply public goods in the allocative sense (without encouraging free-riders, i.e. people taking advantage without paying their share); hence, the intervention of the state was considered necessary and inevitable.

[17] Without entering into a discussion of its premises—they in turn are not without their critics (Brownstein 1980; Pasour 1981; Block 1983; DeJasay 1989; Hoppe 1989; Goldin 1992; Holcombe 1997; Tabarrok 2002; Simpson 2005).

holders), there is no longer any free-rider. The users pay for what they get, and the site owner needs to deliver the goods to get paid" (Foldvary, 1994, p. 25; see also Foldvary, 2001). As we will see, this is exactly what happens with proprietary communities and homeowner associations.[18]

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[18] The renowned *club goods* theory elaborated by Buchanan (1965, 1968) was the first attempt to deal formally with certain collective goods guaranteed by organisational systems of the kind we deal with here [a neat summary of Buchanan's original theory and its ensuing developments is provided by Cornes and Sandler (1986) and Sandler and Tschirhart (1997)]. For a discussion on the phenomena we will consider here in light of the theory of clubs, see Foldvary (1994, pp. 63–78), Webster (2001), Webster and Lai (2003, pp. 110–41) and Glasze (2003, 2006).

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Part I
Characteristics and Functions of Contractual Communities

Chapter 1
Types of Contractual Community

Abstract In this chapter we will examine two of the main forms of contractual community, namely the proprietary community, and the homeowners association. For each of the two we will consider the way they come into being, their principal features, and the way they are administered.

Keywords Proprietary community · Homeowners associations · Ownership models · Organisation · Rules · Facilities

1.1 The Proprietary Community

1.1.1 Organisation, Origins, and Examples

The "proprietary community" entails that a single private owner of a given stretch of real estate parcels the land up, adds infrastructure, and applies a form of administration to the said property so as to increase its value, and to ensure revenue by leasing portions or elements thereof. (By "single owner" we indicate an individual entrepreneur, a group, or a company). In this case, the title to the land is kept intact and parcelling is accomplished by leasing.

The tenants accept the regulations attached to their rental agreement, and contribute to the running of the real estate complex via payment of a pre-set sum for the lease of the property. The duration of the period of use of the property in question, along with the various procedures for renewing or terminating the contract, are integral parts of the initial rental agreement.

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This organisational arrangement, which had a certain currency in previous centuries,[1] has recently been resuscitated, starting with the example of the US shopping malls, by which a single owner rents out portions for traders. Shopping malls were in fact one of the early signs of the reintroduction of the proprietary community in the last century[2]; in particular, such cases evince the unitary nature of the enterprise in terms of administration and management of the area in question, along with the functional and financial aspects (linkage, parking, services annexed to sales points, brand management, etc.).[3] Other more complex and interesting examples of proprietary community are entertainment complexes, theme parks, industrial parks, research parks, office buildings, and apartment complexes. (Significantly, the category of use of the property tends to influence the duration of rental contracts, with longer contracts in the case of residential property). Interestingly, some entirely new cases are emerging that are of even greater relevance, in which the proprietary communities comprise various combinations of the functions listed above.

Some significant cases of proprietary community are theme parks like Knott's Berry Farm (California),[4] and entertainment complexes like Walt Disney World (Florida),[5] residential, agricultural and tertiary complexes like Irvine Ranch

[1] A form of land-use organisation fairly similar to this was common in London during the Eighteenth and Nineteenth centuries; in those days it was common practice for a landowner to transform and urbanise specific areas and then lease the buildings to a variety of separate subjects. Whoever acquired rights of use generally accepted the commitment to ensure the proper upkeep of the properties, and not change their end-use. The (single) owner in turn would take care of the management and administration of the entire complex, and had the right to verify whether the property was being maintained according to the original contract of use; if the user defaulted, the owner could send a writ to the leaseholder; if the latter failed to comply within a specified period, the owner could declare the contract void (Summerson 1962; Olsen 1964; Rasmussen 1967; Booth 2003).

[2] The first shopping mall—Roland Park—was built in 1907 in Baltimore: it consisted in a group of stores, unified in their architectural design, and set back from the main street in order to provide easy parking. Fifty years ago fewer than a dozen shopping centres existed in the United States; today there are over 50.000.

[3] One of the largest shopping malls in the US is the Mall of America in Bloomington (Minnesota), with a sales surface of 230,000 m^2, over 500 stores, 12,500 parking spaces, 11,000 staff. In 2006 the Mall of America was visited by 40 million people.

[4] Knott's Berry Farm is the oldest American theme park. Founded by Walter Knott, it opened in 1968 (Knott was a great admirer of the ideas of Spencer Heath: see Chap. 6). Today the farm covers 160 acres.

[5] Walt Disney World was opened in 1971. It is today the world largest recreational complex. It provides recreational and commercial services and private security to residents and visitors over a 47 square-mile area. It includes four theme parks and two water parks, 23 hotels, and other kind of recreational services. Today it has about 66,000 employers. On the history and organization of Walt Disney World, see Foldvary (1994, pp. 114–133), Klugman et al. (1995).

(California),[6] and huge hotel such as Las Vegas's MGM Grand (Nevada).[7] A particular case of a proprietary community was also Arden (Delaware).[8]

1.1.2 The Tasks and Duties of the Single Owner

The single owner performs four main functions, all geared to increasing the value of the land he owns.[9] First, the single owner conceives a real estate plan and assumes responsibility—either directly or by proxy—for its implementation. Second, he lays down the regulations concerning the end-use of the buildings, and what type of activities may be present. Third, he selects the tenants, setting the terms for admission, and evaluating the applications in turn. Fourth, he administers and manages the proprietary community by ensuring the tenants' adherence to the rules of the rental agreement, guaranteeing the general upkeep of the properties in question, the supply of services, the activation of promotional events, and so forth.

In short, one might say that the single owner performs a type of "strategic unitary action" (MacCallum 2003a). Indeed the force of the single owner lies in pursuing the (desirable and mutual) goal of improving the running conditions of

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[6] For a long time Irvine Ranch was one of the vastest private estates in the United States. Managed on an overall scheme, the estate was developed in successive stages from the 1950s onwards. In the ensuing decades the entire property (185 square miles) was run by the Irvine Company, which constructed residential complexes and other buildings. The farmland and the condominiums were mostly rented out. The Irvine Ranch has been under private ownership for nearly 150. The Irvine Company resisted for a long time intense pressure to sell the land piece by piece. On Irvine Ranch history see Griffin (1974), Glass-Cleland (2003), Forsyth (2005, pp. 53–106). Today the situation is partially changed: some portions of the original Irvine Ranch have been sold; however, the Irvine Company remains the owner and administrator of numerous residential complexes and tertiary structures, hotels, resorts, and shopping centres.

[7] Las Vegas' MGM Grand (Nevada) opened in 1993: it is a hotel with more than 5,000 rooms. It is the second largest hotel in the world. "Counting room guests, service staff, and visitors, the population of the MGM Grand ranges between 35,000 and 70,000 persons daily" (MacCallum 2003a, p. 7). This kind of hotel compare with a small city. The MGM Grand includes restaurants and cafes, theatres and art galleries, shopping places, chapels, convention facilities, fitness centres, professional offices, medical services, a security force, and a monorail station. The property includes outdoor pools, rivers, and waterfalls that cover 6.6 acres.

[8] Arden community was founded by followers of Henry George in 1900 in order to experiments George's idea of a single tax levied on the value of land (see Chap. 6). Till 1965 Arden remains a particular case of proprietary community. All the land was undivided and owned by a trust. "Assessors" were elected by the residents for the management of the community. All land is leased to residents. The community collect the community's land rent to provide collective goods. See Foldvary (1994, pp. 134–51). Similar experiments—namely, private settlement projects founded on the idea of a single levy on the land to finance collective services—include Fairhope in Alabama (founded by the Fairhope Industrial Association in 1894). The Fairhope Single-Tax Corporation continues to operate on an estate covering more than 4,000 acres, renting out around 1,800 leaseholds for periods of up to 99 years.

[9] The first of the functions we will mention could also be performed by different subject from those performing the other three.

the proprietary community as a whole; conditions that become the primary motor for the growth of the latter.

The goal of the single owner is to make the community "a productive and wholly desirable place for people to live and carry on their businesses" (MacCallum 1970, p. 62). Indeed, the owner "who gives up the direct use of his land and instead administers it as productive capital by letting its use to others acquires an economic interest in creating an environment that will be conducive to the well-being of his tenants" (MacCallum 2003a, p. 13). In light of this, the formula of letting out property passes from the *passive* version whereby the owner earns from merely possessing something that he temporarily relinquishes to others (the typical lease of a single property to a single tenant), to the more *active* version in which the owner obtains returns above all through his ability to improve and administer a set of properties over time (typical of the case of renting out an entire building complex to a group of subjects).

1.1.3 Forms of Emergence and Diffusion

As we have seen, the coming into being of proprietary communities is generally the outcome of an entrepreneurial initiative; usually the entrepreneur is the single owner itself.

To date, proprietary communities have been in any way generally overlooked. As MacCallum (2003b, p. 228) himself points out, the matter of proprietary communities has broad economic and sociological implications; but, "because they are relatively prosaic, non-heroic developments of the marketplace, not ideologically inspired as intentional or utopian communities are, they have received little scholarly attention".

As regards their diffusion, we can observe that, for the time being, *residential* proprietary communities are fewer in number compared to the other types of proprietary communities. According to MacCallum (2005) this does not depend solely on the fact that (rented) apartments yield less revenue to the owner than the other types due to purely market reasons, but to the fact that current legislation (in the US, for instance) provides fiscal and bureaucratic incentives that favours the *purchase* of the residential units.

1.2 The Homeowners Association

1.2.1 Organisation, Origins, and Examples

The "homeowners association" entails that a group of individuals, each owner of one of the living units that lie within a given territory, accepts a set of community regulations, and pays a fee into a common fund that guarantees the civic services provided in the common areas. As for the question of ownership, each member of

the association owns a living unit (for instance, the apartment in which he or she lives), and has shared ownership of a series of areas and buildings for common use (e.g., squares, streets, parks, sports grounds).

There are various systems for determining the quota each pays into the common fund. In some cases it is the same sum for every living unit; in other it varies according to the surface area of the unit; or on the basis of the unit's value (evaluated by an independent surveyor called in regularly by the association). Besides the membership quota, homeowners associations sometimes have other sources of income, for example revenue from the provision of services to non-members.

The principle of the homeowners association was already in place in previous centuries,[10] but recently it has been making a huge comeback, particularly in the United States. Homeowners associations can be as small as a handful of buildings and as large as a small-medium city of over 50,000 inhabitants. Two of the greatest homeowners associations are Reston (Virginia)[11] and Columbia (Maryland).[12] But the

[10] For example, in various settlements in Britain at the end of the 1700s and early 1800s, which saw the inclusion into the purchase agreement of a set of regulations governing the communal facilities (Davies 2002). In the United States the first instance of a residential community association is usually held to be Gramercy Park, set up in New York in 1831 (characterised by a situation in which the park and streets were owned by a trust and managed by a board elected by sixty homeowners from the estate); even though the first true example is probably that of Louisburg Square in Boston in 1844 (in which 28 homeowners accepted restrictive covenants, and form an association which they pay a quota to for the upkeep of the park and roads). Not long afterwards (1852) comes the experiment of San Francisco's South Park, which had less success. At the beginning of the 1900s, one of the best-known examples is Saint Francis Wood in San Francisco (500 dwellings, with roads, parks, and communal sports facilities). For similar examples in France, see Le Goix (2008).

[11] Reston association is a huge community association. It was conceived as a private planned community by Robert E. Simon (influenced by the ideas of Howard and his followers), and founded in 1964. The total area of Reston is about 17.4 square miles. The population is over 56,000. The housing units are over 24,000. Reston is caring for and maintaining over 1,300 acres of open space and recreation facilities. The association has a full-time staff of around 80, increasing in the summer months with 300 seasonal workers. The Reston association maintains and administers woodland, lawns, ponds, and several streams (some suitable for sailing and fishing), 15 swimming-pools, 48 tennis courts, 35 playing fields for kids, 6 pavilions for picnics, and almost 90 km of cycle tracks. See Foldvary (1994, pp. 166–89). Commercial sites are no part of the Reston association; a large part of them is in the Town centre that is managed by another association, The Reston Town Center Association (see Ward 2006).

[12] Columbia association consists of ten villages. The creator and developer was James W. Rouses. It opened in 1967. The total area of Columbia is 27.7 square miles. The population is about 88,000. The housing units are over 35,000. Commercial sites are included in the association jurisdiction; about 30–40% of the community revenues comes from assessments on shopping centres, office building, industrial parks. The association's staff totals around 200 full-time workers and around 400 part-time and seasonal ones. Columbia association operates numerous facilities, such us 6 indoor swimming pools, 23 outdoor swimming pools, a sports park, one ice rink, 3 athletic clubs, a horse-riding centre, tennis, basketball, volleyball courts, picnic pavilions, 170 tot lots and play areas, 93 miles of pathways for jogging and biking. Columbia association maintains more than 3,500 acres of open space, including 268 footbridges. There are three lakes. On the history and the organisation of Columbia association see Forsyth (2005, pp. 107–160).

typical size in the United States is around 250–300 housing units with a population between 400 and 1,000, as happens in, for instance, Park West (Virginia).[13]

1.2.2 Rules and Services, and Tasks of the Board

Here we will take a detailed look at how a homeowners association works.

The rules of cohabitation are partly contained in the *Declaration of covenants, conditions and restrictions*, which is supplied along with the deeds of sale, and comprises a form of "local constitution" to all effects; the other part comprises regulations developed over time by the association's board (elected by majority). This dual system of rules covers the system of administration of the association itself (the organs and their functions, methods of financing, etc.), and the rights and duties of the members: these include restrictions on how the private units may be used (e.g., what type of activity, modes of use and layout of the private green areas and parking, what colours are permitted for façades, types of roofing, etc.) and permissions of access to the common areas.

The first type of rules—those collected in the *Declaration of covenants, conditions and restrictions*—are the most important and basic of the two. These are aimed at guaranteeing a certain legal stability of a given place. These rules are attached to the original contract through which the individual owners become members of the association itself. Among this first set of rules are those governing the use of the property, usually termed *covenants*.[14] In the case of residential property, the covenants are strictly tied to a living unit purchased by the individual in the area in which the association itself is constituted. These covenants obtain also for successive purchasers, once they have been apprised of the covenants' existence. They "run with the land". In Great Britain, this principle was established for the first time in the renowned case of *Tulk vs. Moxhay* (1848).[15] In the

[13] Park West Association is a medium-size homeowners association. It was created in the eighties. It has 270 housing units. The communal areas administered by the association comprise 5 roads, parking areas for a total of 600 vehicles, sports amenities, including swimming-pools, games pitches, and assorted greenspace.

[14] As Hughes and Turnbull (1996, p. 171) observe, covenants are private land-use contracts for reducing externality risks. "By binding themselves to the contractual restrictions created at the subdivision filing, consumers can credibly commit to economic behaviour that reduces the overall level of housing consumption risk facing all land users in the subdivision. This method of credible commitment obviates the need to deal with the free-rider problem that typically haunts cooperative agreements".

[15] To briefly recap the events, a parcel of land in London was bought from the owner in full cognizance that the latter had bought it 40 years earlier and had accepted the prohibition of constructing in any of the free spaces. The last purchaser (Moxhay) refused to honour the restrictions (and intended to build where he pleased); but his plea was rejected at a hearing in which the court ruled that he was aware of the restrictions at the time of purchase, and was therefore bound to comply with the original contract.

United States a ruling that affirms the same principle was made in the case of *Dixon vs. Van Sweringen Co.* (1929).[16] A legal problem arises due to the fact that the covenants do not obtain only for the parts to which they original refer consequent to a bilateral agreement (in particular, the seller of a unit within the territory of a homeowners association, and the first purchaser of the same unit who becomes a member of the association); these covenants also affect people who come in later and have not explicitly accepted the initial agreement (that is, those who purchase the unit in a later phase). As pointed out earlier, the legal loophole was solved by ensuring that the original covenants obtained for all subsequent purchasers, so long as the latter have been apprised of the said covenants.[17] It is obvious that if the covenants did not remain attached to the property unit, over time the original structure of the association would be in peril, as new purchasers would not be entailed to observe the original rules of the association.

Covenants remain valid for extended periods of time; they can be revised only through special procedures. In many homeowners associations in the United States the covenants remain valid for decades (20 years is fairly standard), and are considered automatically renewed upon expiry unless a significant majority of the association's members explicitly indicate otherwise; after the first expiry, the covenant is usually revisable at preset intervals (e.g., every 10 years). The presence of covenants fosters an increase in worth for property units within a given settlement, and keeps their value steady (Hughes and Turnbull 1996; Agan and Tabarrok 2005).

The second tier of regulations—secondary and integrative—are introduced later by the board, whose task is to integrate the ordinary regulations with more detailed and contingent requirements. Such additional rules tend to remain valid for a shorter period, and are more easily revised.

In sum, as observed by Ellickson (1991, p. 134), the rules of the first type are *constitutive rules* (voluntarily and unanimously approved at the outset when

[16] The Van Sweringen Company was set up in 1913 to develop lands purchased east of Cleveland by the Van Sweringen brothers in 1905. The settlement created by the company envisaged a broad use of covenants to guarantee the aesthetic and living quality of the estate. The sale of the lots began in 1916. Several years later, Janie Dixon bought one of the lots from the previous purchaser, but refused to honour the relative building restrictions. The court of Ohio ruled against Dixon, stating the principle by which each new purchaser in cognisance of the original contract restrictions was obliged in turn to honour them. (Basically, the *Dixon vs. Van Sweringen Co*. case inverts a trend that had begun against private covenants in the United States from the early 1900s).

[17] An additional and greater complication lay in the fact that all this (the transfer of contractual restrictions to all later purchasers) is easier to accept at juridical level in the case of prohibitions (i.e., rules that preclude certain actions), rather than those that prescribe obligations (i.e., imposing positive action such as building or maintenance of structures, or ensuring the proper upkeep of one's property). The juridical rulings on this last point are more varied: in the United States for example, after a famous ruling in 1881 (*Haywood vs. Brunswick Permanent Benefit Building Society*), which had excluded covenants from containing these pro-active obligations, later sentences acknowledged as admissible at least some types of positive obligations. A thorough study of this and other problems tied to covenants is Korngold (2004).

accepting the Declaration of covenants, conditions, and restrictions), whereas the second tier of rules are *organisational rules* (introduced later by the board).[18]

Now that the nature of these two types of regulation has been made clear, we move on to the services provided within such communities. The collective services are run by the board, and apply to the areas of common ownership; the more common services are roads, parking lots, lighting, planting and maintenance of green areas, street and sidewalk cleaning, garbage collection, snow removal, management of amenities (swimming-pool, tennis-courts, etc.), and sundry support activities (creation and distribution of newsletters, child-care, etc.).[19]

At this stage of the discussion, we can summarise the four fundamental duties of the said board.

Their first mandate is to ensure that the *Declaration of covenants, conditions and restriction*s is respected by the association's members, and if necessary intervene by means of notices, or fines in the case of proven violation.[20] The second assignment is to introduce the aforementioned additional organisational rules. The third is to collect the membership fees that finance the collective activities. The fourth task is to supply and administer collective facilities and amenities, and to manage the association's annual expenses according to an agreed budget. Interestingly, in the United States many homeowners associations set aside a "reserve fund" each year upon which to draw for possible future maintenance costs on common infrastructure, or the replacement of some of them.

Note that the board's actions are limited to the powers bestowed upon it by the association's members, and can in no way modify its status or functions during its term of duty. That is, the board members abide by a specific mandate that cannot be altered or extended, and their operations are bound by the terms of private law. Members of the board usually perform their functions free of charge, as they themselves are normally members of the association. In the United States, the board members usually number between five and seven, and they are appointed for a term of two to three years. To perform their duties, the boards of homeowners associations in the United States are often assisted by "committees", always composed of volunteers; in certain cases, however, the board might engage an outside management firm to handle specific tasks.

One last key feature to note is that the communities vary in complexity according to their size; the smaller ones consist largely in a single association with the simple structure; whereas the larger ones denote a more articulated framework,

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[18] See also Foldvary (2006), who notes that rules of a homeowners association have two levels: the *constitutional* and the *operational*.

[19] See Appendix, Table 3, for more details.

[20] In such instances, the board's procedure can be either "active" or "reactive". In the case of an active approach, the board is under obligation to periodically verify that the rules are being respected; in the second, the board reacts when alerted to possible misdemeanours, and may only proceed as a consequence to such reports. As one can imagine, both these approaches have their inevitable pros and cons: the former runs the risk of being overly intrusive; the latter entails the risk of random or subjective accounts of violation (Budd 1998).

consisting in one or two main associations (umbrella-associations), and in a network of sub-associations.[21]

1.2.3 Forms of Emergence and Diffusion

Now that we have seen the way in which the homeowners associations work, we can turn to how they come into being, or what conditions obtain for them to form.

Basically, this type of association is more easily created if its basic premises are met from the outset. It is worth noting that in the United States often it is the developer himself that configures a system of association along with a package of regulations applicable right from the sale of the first property. One of the developer reasons is to fetch a higher price for each lot; in other words, the developer uses this mechanism because there exists a sector of the demand prepared to pay higher prices for real estate that is covered by a set of common regulations. As Gordon and Richardson (2004, p. 200) write: "The developers of private communities do more than supply public goods, they also establish and market the rules for their governance. Consumers purchase the entire package, suggesting that the rules have to pass a market test". The same question is pointed out by Nelson (2005, p. 14): "Private profit in such circumstances is put at the service of devising a better system of local governance".

In such cases the association is instituted from the outset, and the developer himself is a member inasmuch as it continues to own lots yet to be sold, withdrawing its membership once the last one has been purchased. As one might imagine, some conflicts can arise during the phase of transition in which the original developer remains involved until the last lot has sold. During this phase the association is composed of various different owners, but owing to the lots still to be sold, the original developer continues to be a member, moreover, one whose influence is proportional to the quotas still in his possession.

It is clearly harder to set up a homeowners association among a group of scattered residents who just happen to live in a certain neighbourhood or consolidated part of the city; the fact that it is more difficult to establish such associations a *posteriori* does not make it impossible. To this end, various tools and procedures have been put forward. Some systems, such as that tendered by Foldvary (2005), propose tools that always rely on unanimity. Foldvary pictures a neighbourhood in which group of owners emerges upon the instigation of a select

[21] In Reston, Virginia, there is a case of a principal association and a series of cluster associations for the discrete neighbourhoods. In Columbia a principal association operates alongside 10 sub-associations for each of the villages. At Woodlands in Texas there were three principal associations that work in tandem, and different sub-associations that hinge on the villages. The Landfall Council of Associations in North Carolina is an association that comprises 22 sub-associations. The Sawgrass Players Club in Florida is an umbrella association comprised of 16 sub-associations for the neighbourhoods.

few locals, and presents a formal request to the council to form a homeowners association, indicating the services they intend to take responsibility for, and in exchange have certain tax exemptions: if certain residents of the neighbourhood decline to join the association, the latter will agree with the town hall on what kind of measures to adopt as a safeguard.[22] Other writers, for example Ellickson (1998) and Nelson (2002), propose a mechanism that relies on a super-majority, namely, a sizeable majority of residents that may involve the reluctant ones regardless.

While the former of these two proposals is technically more complicated, it is preferable because it pivots on the principle of unanimity,[23] though this may inevitably entail that such associations will on the whole be limited to relatively small areas.

To conclude with a comment regarding the diffusion of this kind of contractual communities, we can observe that they have a great success. Homeowners associations are the form of residential association preferred in the United States, their number greatly increasing in the last two decades, while gaining a foothold in other countries also (Nelson 2005; Atkinson and Blandy 2006; Glasze et al. 2006).[24]

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[22] "If most of a neighborhood wishes to privatize but some do not, those wishing to remain directly under the government would continue to be under government jurisdiction, and there would then be agreements for the joint provision of services such us streets that service both members and non members" (Foldvary 2005, p. 126).

[23] For a critique of the idea of creating residential contractual communities in established neighbourhoods not on the basis of unanimous consent but through super-majority, see Eagle (1999).

[24] See Appendix, Table 1, for more details.

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Chapter 2
Differences and Similarities Between Contractual Communities, and Reasons for Their Success

Abstract In this chapter we will focus principally on the differences and similarities between contractual communities; special attention will be given to their similarities, as this will enable us to shed further light on the phenomenon of contractual communities, and lay the basis for the arguments and proposals tabled in the ensuing chapters. We will also outline the reasons for the success of this type of communities, and put forward some conjectures about their future.

Keywords Voluntariness · Benefit principle · Land rent · Leadership · Security · Technological innovations

2.1 Differences and Similarities

2.1.1 Differences

At this point in our argument it is worth pinpointing some of the differences and similarities between the various forms of contractual communities discussed here, first dealing briefly with the differences in this paragraph, and exploring the similarities more extensively in the next. The key differences between the contractual communities under study are basically two, and concern the *ownership regime* and *system of decision-making*.

As for the *ownership regime*, in the case of the proprietary community the ownership of the land is undivided, and in the hands of a single owner, both for the individual lots and for the areas used for common activities; in the case of the homeowners association, the ownership of the land is instead divided up among individuals, and only certain areas are jointly owned and used for shared activities.

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As for the *decision-making setup*, they differ in one fundamental way: in the case of the proprietary community the "collective" decisions are entrusted to a single owner that manages the real estate according to the rent agreement; in the case of the homeowners association, the "collective" decisions are entrusted to an elected body of association members, whose task is to implement the association's founding principles.

2.1.2 Similarities

There are at least five basic features shared by the contractual communities under study: (1) recognised boundaries; (2) the importance of the institutional aspect; (3) the voluntary adherence; (4) the principle of contribution in terms of benefit; (5) the function of land rent; (6) the special role of leadership.

Recognised boundaries

The first feature in common is the fact that contractual communities are strictly tied to an identifiable territory, namely, a tract of land with distinct contours (whether or not these are physically present). In other words, the identification of a specific portion of space is an indispensable factor for all the various possible forms of contractual community. If its boundaries were not clearly defined, then the rights and duties of the community (and its members) regarding the use of that space would remain unclear.[1]

The importance of the institutional aspect

The second feature in common is not only the element of "design", but also—and chiefly—the relevance of the "juridical and institutional" aspect. This means that what counts is not simply the physical and architectural unity of the ensemble of buildings and spaces, but above all the institutional basis on which they depend. The crucial point is that both proprietary communities and homeowners associations are primarily "institutional bodies", over and above the physical arrangements. Clearly, in such cases the mechanisms of *private law* represent the basic tools for creating the institutional entities in question.[2] As Boudreaux and

[1] The scale and physical shape of the said enclave are not preconceived factors, as each one's nature is instead determined by the needs of the context, adjusting accordingly to the evolving demands of the local use and management of the relative goods and services. As already pointed out repeatedly, this constituting feature of the community's being anchored to the specific context, gives rise to a broad variety of spatial configurations for settlements of the kind under discussion here, ranging from a compound of separate buildings, to an urban neighbourhood, or a full-fledged community of town size.

[2] To distinguish the type of issues involved in *private* and *public* law, the first is said to concern the interrelations (e.g., the exchange of goods) among citizens; whereas the second covers the interrelations between the state and the citizens as a whole [with specific reference to land use issue, see Needham (2006)].

Holcombe (2002, p. 289) write, the great variety in private contractual governments is easily understandable:

> Different people prefer different types of government just like they prefer different types of homes, cars, music, or food. But there are many local governments already in existence, so the question arises as to why contractual governments might be desirable …. The answer lies not in the goods and services contractual governments provide, but in the rules they follow to produce those goods and services.

In this perspective, "the contractual government's creator, then, is actually producing and selling constitutional rules" (p. 304).

As aptly pointed out by Nelson (2005), the recent boom of homeowners associations in America can be seen as a grandiose exploration of "local constitutionalism". In reference to homeowners associations, Lee and Webster (2006, p. 28) note how the boom seems to indicate a "convergent process of institutional discovery" under way; in particular, "neighbourhood government is being reinvented in the US as a response to state failure, limits on local taxation and the demand for greater choice and greater local control".[3] Similarly, and in reference to the growing phenomenon of proprietary communities, MacCallum (2003, p. 15) observes that "the unexpected result logically implied by this real estate trend is nothing less than the qualitative transformation of government". In short, contractual communities are an engine of institutional reform (Brunetta 2006, 2008).

An important aspect that should be stressed here—and which appears even more evident in the present case—is that the land and the relative buildings are not merely a "physical fact", and what is leased or sold is by no means a mere "material thing".

On the one hand, a given parcel of land is not important solely for its inherent physical features, but mainly for its location—not in the static sense of geographical place, but as regards its dynamic position within a broader network of external effects of a both positive and negative nature.

By the same token, what is sold or rented out is not strictly a "thing" as such (i.e., a piece of land and/or a building), but effectively a certain type of "social jurisdiction" on a thing (i.e., on a piece of land and/or building). The market transactions are therefore not simply material transactions, but socio-juridical ones: exchange is "wholly social, denoting a change in human relationships; it is behind all physical processes, a matter of title and jurisdiction over physical things" (Heath 1957, p. 99). To put it yet another way, the right to use a given piece of real estate does not so much entitle a relationship over a thing, as involved a relationship between a plurality of individuals in relation to the use of a thing (Baron 2006, p. 1425; Needham 2006, p. 32).

[3] See also Deng et al. (2007, p. 195): "Private communities, in various forms, compete in the search for new urban institutions". And Chen (2011, p. 5): "HOA (Homeowners association) is a kind of institutional innovation by developers, which demonstrates… that there are institutional alternatives in neighbourhood management".

Voluntary adherence

The third similarity concerns the principle of voluntary adherence on the part of the lessees or association members. In the case of proprietary communities and homeowners associations one can effectively speak of communities based on free contract choices (Fennell 2004).[4] As pointed out by Foldvary (2006, p. 23), private forms of governance are distinct from their public counterparts—based on the notion of sovereignty—because they pivot on "explicit voluntary contracts among persons of equal legal standing".[5] Voluntary contracts are positive-sum contracts: in this case each party is gaining value; otherwise, the parties would not enter the agreement (Foldvary 2009).

Ellickson (1982, p. 1520) also suggests that the main difference between "cities" (as public entities) and contractual communities like "homeowners associations" is "the sometimes involuntary nature of membership in a city, versus the perfectly voluntary nature of membership in a homeowners association". In brief, "public entities have involuntary members when they are first formed… By contrast, membership in a private organization is wholly voluntary" (p. 1523).

Obviously, what is *strictu senso* voluntary here is the entrance and adherence to the contractual agreement; once the agreement is accepted, the terms and conditions became mandatory.

Given that the rules of cohabitation are automatically adhered to at the moment of purchase or leasing a property in a given place, basically the adherence to the "social contract" is automatically unanimous. In this sense it is not necessary to resort to a *hypothetical social contract*—as instead one must for political sovereignty—which the individuals would supposedly underwrite if they had been in an "original position" (Rawls 1971), or resort to an *implicit social contract*, which assumes that individuals accept it for the mere reason of not leaving the place in which certain laws obtain (Locke 1690). In fact, in the case of contractual communities, the contract is a *real social contract*—it is to all effects accepted and expressly undersigned by all concerned. Nelson (2005, p. 91) observes that this

[4] The generative principles of the contractual communities combine the condition of freedom and voluntary action: two elements that call into play reconsidering some basic ethical values such as autonomy and responsibility (Goodman 1967; Ward 1973; Sennett 1992).

[5] Contracts present the following qualities. First, contracts "are concerned with the distribution of responsibilities and obligations. They place responsibility on people and/or organisations to comply with their own voluntary agreements. As such, they facilitate 'responsibilisation' within civil society". Second, contracts "entail a degree of reciprocity or mutuality. Responsibilisation is not merely one-way". Third, contracts "assume a 'sense of choice'. … The more people believe that they have choice in … an agreement, the more they are likely to adhere to its logic. In this sense, contracting is 'reflexive' as it seeks to achieve the collaboration and cooperation of those subject to the regulation, favouring self-regulation". Fourth, contracts "presuppose a conscious awareness of a future and a desire to control the uncertainty of the future by regulating its excesses". Fifth, contracts "provoke active rather than merely passive responsibility" (Crawford 2003, pp. 489–490).

case is "one of the few instances in the real world where all the governed have actually given their consent on the dotted line".[6]

Contribution on the basis of benefit

The fourth similarity concerns the special meaning that the "levy" assumes in contractual communities. In the case of proprietary communities and homeowners associations, the quotas paid by the lessees and the members differ in some respects from the traditional levies paid to the local public bodies.

First, quotas are paid on the basis of a voluntary agreement. The principle of contribution is intrinsic to the voluntary agreement, and is linked to a levy that the lessees pay to the single owner (in the case of a proprietary community), and a fee that the association members pay to the board (in the case of the homeowners association). To put it another way, there is no coercive form of taxation to finance services for the common enjoyment, as the necessary quota is already included in the freely accepted contract.

Second, the quotas have been established in direct ratio to the benefits expected in return; in other words, those who pay are entitled to a corresponding benefit of exactly the type they have paid for. In economic science this is known as the "benefit principle" (Musgrave and Musgrave 1976). In this case the "levies" are conceived as "costs", with consequent advantages in terms of allocative efficiency.

Third, the quotas are established once and for all beforehand in the original contract, and cannot be arbitrarily modified with legislative "innovations" (updates): in the case of proprietary communities, the levy and its possible revisions are stipulated in the rental contract; in the case of homeowners associations, the membership quota and the way it is calculated and updated are both fixed in the declaration of covenants, conditions and restrictions.

Fourth, levies tend to come *after* any upgrading carried out on the property, rather than *before* (as instead usually happens with local public administrations).

The positive role of land rent

The fifth similarity concerns the positive utilisation of certain aspects of the phenomenon of "land rent". It is particularly interesting to note that the influence of some actions and interventions on the land is, in the case of both the proprietary communities and the homeowners associations, the very thing that allows contractual solutions to the complex issues of coexistence be found. In other words, the fact that the properties "incorporate" an increase in value owing to the

[6] See also Ellickson (1982, p. 1526): "The initial members of a homeowners association, by their voluntary acts of joining, unanimously consent to the provisions in the associations' original governing documents. … This unanimous ratification elevates those documents to the legal status of a private 'constitution'. The original documents … are a true social contract. The feature of unanimous ratification distinguishes these documents from and gives them greater legal robustness than non-unanimously adopted public constitutions".

enhancement of infrastructure and supply of services, is what allows for a "voluntary exchange" to this end. The increases in value of the land due to certain enhancements are, in this case, not a *problem*, but the *condition* that makes it possible to guarantee the collective services, accruing and sharing out indirectly the advantages among all the members of a contractual community.

To sum up: "The ownership of sufficient territory so that the rent generated by the goods can be collected enables the owners to eliminate free-riders and determine the profit-maximising level of collective goods to provide" (Foldvary 1994, p. 41). In other words:

> When a private agency owns the territory (estate) serviced by a territorial collective good, it can simultaneously provide the good and collect the rent generated by it, satisfying the conditions of simultaneity, benefit and voluntarism. … Consensual rent collection is an economic equivalent of government land-value taxation, except that the equilibrating agents operate by a market rather than a political process (Foldvary 1994, p. 42).

It is therefore clear that, in the case of the contractual communities, the land rent should not be seen merely as a form of exploitation by owners who benefit passively, but instead becomes a component of a more articulated active operation for the enhancement of the territory.[7]

The function of private leadership

The sixth similarity concerns the particular role of leadership performed, in one case, by the single owner and, in the other, by the board of the association. What is interesting to point out is that, in both these specific cases, the agent acting out the role of leadership has a more clearly defined field in which to act compared to traditional public bodies, but also a more vested interest in the success of its actions.

First, the agent operating the leadership cannot alter his or her range of action, and is closely bound to complying with private law and with forms of mandates that are explicitly geared to a specific end; in other words, the agent cannot alter the private originating declaration from which he or she takes its role—as instead public authorities do with increasing disregard. Should some contravention occurs, the private leadership can be dragged before the court by any one of the lessees or association members. About the role of the single owner in a proprietary community, MacCallum (1970, p. 88) observes: "In comparison with that of a sovereign official, the role of an owner is clearly defined. His obligations towards his tenants are detailed in the lease agreements negotiated with each".

Second, in many cases the leadership has a more direct interest in the success of his actions: paradoxically, the private dimension within which he performs his duties increases the responsibility of the decision-maker. The very programming of the duties to perform—complying with a specific schedule, a budget, and the auditing of the results, etc.—is in many cases more accurate and transparent than

[7] We will return to this issue in Chap. 6.

what takes place with the public authorities in corresponding operations. In short, in certain situations the incentives to toe the line are more transparent and direct for private leadership than in public administration.[8]

In pointing this out, it is not opportune to generalise indiscriminately beyond the forms of organisation under study here, nor should we conceal the drawbacks and failings that inevitably befall *any kind* of leadership; that said, we must not underestimate certain decisive structural features that connote the performance of leadership in certain specific private areas and which manage to forge particularly close links between authority, responsibility, and efficacy.

As we shall see further on (Chap. 4), this is not a call for the end of the public body, but simple to radically re-examine its role, and not expect it to perform beyond its means.

2.2 Plural Motives for the Emergence of Contractual Communities

As explained earlier, contractual communities are spreading, and have recently been gaining ground in the United States in particular. Taking for granted the fact that this expansion come about if (and where) a favourable legal framework prevails, and if (and where) the local administrations are not opposed to such schemes,[9] we will now take a look at the question of *demand* and *supply*.

2.2.1 Questions of Demand

From the point of view of demand, our conviction is a follows: in their attempt to account for the emergence of certain phenomena, the usual "single-cause psycho-sociological explanations" prove to be completely inadequate, because they tend

[8] Worth noting are the results of a national survey in the US conducted by Zogby International in 2009 on behalf of the Community Associations Institute. While the survey covered several types of community associations (homeowners associations, condominiums, housing cooperatives), the results are indicative for the arguments under discussion here. To the question: "Do you think the members of your elected governing board strive to serve the best interests of the community a whole?", 44% responded "Absolutely", and 45% "For the most part". Source: Community Associations Institute (www.caionline.org).

[9] In the United States various local administrations have welcomed the fact that certain companies or associations opted to take on the direct management of infrastructure and services, thereby considerably easing the tight local budgets (McKenzie, 1998). Elsewhere, for example in some countries across Europe (e.g., Italy), one can see – at least for the time being–a stronger aversion of public administrations toward such contractual communities as homeowners associations.

to reduce the "consumers" of certain forms of contractual communities to a single, univocal psychological type, driven by crude and antisocial impulses. The reality instead is that many individuals are doing nothing more than exercising their liberty to willingly enter contractual communities in their quest for good-quality living environments, for services that address their needs, for greater guarantee of an increase in value of their real estate investment, and for more direct forms of involvement in the running and care of their neighbourhood, and so forth. Factors of this kind are combined variously (Glasze et al. 2006a). The concern for personal safety and security, which many writers continue to see as the primary obsession of people choosing private residential communities, is therefore only one of the elements of a more complex whole of motives, and furthermore not always the purchaser's and tenant's priority.[10]

As observed by Glasze et al. (2006b, p. 2) in their *Introduction* to a book that brings together varied research into the phenomenon of residential contractual communities all around the world: "security is only one service that residents want and in both conventional and private neighbourhoods it is generally packaged up with other services. Locational choice is made on the basis of subjective evaluation of bundles of civic goods". The same point is endorsed in the book's *Conclusion*:

> Contrary to much of the media coverage about secured communities, security seems to be only one motivation for moving into this form of neighbourhood. It is often not as important as the desire to secure the supply, more generally, of a bundle of rights including the rights to goods and services and freedom from risk of all kinds (Webster and Glasze 2006, p. 232).

Generally speaking, the question of safety and security is more layered (Kilburn and Shrum 1998) than some rather simplistic readings continue to obtain; and many assumptions that have come to be accepted without question should be critically revised.[11]

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[10] We quote here the results of the national survey carried out in the United States by Zogby International (2009) (covering homeowners associations, condominiums, and housing cooperatives). As for "the best aspects of living in an association", the replies are as follows: 23% "Neighbourhood attractiveness"; 22% "Less maintenance for individual homeowners"; 13% "Community safety"; 11% "Property values". Source: Community Associations Institute (www.caionline.org).

[11] It is interesting to recall here some data covering the situation in the US taken from the recent American Housing Survey (United States Census Bureau 2009). Some 90.66% ticked the option "satisfactory police protection"; and only 6.57% ticked "unsatisfactory police protection" (The remainder gave no answer.). As for the question "serious crime in past 12 months" in your neighbourhood, 80.6% responded "no"; 17.26% responded in the affirmative. These data seem to indicate both that crime is not perceived as a constant and pervasive threat, and that people are quite satisfied with the protection offered by the police force. See Appendix, Tables 7 and 8, for details.

2.2.2 Questions Regarding Supply

On the supply side, it goes without saying that real estate developers and market agents tend to prioritise and favour forms of settlements in which lessees or owners are willing to make a larger investment. For their part, developers have contributed and will continue to contribute and/or administer certain types of goods and services in a way that guarantees them significant economic returns. This is not so much because [as claimed by McKenzie (2005, 2006) and Winokur (1994)] the physical conformation of certain contractual communities—usually with a dense layout and ample collective spaces—allow for particular savings in their construction, as for the fact that contractual communities are distinctive "institutional subjects" that guarantee certainty and quality over time, and are therefore appealing to the market.

It is interesting to note here that developers are likewise taking greater account of environmental issues and sustainability—also when creating settlements that are specifically intended for contractual community management—given the growing interest in the public and market in these issues. In addition to the better-known cases (for example what took place at the island of Hilton Head in the United States[12]), there is a growing occurrence of contractual communities that make proper care for the environment one of their main priorities.[13]

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[12] The development was got under way by two construction partners, Charles Fraser and Fred Hack. From the outset Fraser and Hack failed to agree on the development project: but the two decided to go ahead—separately—with two different projects. Hack constructed traditional buildings without an overall scheme, and sold them piecemeal as they became read. Whereas Fraser conceived a unitary settlement and functional community of residents, envisaging forms of specific safeguard for the island's ecosystem, applying rigid covenants that bound owners to the upkeep of the original project over time. In this way he began to realise the settlement of Sea Pines, which would become one of the most cited examples for the combination of residential development and environmental protection. Fraser's approach was so successful in economic terms that his former partner was forced to recant and copy the former's scheme—the same applied to many of the other islands and coastal sites in the area. In such cases, the developers went far beyond their legal obligations in terms of respect and protection of the environment. As Rinehart and Pompe write (1997, p. 555), commenting the case of Hilton Head: "By not building as close to the ocean as possible and by protecting shoreline vegetation, property values for the community are enhanced. Although developers find protecting such environmental resources costly, they will voluntarily engage in such activity when they expect to receive private net gains". And: "Private developers are making significant efforts to protect environmental resources that add to the net collective value of the community. These efforts are simply profit-maximising behaviour by developers responding to property owners' growing demands to protect the environment and preserve the natural landscape" (p. 557).

[13] Examples worth citing in the United States include: Ross Bridge (Alabama), Civano (Arizona), DC Ranch (Arizona), Desert Highlands (Arizona), Talking Rock Ranch (Arizona), Portola Valley Ranch (California), Village Homes (California), Sea Ranch (California), Bonita Bay (Florida), Tupelo Plantation (Florida), The Peninsula at Golden Isles (Georgia), Huntsman Spring (Idaho), River Rim Ranch (Idaho), Prairie Crossing (Illinois), Coffee Creek Center (Indiana), Radisson Community Association (New York), Mountain Park Home Owners Association (Oregon), Eagle Rock Reserve (Montana), Great Brook Preserve (Maine), The

2.3 The Role of Technological Innovation in Fostering Possible Further Development of the Contractual Communities

As we near our conclusions, a considerable aspect worth highlighting is that instances of contractual community may undergo a surge as a result of certain forms of technical advances that can significantly alter the supply of certain types of services.

Generally speaking, it is worth noting that very often political and economic theory assumed technology as a given (Foldvary and Klein 2003b). Part of the justification for attributing a decisive role to the state in so many fields is tied to the habit of considering certain forms of technology as fixed elements of our world. In truth, many technical advances under way actually favour the freeing up of various sectors. As Foldvary and Klein (2003b, p. 1) observe, the technological advancement under way tend to favour the case for free-enterprise action; it reduces the relevance of market-failures arguments and the case for public intervention:

> Most market-failures arguments boil down to claims about invisible-hand mechanisms being obstructed by some kind of transactions costs. If technology trims transaction costs – by making it easy to charge users, define and enforce property rights, exit and utilise substitutes, gather information, gain assurance of quality and safety, enter and compete in markets – the invisible hand works better.

This aspect is particularly important for our discussion of contractual communities, as they are in a position to exploit these technological advances as a means of securing certain basic resources for themselves. In this way they eliminate the need to link up to (and depend upon) the statutory supplier network.

A case in point is the opportunity of improving solar energy transformation for domestic use; another opportunity is to create independent water processing and recycling plants—in particular, closed-circuit systems (Foldvary and Klein 2003a). To get such innovations off the ground would clearly require radically rethinking the traditional methods of supplying services, and would entail creating the conditions for significant alterations to administration and social organisation.

(Footnote 13 continued)
Branches at East Fork (North Carolina), Crescent Communities on Lake James (North Carolina), Balsam Mountain Preserve (North Carolina), Cliffside of Hickory Nut Falls (North Carolina), Creston (North Carolina), Firefly Mountain (North Carolina), French Broad River Crossing (North Carolina), Hickory Nut Forest (North Carolina), Highlands Pass (North Carolina), Mount Wilderness (North Carolina), Palmetto Creek (North Carolina), The Cove at Flat Gap (North Carolina), Cedar Creek Falls Retreat (North Carolina), The Legacy at Jordan Lake (North Carolina), The Preserve at Little Pine (North Carolina), Sunalei Preserve (North Carolina), Dewees Island (South Carolina), Seabrook Island Property Owners Association (South Carolina), Haig Point Club (South Carolina), Daufuskie Resort (South Carolina), Spring Island (South Carolina), Kiawah Island (South Carolina), The Ponds (South Carolina), Woodland Valley (South Carolina), Thunder Pointe (Tennessee), Homestead Preserve (Virginia), Preserve at Hunters Lake (Wisconsin).

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Part II
The Role of Contractual Communities

Chapter 3
Positive Aspects and Limits of Contractual Communities

Abstract In this chapter we will take the positive aspects and the limits of contractual communities into consideration. We have tried to do this from a "neutral" and "non-partisan" point of view without taking sides beforehand. Our considerations here have led us to maintain that many of the recurrent criticisms of contractual communities are inconsistent and that only some are truly to the point.

Keywords Polarisation · Segregation · Privatisation · Public Space

3.1 Positive Aspects

The positive aspects of the proprietary community are the following.

The first positive aspect is that the "members" join the type of organisation in question completely voluntarily. In fact, the renters accept both the organisational rules and the required rent freely. The rules and the rental rates are explicitly specified in the rental contracts and deliberately accepted at the act of signing the contracts themselves.

The second positive aspect is the fact that single owners put their proposals on the market. Thereby they expose themselves deliberately to competition and let themselves be guided effectively by profit. In effect, single owners supply particular mixes of services and rules over their territories; their potential users evaluate these mixes by comparing them with those of their competitors, who are also in the private sector. Obviously, single owners have no coercive power and so cannot count on anything other than the attractiveness of the complex that they have created. The yardstick of financial return allows single property owners to appropriately finalise their programmes. Thus they can act in response to the

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relative rising or falling in their real estate property values, fluctuations that enable them to check up on the choices they have been making. Thus decisions are not made "in the abstract" but in the face of concrete phenomena and constraints. Single owners are genuine entrepreneurs and are therefore motivated to take a long-term point of view and to imagine solutions that can hold up well over time. They have personal interests in safeguarding the existence of a settlement that satisfies their varied users impartially. In other words, single owners are (directly) *motivated* but (indirectly) *non-partisan*. The single owner, unlike the tenants he serves (who are clearly partisan) is at once both interested and disinterested; "he has a direct personal and business interest in the entire centre and therefore in the success of every proprietor on his team" (MacCallum 2003, p. 8). The aim of the single owner is "the success of the whole community rather than that of any special interest within it" (MacCallum 1970, p. 62). Single owners find themselves in positions ideal for playing leadership roles and for promoting the success of proprietary communities. In a way, single owners are forced to make decisions that bring the most benefit in common to all and favour the production of wealth to the advantage of all. Finally, single owners are pushed to be innovative and creative as a consequence of their very entrepreneurial role.

The third positive aspect is the fact that a proprietary community has a certain degree of flexibility in the ways in which it adapts to changes and exploits opportunities that open up as time goes by. This is due to the fact that single private owners are constantly on the lookout for the options that come up and able to "readjust their programmes" as they go along because they have a certain margin of manoeuvrability at their disposal. Indeed, single owners can review the situations and conditions of the single units because rental contracts expire periodically. Besides they are and remain the owners of the land in its entirety; therefore they can also update certain features of their settlements over time, remodelling some parts, adding connections, integrating services, etc.

Let us now consider the second form of contractual communities, namely, homeowners associations, which have the following positive aspects.[1]

Here too, the first positive aspect is that the members join homeowners associations voluntarily, accepting the rules and membership fees on the basis of a free agreement. When people purchase a piece of real estate in a housing complex, they explicitly consent to the duties that are effectively present. In a homeowners association the agreement towards the initial constitution has been unanimous. "As a condition of purchase, every buyer must agree to accept the association's

[1] There are some interesting results of the already quoted Zogby International (U.S.) national survey (2009). (This survey covers homeowners associations, condominiums, and housing cooperatives). For the item "Overall resident satisfaction", 71% answered "positive". To the question "How would you describe the return for what you pay in assessments?" 82% answered "Great" or "Good". At the question "Do the rules in your community protect and enhance property values?" 70% answered yes. Source: Community Associations Institute (www.caionline.org).

governing rules. … Any subsequent purchasers must also meet the consent requirement" (Nelson 2005, p. 90).

The second positive aspect is that such an arrangement often prompts individuals to rediscover a sense of responsibility and care for their living environment. The formation of a homeowners association can create and maintain a sense of identity and a durable spirit of community within a neighbourhood: "as a smaller and more cohesive governing unit, a private neighbourhood can help to stimulate residents to be more involved in public affairs, creating 'social capital' within the neighbourhood itself" (Nelson 2005, p. 269). In other words, when individuals "privatise" their environments, they are able to monitor them more closely, and more easily focus on the conditions of their own neighbourhoods as a whole.[2] This happens because they become more aware of the reciprocal and cumulative effects of the actions of each individual and become more interested in handling problems in common with others.

The third positive aspect is that the services meet the real needs of the citizens more adequately, in that they are delivered on a scale that turns out to be more apt to catering to the preferences of the individuals directly involved. The services are very often delivered more efficiently than they are by traditional public agencies; service adjustments are more tailored to the needs of changing circumstances (Foldvary 1994). Private neighbourhood associations deliver services roughly 50% more cheaply than traditional public agencies (Nelson 2005).[3]

The fourth positive aspect is that homeowners associations very often guarantee a good residential quality. This happens for several reasons. Firstly, the rules (above all, the rules set down in the covenants) are formulated in an appropriate way—thanks also to the ongoing process of competition in the market. Secondly, these rules are especially felt and broadly respected because those subject to the rules consider themselves parts of a common enterprise; they have recognised that collective advantage comes together with individual advantage. Thirdly, the board has a direct interest in maintaining a quality environment.

3.2 Limits: A Review of the Main Criticisms

Let us now discuss several problems considered crucial by many critics. Generally, the critics focus almost exclusively on homeowners associations. Proprietary communities are rarely considered to be of any special theoretical interest. Housing cooperatives are excluded by definition from any potential criticism. (This seems to point to the largely ideological nature of many criticisms). We will

[2] "To belong to a community is to act has a creator and co-owner of that community. What I consider mine I will build and nurture" (Block 2008, p. 12).

[3] See Langbein and Spotswood-Bright (2004, 2005) for a critique of the efficiency of contractual communities in the delivery of services; see Agan and Tabarrok (2005) for a rebuttal of their arguments.

therefore focus mainly on the criticisms of homeowners associations, keeping in mind that some of these can easily be stretched to cover other models of contractual communities.

In the first place, many critics hold that homeowners associations are involved with—and only can be involved with—the richest classes, who want to isolate themselves within fortified *gated communities*. Arrangements like these generate further socio-spatial inequalities and lead to a sharper and sharper polarisation of urban conditions (Cashin 2001; Caldeira 2005; Vesselinov et al. 2007). In other words, cities "that are segregated by fortified enclaves… foster inequality and the sense that different groups belong to separate universes" (Caldeira 2005, p. 104). This often goes by the name of the "secession of the successful" (Cashin 2001).

In the second place, many critics hold that homeowners associations provoke an unwanted privatisation of public space—that is, a progressive subtraction of urban spaces with open access for everyone (Blakely and Snyder 1997; Vesselinov et al. 2007). According to Blakely and Snyder (1997, p. 2), present-day homeowners associations

> are not multi-unit, high-density apartment and condominium buildings with security systems or door-men in which gates or guards prevent public access to lobbies, hallways, and parking lots. Gated communities are different: their walls and fences preclude public access to streets, sidewalks, parks, beaches, rivers, trails, playgrounds—all resources that without gates or walls would be open and shared by all the citizens of a locality.

According to Scott (1994), p. 20: "The assignment to homes associations of open space, parks, and other important community facilities bypasses the local governments that could appropriately be designated as custodians of such property".

In the third place, many hold that homeowners associations bring along a general weakening of civic consciousness and participation (Barton and Silverman 1994; Blakely and Snyder 1997; Bauman 2000; Cashin 2001; Bruhn 2005; Caldeira 2005). As Blakely and Snyder (1997, p. 3) write, homeowners associations "reflect the increasing attempt to substitute private controls for public organisation, for the joint responsibilities of democratic citizenship all of us share". Homeowners associations bring out tensions, those "between exclusionary aspirations rooted in fear and protection of privilege and the values of civic responsibilities" (p. 3). "The trend toward privatised government and neighbourhoods is part of the more general trend of fragmentation, and the resulting loss of connection and social contact is narrowing the bonds of mutual responsibility and the social contract" (p. 139). Caldeira (2005, p. 104) seconds this notion: "Cities of walls do not strengthen citizenship; rather, they contribute to its corrosion". See also Bruhn (2005, p. 83): "As citizens divide themselves into homogeneous, independent cells, their interest in and commitment to sharing in the principles of citizenship and community is attenuated".

In the fourth place, some critics emphasize that homeowners associations themselves are not democratic enough (Blakely and Snyder 1997; Glasze 2003; Glasze 2006). In fact, only property owners have the right to vote on common

issues. In many cases, the weights of their votes are based on the surface area of the unit or on the values of the real estate they own.

In the fifth place, some critics observe that the associations' declarations of covenants, conditions and restrictions can contain rigid admittance barriers, so that some categories or classes can unjustly be discriminated against.

In the sixth place, many critics emphasize the potential tendency towards the segregation and reciprocal isolation of various groups in society, both in physical and social terms. This happens because the various associations tend to take shape by bringing homogeneous members together—or, at least, members who share certain ideas of environmental and architectural quality, preferences for certain types of services, and so on. This also happens because people who are not members of these associations could automatically find themselves located, in turn, in "unintentionally homogeneous" areas. All this could lead to the parcelling out of urban society into overly uniform islands. This would result in the reduction of the benefits of the "urban effect"—that is, the fruitful encounter with diversity. This last element represents a feature of the city that is not only positive but is truly one of the factors that "makes the city a city" (Jacobs 1961, 1969; Sennett 1992; Florida 2005, 2007).

3.3 Limits: Possible Replies to the Criticisms

3.3.1 Not Only Gated Communities, And Not Only the Richest People as Members

In regard to the first criticism, it is first of all important to note that only a part of the homeowners associations are effectively gated in the strict sense of the term—completely fenced in and with entrance controls like electronic devices or security guards. (If the term "gated community" is not employed in the strict sense of the words, it loses all meaning because it ends up coinciding merely with a general idea that private property in lands or buildings is a right that obviously allows their owners to exclude access to others). In the United States, for example, only 10% of all the residential community associations are gated in the strict sense of the term, making up a total of 20% of the residents in this type of complex (Nelson 2005).[4] Where the associations also include commercial areas, these are obviously anything but impenetrable.[5]

[4] The data from a recent American Housing Survey (United States Census Bureau 2009) allows us to state that the housing units within gated communities (those with wall and special entry systems) are only about 5.5% of the total number of housing units. See the Appendix, Table 5, for more details.

[5] Reston Town Center, for example, attracts millions of visitors every year. In 1996, there were more than five million.

Furthermore, only a part of the homeowner associations include individuals belonging to the richer classes. In fact, the associations include various social classes: "this is a process that affects all income groups" (Lee and Webster 2006, p. 29). The point is that "many moderate-income households participate in CIDs [common interest developments] and the concept is too popular to be considered a prerogative of high-income households" (Deng et al. 2007, p. 202).[6] It can be added here that in the United States not even all the gated communities are made up only of individuals from the richest classes (Sanchez et al. 2005).[7]

In conclusion, the chance to belong to some types of contractual communities certainly does not itself *create* inequalities. Rather, it reflects them, but not any more than the chance to buy certain types of clothes or cars does. More generally, socio-spatial inequalities are inevitable phenomena. There is a tendency of various parts of the city and the territory to specialise. This is a phenomenon that, in its varied forms, will always be a feature that is characteristic of our social landscape.[8] The point is that we should therefore not deceive ourselves into believing that we can create a world where there are no inequalities. Rather, we should act so that everybody can take advantage of a type of society that we can really promote.

3.3.2 No Privatisation of Public Space

In regard to the second criticism, the response is that homeowners associations do not take any public space away from cities. They simply organise an *already private* space in ways different from more traditional ways of using spaces of this kind. Hence there is no "assignment" of spaces that legally belong to local governments, despite Scott's claim (1994); there is no subtraction of resources "which

[6] See also Webster and Glasze (2006. p. 227): "Studies in the US… and elsewhere… have shown that is not only the elite who are moving into gated housing estates but that the trend is followed also by many households of the medium income range". And Ben-Joseph (2004, p. 132): "Although [they] have historically been the domain of the affluent…, private communities are spreading, world-wide, across diverse economic and social classes".

[7] American Housing Surveys of 2001, 2005 and 2009 reveal that gated community associations include not only homeowner housing units but also rented units. For example, in 2009, 44% of the housing units included in gated communities were owned, and 56% were rented (United States Census 2009). This shows that not only the rich live in gated communities, because the richer classes tend to purchase their own houses. See the Appendix, Table 5, for more details.

[8] There is a certain kind of Marxist geography—followed more or less implicitly by many—that tends to make the existence of social-spatial inequalities (city-wide, region-wide, and country-wide) coincide with the existence of the capitalist system of production in the conviction that these two phenomena imply each other (Tabb and Sawers 1978; Harvey 1982; Smith 1984). There are rebuttals to this: no type of economy (capitalist or not) can develop in a spatially neutral and uniform way (Pahl 1975, 1979); therefore every kind of economy produces unequal development in any form or direction (Sayer 1995). We can very easily recall the existence of deep inequalities in old pre-capitalist urban and territorial areas as well in the socialist areas in the twentieth century (Matthews 1979; Cole 1981; Hague 1990).

otherwise would be open and shared by all the citizens of a place", despite these words of Blakely and Snyder (1997).

What happens in the formation of a homeowners association is simply that the private space possessed by someone, for example, a developer, is subdivided into a series of spaces that are still private, some of which will be open to all the members of the future association. Therefore homeowners associations do not take any (already) public space away. Rather, they organise (already) private spaces in a way that is less fragmented than in the traditional ways, allowing at least the members of a certain group to use common spaces. Rather than a "privatisation of public space", there is a "collectivization of certain private spaces". The phenomenon of the homeowners associations has generated "an unprecedented transition from the traditional individual ownership of property to collective governance of most property in the USA" (Ben-Joseph 2004, p. 132). In the United States, in particular, there was a shift "from individual private ownership of residential property to new collective forms" (Nelson 2009, p. 351).

Moreover, spaces that in our cities are usually called "public", are, in fact, not open to all and not open at all times. These public spaces are subject to various types of access barriers and various types of rules for usage that the subject that owns the property—the public authority—deems necessary to introduce. We are not assuming that there is anything negative in all this, but simply that it makes no sense to speak of urban public spaces as spaces where anyone can enter whenever he or she wants to. Rather, it is more correct to interpret them as spaces whose rules and entrance barriers have been established by the legal owner, that is the public subject.[9] In this regard, there is a surprising phenomenon that we can point out in our cities: entrance barriers and barriers to the use of traditional *public* spaces are actually growing. For example, car owners are required to make payments (which are becoming more and more complicated and detailed) in order to be able to park on "public" city land.[10] There are various types of limits being introduced to prevent cars from entering certain parts of the city. There are parks and public gardens that many local administrations are tending to fence off and limit access to during certain predefined times. Paradoxically, we can conclude by saying that the most peculiar tendency of today is not so much the obvious fact that private spaces utilise access limits, but that the access limits of public spaces are increasing (Mitchell 1997, 2003).

[9] Needham (2006, pp. 41–43) observes that the traditional way of drawing the line between public spaces (those assumed to be open to all unconditionally) and private spaces (those open only to some and under certain conditions) has very little meaning because all city spaces are subject to the rules that the owners introduce (including public owners). As an alternative, Needham suggests that we distinguish among spaces on the basis of the differing "ownership regimes" to which they are subjected, where each of the owners in question (be they public or private) are authorized to introduce rules and conditions for entry. In other words, rather than speaking simply of the different holders (public or private) of land property rights, it seems more correct to speak of different ways of holding (and managing) such property rights.

[10] "It is interesting to note that many cities charge people to park in 'public' parking lots, whereas most shopping centers offer 'free' parking" (Foldvary 2009, p. 329).

3.3.3 Civicness and Membership

In regard to the third criticism, it does not actually seem to be true that membership in homeowners associations *in itself* reduces the members' participation in more traditional political processes like party memberships, voting for local and national governments, etc. (Gordon 2003; Walks 2010).

Nevertheless, many of the critics counter that this is not enough and keep on asserting that what is undermined by homeowners associations is a wider and deeper civic involvement in the life of the community (understood in the broad sense).

In response to such position, we can observe that it is an illusion to imagine that an entire city can be experienced as a "great community". Rather, it is a "great society",[11] in which various smaller concrete communities flourish. In other words, we cannot demand that every issue be treated and felt by all the citizens in the same way. Perhaps it is time to go back to distinguishing in a clearer way between two types of issues. There are a few issues related to *the right*; we all should be concerned about them because they have general relevance. And there are the many issues related to *the good*. These issues touch only (groups of) individuals separately; they concern those groups who share or wish to share certain concrete situations or experiences. The question of "social cohesion" that is so often raised should consequently be divided into two. First, there is the level of society understood as a whole. Here social cohesion must be sought in the concept of an impartial and impersonal law that establishes rules of the game that all share, rules that we all must again learn to regard with total respect (Moroni 2007, 2010a). Second, inside of a society understood in this way, there is a different form of social cohesion that can be created, one based on narrower bonds of reciprocal relationships and on a sharing of essential conceptions of the good life on the grassroots level: these bonds can be created only *within* the various groups that make up society itself.

As is well known, many critics rebut this also, maintaining that homeowners associations, after all, are places where there is indifference for reciprocal situations and where there is a continuous war of attrition in the defence of private property (Putnam 2000; Bauman 2000; Bruhn 2005). Putnam (2000, p. 210) maintains that the residents of gated communities "appear to have a surprisingly low rate of civic engagement and neighbourliness even within their boundaries". Bruhn (2005, p. 138) seconds this comment, saying that homeowners associations "do not generate high levels of participation, self-governance, or mutual trust. … Neighbours are often un-neighbourly".[12]

These critiques can be met, too.

In the first place, it is not true at all that homeowners associations are the sites of continual dispute and argument: if we do not heed various sensationalistic newspaper reports, inevitably focused on the most extreme cases, and if we

[11] In the sense that Hayek (1982) gives to this expression, retrieving it from Adam Smith.

[12] See also Wilson-Doenges (2000).

consider the general statistics, the image that emerges does not reveal any particular atmosphere of clash or argument (Nelson 2005).

In the second place, it is not true at all that members of homeowners associations are disinterested in common issues. They participate in the procedures of collective decisions at a higher rate than normal. The percentage of potential voters who actually vote in the elections to the boards of community associations is 70% in the United States, on the average. This is a higher percentage than is normally recorded for the elections of public administrations there. Furthermore, a significant number of the members of homeowners associations serve in voluntary committees in support of the activities of the associations or of the same boards (a good 30% of members of American community associations have participated in a board).[13]

In the third place, ties of a reciprocal nature are actually created within the homeowners associations. This is evidenced, for example, in the various voluntary activities of reciprocal support and the initiatives that are social in more general terms and that have arisen in many homeowners associations.[14]

Clearly, we do not have to pretend that everything works idyllically inside homeowners associations. Yet, we must not depict the associations in an unrealistic way. In other words, seeing homeowners associations as the *antitheses of social cohesion* involves an excessively simplistic reading; they are much more multi-faceted, involving individuals within complex relationships, along with their preferences, their environments, their institutions, and their lives (Manzi and Smith-Bowers 2006).

3.3.4 The Question of Internal Democracy

In regard to the fourth criticism, the critics have seemed to forget that the traditional ideal of democracy—understood as the chance to elect representatives on the basis of "one person one vote"—has a meaning in the case of *coercive* communities (states). In these, people find themselves involved entirely and involuntarily (Ellickson 1982). However, democracy loses *this* meaning in the case of voluntary contractual communities. For the very reason that adherence is voluntary and not imposed, people can choose the systems of decision-making that they prefer.[15]

In the case of homeowners associations, the fact that the vote in collective decisions should be assigned to *homeowners* (on the basis of the surface area of the unit or its value) is basically not so shocking.

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[13] Today more than 1.75 million of Americans serve on the board of a residential community association. Tens of thousand serve as committee members (Community Association Institute: www.caionline.org).

[14] For example, in the aforementioned Reston and Columbia.

[15] Obviously, within the general framework of public rules that we want set up as a frame of guarantees and certainties that are "external" to such decisional procedures, as (normally) happens in relation, for example, to companies.

3.3.5 The Question of Entry Barriers

What pertains to the aforementioned (four) criticisms in a general way is this: critics inveigh violently against certain phenomena; yet they do not notice that some of the criticisms that they have of homeowners associations are not specific to these organisations at all. In other words, the criticisms have nothing to do with specific forms of juridical-spatial structuring of residential or commercial activities. In reality, the critics take aim at the very idea of personal freedom—for example, the freedom of contract or association—and at the idea of private property. Obviously, it is entirely legitimate to criticise the freedom of contract and association or private property. However, the critics should not deceive themselves that they can criticise these only under the circumstances when they are not satisfied with what they imply (proposing pernicious *ad hoc* legislation, something that is becoming more and more common).

In regard to the fifth criticism, on the other hand, the issue being raised is an important one. The situation is relatively simple in cases involving certain flagrant and offensive types of discrimination like entrance barriers based on race or individual's physical condition. In these cases, it is easy to acknowledge the need to put limits on private regulation-making. Several courts in the United States, for example, have aptly passed judgement on the illegality of association rules that promote certain types of discrimination (Budd 1998). In addition, the Fair Housing Amendments Act (1988) explicitly outlaws discrimination against any individual based on race, colour, religion, sex, and ethnic origin (in his or her right of access to property, real estate rentals or the use of common services). Furthermore, this law outlaws discrimination on the basis of the "family status" (e.g. being single or having a family with children) or on the basis of the individual's physical condition (e.g. being disabled).

In cases tied in with other types of discrimination, the issue becomes harder to resolve and the border between the lawfulness and unlawfulness of regulations originating in the private sphere becomes harder to discern. These issues include, for instance, entrance barriers having to do with age, occurring when associations want mostly young members, or the elderly (as exemplified in the United States in the so-called *retirement communities*[16]). As Nelson (2005, p. 62) notes: "Though the legal acceptability of many exclusionary practices is being contested, the issue remains cloudy and, for the most part, remains to be resolved".[17]

[16] The first large-scale, age-restricted, "active adult" community in the USA was Sun City (Arizona). See McHugh and Larson-Keagy (2005) for this type of community.

[17] For an ample and in-depth discussion of this crucial problem, see in particular Strahilevitz (2006).

3.3.6 The Question of Isolation

In regard to the sixth criticism, there is another decisive issue (probably the most important one: Moroni 2010b) that is being raised: the very real risk of "isolation".

At this regard, we can imagine that cities more free than now (Moroni 2007, 2010a, 2011a, 2011b) could potentially provide numerous work opportunities, attractions, and leisure activities: such offerings could convince the citizens not to transform themselves into recluses inside of the contractual communities that they belong to. Instead, these communities could be best understood as sorts of "cells" inside an urban world that is lively and pluralistic, a world still worth perceiving and inhabiting for its wholeness. In other words, we might manage to promote the formation of cities which, *in their entirety*, continue to have diversity and plurality as their distinctive elements. These are their distinguishing marks and their engines of economic and social development. If we promote such cities, any inevitable pockets of small-scale homogeneity are nothing other than pieces in a complex and dynamic puzzle that has a global worth. A greater degree of homogeneity *inside of* the little environs of a neighbourhood can very easily blend in with (and even foster) a broad degree of plurality and differentiation *among* the various neighbourhoods that make up a city (Webster and Le Gois 2005).

Basically, if we distinguish among "gated communities", "gated lives" and "gated minds",[18] we can say that our aim is not so much to fight against *gated* "communities" *in themselves*, but to promote the forming of a city for which – in and outside of the eventual *gated communities*—the "lives" and the "minds" tend to become less and less *gated*.

Furthermore, not even the inhabitants of the most apparently "isolationist" gated communities can cut themselves off completely from the rest of society.[19] If there is something that prevents people from creating artificial communities that really are closed, this something is the market system. The market system, opportunely, breaks through every wall and "forces" everybody—including the richest—to come into contact with others. This happens not so much for (or not only for) a simple "exchange of goods", but mainly for a more decisive (and implicit) "exchange of information" about various situations and bodies of

[18] If a *gated community* is a community that is fenced in and close spatially, we can say that a *gated life* is a life where the potential for movement, communication, and interaction is reduced to the minimum. In the same way, a *gated mind* is the mind of people who peremptorily fight ideas, concepts of the good life, and styles of existence that are different than their own, just as they fight substantial innovations in that direction (Brunn 2006).

[19] This is recognised by Salcedo and Torres (2004) as they examined several residential situations in Latin America that are apparently "shuttered" and invited their readers to bring up for further discussion the by-now stock mainstream image of the phenomenon of closed communities. See also Alvarez-Rivadulla (2007, p. 47), who observe "the literature on gated communities tends to assume rather than empirically evaluate their impact on increasing segregation, ignoring contextual variations".

knowledge or skills on a local level: in fact, the market gives individuals incentives to reveal and make their own subjective and positional bodies of knowledge/skills available to everyone through the mechanism of prices. In this sense, the market is not only and not simply a mechanism of telecommunication but also one that allows individuals to share knowledge and skills that are spread all over society but that otherwise would be irremediably dissolved in it. In this way, the market keeps everybody tied into a huge and advantageous common enterprise (Hayek 1982).

In the next Chap. 4, we will discuss the possible institutional devices that could potentially diminish the risks that these last two criticisms tackle.

3.4 Conclusion

When we are faced with the emergence of certain forms of contractual communities—forms that are profoundly innovative—many of us react with aversion and fear for a presumed disintegration of traditional ways of life. But, there is no reason to presume that certain phenomena are necessarily *disintegrative* of our established ways of life rather than positively *integrative* of them (MacCallum 1997).

We should not at all attempt to hide the problems and difficulties tied in with certain forms of private organisation; and we should not assume radical positions that imply the dying away of the state. But we should take certain phenomena seriously. The question to ask ourselves is not, in fact, whether we should *accept* certain forms of contractual communities; the question is, rather (Webster and Le Gois 2005), whether we have any strong reasons to *prevent* them from being formed—taking in mind that we cannot do this without cancelling certain freedoms that are fundamental for citizens and certain decisive advantages of private initiative.

Let us conclude with the words of Manzi and Smith-Bowers (2006, p. 165): politicians and academicians should take account "in less emotive language" of the expansion of the phenomenon of private community associations; they should consider "how issues of segregation can be balanced against the need to develop consumer choice and potentially increase social cohesion by providing new forms of sustainable communities, instead of railing against privatism, isolationism and particular interests".

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Chapter 4
The Space of Contractual Communities and the Re-Design of the State's Role

Abstract We are used to thinking that private actors cannot easily take coordinated and harmonised actions. This is very often considered as a particularly binding justification for public intervention. In the light of the phenomena dealt with here, we perhaps should begin to think that private actors could effectively take harmonised and coordinated actions if and when they are not hindered or prevented from doing so, as they often were in the twentieth century.

Keywords Subsidiarity · Competition · Public policies · Tax rebates · Urban regeneration

4.1 The Traditional Welfare State Replacing Private Activities

It is curious to see how many scholars seem to believe that the recent growing influence of private associations and business interests in urban issues is something new, as if this phenomenon specifically affected the last few decades. But, the opposite is true: both private interests and community groups have always provided active input to urban operations and initiatives; private individuals and bodies were the driving force of urban change and innovation before the twentieth century. In the nineteenth century there were well-known examples of various forms of private associations and organisations in Great Britain and the United States:[1] these were formed for various aims, including the pursuit of common

[1] See Beito et al. (2002a), Body-Gendrot et al. (2008) for the various forms of private organisations devoted to delivering collective services in the 1800s. Body-Gendrot et al. (2008) observe how the period of strong public urban governance running from 1945 to 1975 could merely be a "parenthesis", an "interval", in a far longer period dominated by private and third-sector intervention.

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goals, the building and running of collective services and infrastructures (libraries, museums, theatre, parks, and streets etc.) and the furnishing of services mainly for the weaker classes (in the fields of health, instruction, etc.).[2]

Tocqueville (1840) emphasised this point in several famous passages about nineteenth-century America:

> Americans of all ages, all conditions, and all dispositions constantly form associations. They have not only commercial and manufacturing companies, in which all take part, but associations of a thousand other kinds, religious, moral, serious, futile, general or restricted, enormous or diminutive. … I met with several kinds of associations in America of which I confess I had no previous notion; and I have often admired the extreme skill with which the inhabitants of the United States succeed in proposing a common object for the exertions of a great many men and inducing them voluntarily to pursue it (vol. II, book II, Chap. 5).

In reference to this, de Tocqueville asked some crucial questions and foresaw certain risks:

> A government might perform the part of some of the largest American companies … but what political power could ever carry on the vast multitude of lesser undertakings which the American citizens perform every day, with the assistance of the principle of association? (*ibid.*).
>
> [The more the government] stands in the place of associations, the more will individuals, losing the notion of combining together, require its assistance… The morals and the intelligence of a democratic people would be as much endangered as its business and manufactures if the government ever wholly usurped the place of private companies (*ibid.*).

Subsequently, something happened not so very differently from what de Tocqueville had feared. Private associative activities and private activities addressed to social welfare were pressured and inhibited by the growing interventionism of the state in the field of services. This happened especially in the wake of the imposition of the ideology and assistance practices of the welfare state.[3] As Giddens (1998) points out, we should recall that old-style social democrats tended to distrust voluntary associations with rare exceptions.

It is perhaps no accident that the recent crisis of the welfare state has reawakened interest in private initiatives of an associative or social nature as well as a more widespread involvement with them. What is surprising is that many interpret this phenomenon as an overcoming of the "individualist-liberal" spirit rather than of the "collectivist-welfare" spirit.

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[2] Many "public" services that are nowadays reputed basic were in fact introduced in their day by private interest groups.

[3] The ability of voluntary private associations "to provide infrastructure, education, security, and poor relief depends on the exercise and spontaneous development of certain institutions, activities, and sentiments. Since governmental bodies dominate these services it is no surprise that our faculties of association remain degenerate" (Klein 2002, p. 92). See also O'Keeffe (1996).

Several vary famous recent studies (Putnam 2000) have observed that social capital has been declining steadily from the second half of the twentieth century to the present. As Beito et al. (2002b, p. 7) point out, it would be a mistake—however, to strictly correlate this decline with the market system, "as it coincides more closely with the rise of the welfare state. The rise of the welfare state and the diminution of property rights crowded out the private provision of many collective goods and social services that had shown considerable merit".

4.2 Towards a Different Approach: A New Crucial Role for Private Activities

4.2.1 A Crucial Complementary Role for Contractual Communities

In this chapter we suggest the adoption of a specific "dual approach" (public *and* private) for the introduction of the rules and the delivery of services, a model that could leave ample and meaningful room for contractual communities.

Allowing contractual communities to develop is connected with recognising the central and intrinsic worth of certain individual freedoms. The freedoms of *contract* and of *association* play an essential role (Foldvary 1994; Nelson 2005). As Nelson writes (2005, p. 386), a government can restrict certain basic rights "simply by putting tight limits on citizens' capacity to band together for expressive purposes". Therefore, the right to gather freely in a place to listen to a discussion must be extended to any kind of voluntary form of common life (*ibid.*).

Moreover, favouring the development of contractual communities is tied in with the idea that it is positive and effective to encourage wider social experimentation and competition among various organisations and projects in the solving of problems. (Already in the 1960s and 1970s, some of the first planned private communities, such as Reston and Columbia, experimented a "mix of uses": residential, commercial, retail, entertainment uses; this was innovative in respect to the then dominant city-planning and administrative culture, which was still centred on the traditional idea of the need for a strict separation among the functions).

We should avoid any misunderstandings in this perspective: contractual communities can substitute local public municipalities in the furnishing of some services, but they cannot *replace* public administrations entirely (Fischel 2004). Local governments keep on being indispensable, even if they are so for reasons other than those traditionally put forward.[4] Therefore we are not adopting "anarchy"

[4] See Heath (1957), Nelson (2004) and Stringham (2006) for the opposite idea—that contractual communities can replace local governments.

here, even though we acknowledge that anarchical thought has aptly signalled the need and the potential to broaden the spaces for self-organisation.

4.2.2 Subsidiarity

In connection with this, there is the widely praised concept of "subsidiarity".[5] According to the principle of subsidiarity the social actors or institutions that are most fit for carrying the burden of meeting the needs of individuals are those set up at the lowest levels possible. There is a general distinction between vertical and horizontal subsidiarity. According to *vertical* subsidiarity, local public institutions are the first levels of the institutional pyramid that must act, yielding the field of action to higher levels only when it cannot be avoided; according to *horizontal* subsidiarity, public institutions (on any level) should step aside whenever certain tasks are done better by other types of private actors.

If we take subsidiarity seriously we have to welcome contractual communities and other forms of private organisations. This can happen as long as an effective form of subsidiarity (horizontal, above all) stands at the heart of the approach; and as long as there is not just a simple decentralisation (vertical) occurring in traditional public structures, ones that keep their spheres of influence and control unchanged.[6]

Leaving aside the general level of discourse, it is common knowledge that there are partially different interpretations of horizontal subsidiarity, also;[7] but without entering the debate here, it is enough to note that, irrespective of the specific interpretation one prefers, contractual communities are without doubt one of the crucial elements of it (though clearly not the only one).

4.2.3 Contractual Communities and Urban Regeneration

In this perspective, contractual communities may even be able to play a role in the revitalisation of parts of established cities that are going through crises. There still

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[5] As is well known, the concept of "subsidiarity" is a key notion in the development of the Europen Union (Bermann 1994). The term "subsidiarity" is an English neologism coined from the Latin word *subsidium* (help, aid) (Soudan 1998).

[6] "The current debate about subsidiarity has concentrated almost exclusively on its significance for the distribution of competences between different levels of *political* authority. But this is only one specific application of a wider sense governing the distribution of functions between the state and any other communities, requiring that the state not assume tasks which other communities can perform adequately for themselves" (Chaplin 1997, p. 117).

[7] In particular, the classical liberal interpretation and the Catholic one. For an in depth discussion of this point, see Follesdal (1998).

is a lot to explore in this vein and what we will find may provide us with surprises. Contractual communities "may present opportunities for urban renewal that are at present poorly understood" (Manzi and Smith-Bowers 2006, p. 164).

Nelson (2005) observes that there were two strategies employed to face the problems of the inner cities: first, to improve the inner-city environmental conditions by providing better public services; and, second, to create opportunities for inner-city residents to move in better places. However, both elements of this policy have largely failed:

> Providing an institutional framework of property rights enabling inner-city residents to help themselves might well have done more good. … I propose that state legislatures should therefore create the necessary legal mechanism to allow property owners in an inner-city neighbourhood to create their own neighbourhood association in an established neighbourhood (p. 304).

In the United States, this idea would take shape in repeating the experiment of the Business Improvement District (introduced by US legislation at the end of 1970s),[8] by expanding the concept to the residential sector (Ellickson 1998).

According to Needham (2006, p. 140), several features of neighbourhood quality are undeniably not being faced adequately enough by the enforcement of public-law regulations. There is a higher potential for keeping up neighbourhood quality if the private-law regulations are applied and enforced. After Needham analysed attempts to keep up the neighbourhood quality in Great Britain, the United States, and Holland, he wrote that in none of these three countries is that aim fulfilled by the application of public law rules, either in residential areas or in industrial ones: "The result is that such areas often deteriorate, and the only way of correcting for that is by rigorous intervention by a state agency spending huge amounts of public money. It would be better to give, under private law, those involved in such areas the possibility and the stimulus to organise themselves as stewards of their own surroundings" (p. 140).

We would like to conclude by commenting on the limited success of many urban renewal programmes, including those with high degrees of participation. This shortcoming might have come about because these programmes did not treat property rights, use rights, and the varied range of their potential configurations (including those that could be incentivised) as factors to take seriously and to examine profoundly.[9]

Clearly, this does not mean that, on its part, the local administration is exonerated from directly committing itself on various fronts to guarantee appropriate forms of urban renewal (see later argument); but it highlights certain fundamental features that foster re-organisation which have until now been overlooked and could instead be encouraged (also discussed later).

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[8] See for instance Segal (1998), Morcol et al. (2008) Billings and Leland (2009).

[9] Effectively, certain recent studies into the policies of urban renewal have brought to light how attention to the issue, and to forms of ownership, may be a decisive element in ensuring a positive outcome.

4.3 The Role of the Public: Enhancing the Advantages of Contractual Communities

In this book we have analysed proprietary communities and homeowners associations as present-day examples that are paradigmatic of contractual communities. However, we can easily imagine that new voluntary forms could be invented by society or the market under certain conditions; such new forms may be developments or alterations of the two preceding forms, mergers of them and so on.[10] In addition, housing cooperatives in their various forms would be more than welcome.[11] Therefore the point is that we should create conditions in which contractual communities could take shape in many different ways and *not* to favour one form over any other. Obviously without making any of them compulsory/obligatory. We emphasize this because in certain American cities what has been happening is that local governments force new developments to be built in the form of homeowners associations (McKenzie 2006b; Franzese and Siegel 2007). This is unacceptable because it undermines the voluntary adherence to contractual communities—and the mechanisms of the market.

Let us now consider what public measures can take us in this direction, namely "law as an abstract and general framework" and "tax rebates".

4.3.1 Law as a framework for utopias

The first kind of intervention should focus on this: we need to define an adequate framework that gets back to recognising that impersonal and impartial law plays a central role. Abstract and general law is fundamental for our living together and for social experimentation. In other words, law should not be understood as a means to reach specific objects and final states, to be reviewed and updated steadily so that some task can be done. Rather, law should be understood as a stable, long-time framework that limits itself to guaranteeing the basis for a broader exploration of different styles and forms of life (Moroni 2007, 2011).[12]

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[10] Describing, for example, potential proprietary communities, MacCallum (1997, p. 297), states that the variety of them "will far exceed anything seen today, as communities will specialise to appeal to every taste, each discovering its ecological niche in the overall economy".

[11] As we have already observed at the beginning of the book, we have not gone deeper into the model of the cooperative. However, this should not be taken as a denial that cooperatives are equally important in our perspective (in certain situations and under certain conditions).

[12] Instead, traditional regulations and urban plans have generally limited the space for experimentation and innovation in constructions and settlements. This is something that American developers complain about—not so much the developers who want to build settlements without rules but the developers who want to build settlements with new internal regulative forms. In other words, the greater flexibility that developers ask for during the phase of the creation of the project is not done in the name of building without rules but in the name of

All of this points in the direction of an out-and-out rejection of a strictly "instrumental" notion of the law (Tamanaha 2006).

Understood this way, the law could constitute that *framework for utopias* that Nozick (1974) spoke of—that is, a general and abstract institutional framework inside of which the most varied of local utopian projects can flourish.

Nozick observes that a longing for utopia and the attempts to achieve it are positive elements in the human spirit. Nevertheless, the mistake that so many of utopians make is that they imagine a utopia that is the substantial one for the whole society—something impossible in a plural and complex world. Conversely, what really can be done is to imagine that there can be a general and neutral institutional framework that would allow for innumerable local utopias.

As Nozick (1974, pp. 311–312) writes: "there will not be *one* kind of community existing and one kind of life led in utopia. Utopia will consist of utopias, of many different and divergent communities in which people lead different kinds of lives under different institutions". In brief: "Utopia is a framework for utopias, a place where people are at liberty to join together voluntarily to pursue and attempt to realize their own vision of the good life in the ideal community but where no one can *impose* his own utopian vision upon others".

Nozick observes that the framework for utopias has two fundamental advantages over every other kind of substantive utopia. In the first place, "it will be acceptable to almost every utopian at some future point in time, whatever his particular vision". In the second place, "it is compatible with the realization of almost all particular utopian visions, thought it does not guarantee the realization of universal triumph of any particular utopian vision" (pp. 318–319).

As regards contractual communities, this means that, once certain abstract and general requirements are respected by all, these communities should be free to organise their own internal mechanisms as they like—for instance, as regards their voting systems (Ellickson 1982).[13] In brief, state legislations "will have to allow private neighbourhoods wider flexibility to exercise a broad range of choice in

(Footnote 12 continued)
building under conditions in which rules are considered to be one of the elements that constitute the project, rules to be calibrated from time to time on the basis of specific requests. In a national survey of American developers conducted by Ben-Joseph (2004, pp. 137–138), developers made three recurrent comments: first, "regulatory agencies exceed their authority to practice social engineering, architecture, and micro-management"; second, subdivision codes "don't allow any flexibility"; third, city and county offices "are only interested in exactions and imposing regulations that make them appear more successful in protecting the community from the 'evil' developer that may be trying to be profitable". According to data gathered by Ben-Joseph, more than 70% of American developers maintain that the main problem that they have to tackle in developing projects for dwellings consists in the city-planning regulations, which are too standardised and invasive (along with the endless procedures and bureaucratic steps they involve). This is a problem that developers consider more serious than the finding of areas or financial resources.

[13] "If legislatures permitted the market for private voting systems to flower, developers might experiment with now forbidden techniques" (Ellickson 1982, p. 1558).

constitutional design and other neighbourhood governing arrangements" (Nelson 2009a, pp. 367–68).

4.3.2 Tax Rebates

The second kind of measure should focus on this: we need to provide for forms of incentives for members of contractual communities who can deliver specific services by themselves. A simple intervention, for example, could consist in forms of tax rebates for those who decide to assume the burden of certain services (Foldvary 1994).[14]

The idea is that members of a contractual community should not be taxed for municipal services they do not consume, given that those particular services are already provided by their private organisation.

Rebates are indispensable tools if we want people from classes other than the rich could be able to organise into contractual communities. In fact, the rich are the only ones able to be subjected to "double taxation"—the situation where a citizen-member of a contractual community has to pay both the traditional taxes levied by local public administrations and the fees required by the association itself (Foldvary 2006; Nelson 2009b).

4.4 The Role of the Public: Lessening the Disadvantages and the Risks of Contractual Communities

Let us now focus on the actions—rules and policies—that could temper the risks and disadvantages of contractual communities.[15] In doing so, we again assume that proprietary communities and homeowners associations *can* bring on some problems, but there is no reason to exaggerate the weight and the importance of such problems in the way that much of the literature in urban planning and sociology does.[16]

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[14] Some local municipalities in the United States (Houston, Kansas City, etc.) have initiated special programmes partially to compensate the contractual communities that decide to assume certain services normally supplied by the public. On the state level, the same principle was introduced by the New Jersey Municipal Services Act (1991).

[15] See Grant (2006) for an interesting critical review of the measures adopted in Canada to lessen the risks of homeowners associations. See McKenzie (2006a) for a discussion of legislative measures of a more general nature that are being discussed in the United States.

[16] Here we cover only what public agencies can do. See Budd (1998) as an example of how private actors can better design contractual communities. Let us make one indicative example. The rules introduced by the boards of, for instance, homeowners associations can sometimes be too intrusive. As Budd points out, homeowners association rules cannot answer every problem. Therefore associations should avoid excessively "intrusive" prescriptions for the behaviour of individuals. Individuals presumedly are able to (or, anyway, be spurred on their own to) adopt

4.4.1 Rules

Let us now consider the rules that may turn out to be helpful.

First, there should be strict universal public rules addressed to preventing *certain* forms of discrimination against people who seek to enter and become members of various associations and communities. And there should be a clear sharing of responsibility under particular circumstances (for example, in the case of financial shortfalls on the part of, for instance, a homeowners association). The point is that contractual communities obviously can organise their own internal mechanisms as they like, but they must do so inside of a framework of public rules—rules that are certain, that cover everyone, and that are the ultimate authority.

Second, there should be rules addressed to maintaining a certain degree of permeability in large single-owner properties and neighbourhoods managed by contractual communities. For example, one of such rules could be a requirement that a public passage ("corridor") be guaranteed for each X number of meters, whatever the form of organisation of land use is involved. In such a way, the continuity of the public street grid and pedestrian passageways is maintained and hence any large-scale interruptions of the urban fabric are prevented.

Third, if there is a piece of land that is fenced in, there should be requirements that the fence be of a certain type and be made with certain materials. The fence should be limited to a certain height, one that would guarantee that the inside and outside are in visual contact. (This should always be done through pre-defined rules mandatory in a uniform way for *every* building or group of buildings.)

(Footnote 16 continued)
behaviours that show common sense and keep themselves and the others secure. Budd continues that boards would do best to adopt a principle of "legislative parsimony", where they try to solve all problems without introducing new regulations, as much as possible. Budd recommends six basic steps for the drawing up of good rules by association boards. First, they should determine if it is really necessary to introduce a new rule; this means that they should identify the problem clearly, identify the possible complaints that any attempts to solve it would provoke, and identify the range of application of the rule (application to an individual, to a part of the community, or to the entire community). Second, they should check whether the introduction of a new rule causes legal controversies (for, example, in reference to rules already in force at the association in question). Third, they should involve the residents in the discussions about and drafting of the new rules (either through consultations or through genuine referenda in crucial cases). Fourth, they should use simple, clear, and direct language in drafting the rules, language that does not set off an excessive variety of interpretations. (Obviously, no one can eliminate every type of interpretation in the application of a rule, but people can significantly reduce the borders of potentially fragmentary interpretations that often arise out of bad writing.) Fifth, they should inform the (old and new) residents periodically about the rules of the community and their revisions and updating. Sixth, they should set up the periodic testing of the new rules to monitor how they are working in practice. On the question of how better to organise the running of a contractual community internally, see also Hyatt (1975, 1978), Nelson (2009a).

4.4.2 Policies

In our perspective, the following policies may turn out to be useful.

First, the state can retire from some activities but should keep on supplying certain networks of infrastructures and basic services. It should do this because there are certain cases in which the market and society cannot manage to guarantee services and infrastructures or because there are independent reasons for keeping the supply public. In fact, there is the issue of the state's providing some transportation infrastructures, something worth focusing on. The infrastructures constitute a physical element of territorial integration among the various sections of the territory. The "connecting" function of public infrastructures is equally indispensable for private owners also. You may own your own house, but if it is surrounded by private land on which you are not allowed to trespass, you are basically imprisoned. In this sense, public infrastructures guarantee everybody the right to move from one point of the city to another, to reach other (public or private) spaces. "Public space mediates between the private spaces that make up the bulk of the city. … Without it, the spatial movement across the city becomes limited and subject to obstacles in need of constant negotiation" (Madanipour 2003, p. 220). In addition, infrastructures play a fundamental role in creating the background conditions in which opportunities for competition and cooperation can emerge in the allocation of new resources.

Mandatory schooling—primary and high school—is another critical issue that deserves attention, one that leads us to make a clear distinction between the rights of adults and minors. There are some that call for a total privatisation of mandatory schooling (taking a cue from the famous proposal by Friedman 1962): this would be financed through forms of vouchers that would give parents total freedom of choice for their children's education. Here, however, there is a fundamental distinction to be made (Ackerman 1980). Within the perspective of this book, no one can dispute that adults can freely decide which educational, cultural, and other kind of option to choose when faced with a range of suppliers. Adults can decide to employ their personal resources, or the vouchers that the state may make available to them, for their personal use. Nevertheless, it is not at all to be taken for granted that a parent or a group of parents can impose on their minor-aged children what schools they can attend and decide how to spend the school vouchers *of their children*. What is basic in a liberal-democratic perspective is that the rights *of individuals* must be guaranteed above all—and not the rights of families as families. This holds, particularly, for minor-aged individuals. All this leads us to conclude that mandatory schooling must always be guaranteed prevalently by the public.[17] This is a policy that prevents minor-aged individuals from being totally guided by their parents in their first schooling—the primary, middle and secondary schools required by law. (This does not take away from the fact that *many* aspects of the mandatory public schools should be profoundly reviewed).

[17] On this question, see the general discussion in Macedo (2000).

Second, forms of *total* and generic tax exemption should be avoided for contractual communities. Members of contractual communities that supply some services for themselves can have the right to deductions from the total sum they own in taxes. However, this should be a partial deduction—not a wholesale exemption—because associations are invariably called upon to contribute to the functioning of the public system in more general terms. Such deductions should be strictly connected with services that contractual communities guarantee for themselves in place of the one supplied publicly—in other words, the members of a contractual community have to be reimbursed if they consumed services provided by their private organisation (for instance, garbage collection, snow removal, etc.) and do not consume the same kind of collective goods provided by the local government; the tax rebatement must regard private services that are actually *substitutes* for public ones.

4.5 Competition Among Private Units

4.5.1 The Issue of Scale is not Specifiable a Priori

Within the framework of the general public tasks set up and outlined above, contractual communities should have as much room as possible to experiment and invent new forms and specific organisational solutions. Within this framework, the many types of contractual communities that deliver rules and services could provide the space for an advantageous competition.

In saying this, we are obviously taking for granted that—as the empirical evidence mainly in the United States has demonstrated—the micro-level delivery of certain services does not necessary increase their costs (Foldvary 1994).[18] There is no reason to imagine that there must be a passage from excessively centralised situations to situations of total pulverisation, one without any guarantees or deliveries of services on a sufficiently large scale. As Baer and Marando (2001) point out, when we are face to face with the complexities of our contemporary urban conditions, we have no reason to presume that the only possible alternatives are a "centralising gigantism" or a "Lilliputian disintegration".

The issue is simply that we should take another look at the distribution of tasks between the public and the private without presuming a priori that there are intrinsic technical and economic restraints where they do not exist. We should go deeper into this issue re-considering the famous model of Tiebout (1956).

[18] The traditional economic theory assumes that this is not so, in that it considers certain "economies of scale" fundamental.

4.5.2 The Tiebout Model

Tiebout wished to increase the efficiency of the complex system of the delivery of public services. To this end, he proposed that the degree of competition among local governments be enhanced in terms of alternative patterns of taxes levied and services guaranteed – that is, in terms of revenue and expenditure patterns.[19]

Tiebout (1956, p. 417) observed that the crux of the problem concerned the mechanism through which the citizen, "the consumer-voter", reveals his or her preferences for public goods:

> If all consumer-voters could somehow be forced to reveal their true preferences for public goods, then the amount of such goods to be produced and the appropriate benefits tax could be determined. As things now stand, there is no mechanism to force the consumer-voter to state his true preferences; in fact, the "rational" consumer will understate his preferences and hope to enjoy the goods while avoiding the tax.

Tiebout continues that it would be desirable in terms of a good theory of public finance (1) "to force the voter to reveal his preferences"; (2) "to be able to satisfy them [the preferences] in the same sense that a private goods market does"; and (3) "to tax him accordingly" (p. 418).

A potential way to tackle this three-fold issue may be sought in allowing local administrative units to compete in delivering differentiated patterns of taxes and services. In this way, citizens could be considered free to choose to live in the administrative unit that guarantees the mix of expenditures and returns that they prefer. The consumer-voters may be viewed as picking that local community which best satisfies their preferred revenue-expenditure pattern. In this perspective, moving out of a certain place or staying there "replaces the usual market test of willingness to buy a good and reveals the consumer-voter's demand for public goods" (p. 420). As we can see here, what is being discussed is the citizens' chance "to vote with their feet".[20]

Such solution can work well in Tiebout's model only if certain strong assumptions are made, including the following: (1) "consumer-voters are fully mobile"; (2) "consumer-voters are assumed to have full knowledge of differences among revenue and expenditure patterns"; and (3) "there are a large number of communities in which the consumer-voters may choose to live" (p. 419).

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[19] See Fischel (1987, pp. 293–315) for a presentation of the discussions over the Tiebout model.

[20] On this, see also Tullock (1994).

4.5.3 Reconsidering the Model

It is worth observing that most of the critical reflections on the Tiebout model, and the attempts to develop it, have remained anchored to the idea that Tiebout's main point was the competition among public administrations.[21]

Our idea is that it would be better if public administrations guaranteed only the basic abstract rules and the main networks of infrastructures; and that contractual communities should be free to compete in delivering the detailed rules and neighbourhood-level services. In other words, the advantages that Tiebout had foreseen in the competition among a number of public units delivering services would be enhanced if these units were private (Webster 2001; Nelson 2002, 2009b; Boudreaux and Holcombe 2002; Tabarrok 2002; Lee and Webster 2006). Or better, the ideal world that Tiebout envisaged could easily be realised by competing private units. Observe how, in this case, we are not employing a *market metaphor* (Donahue 1997) outside of its proper field, but we are employing the *market mechanism* exactly in its field.

There are two points to make about private-sector activity.

In the first place, competition among *parts* of the same city (organised as private communities) in attracting citizens would surely be more probable and more varied than the competition among *cities* (assuming the formation of such contractually communities were effectively promoted). This is based on the assumption that the majority of contractual communities work better at the neighbourhood level (and this is the average size of an overwhelming majority of American community associations).

As Lee and Webster (2006, p. 38) write:

> Faced with different *neighbourhoods*, each supplying different bundles of *neighbourhood goods* for a particular assessment price (membership fee), individuals (who are much more mobile within than between the city) choose a preferred combination (and location) and in doing so effectively price *neighbourhood goods.* If there are large numbers of movers and many private *neighbourhoods* and information is accurate, then it is reasonable to suppose that such goods will be supplied with a degree of efficiency.

In the second place, the borders of the competing units of contractual communities are created in reference to their purpose. Hence they turn out to be more flexible and more adjustable over time, even though their borders were defined in advance. Private units borders can be adjusted more easily than the traditional ones of public administrative units (these last are established rigidly in advance on the basis of considerations independent of the demand for services;[22] they virtually cannot be modified). To a certain degree, the borders of contractual communities would consequently be subject to the mechanisms of competition and progressive

[21] See for instance Epple and Zelenitz (1981), Dolan (1990), Kelleher and Lowery (2002).

[22] "The number and configuration of public sector entities have more to do with the accidents of a capricious history than with the shifting dictates of economic rationality" (Donahue 1997, p. 75).

adjustment. In the case of, for instance, homeowners associations, single individuals could more easily move from one to another association, or create a group with others as a way of enacting forms of "secession" from the associations they first belonged to without necessarily having to change their own place of residence. As Nelson (2005, p. 269) writes: "Private neighbourhoods could more easily merge or perhaps break apart, than those neighbourhoods subject to current municipal… procedures".

4.5.4 The Traditional Critiques to the Tiebout Model are Better Addressed by a System of Competing Private Units

There are two traditional criticisms of the Tiebout model.

The first criticism is that—contrary to what the model assumes—there is only one basic reason that people settle in a certain city or neighbourhood, and that is *work*. This is a traditional judgement, but it should be re-evaluated in light of the situation in the United States, for example. The 2009 *American Housing Survey* reported that only 20% of relocations to new neighbourhoods of residence were determined by work motivations alone. Instead, there were other important criteria for the choice of neighbourhoods: the characteristics of the neighbourhood and the house, the services available in the areas, and the proximity to friends and relatives (United States Census Bureau 2009).[23] This same percentage of motivation for work had also been reported four years earlier (United States Census Bureau 2005). In this case, the statistics refer to the total number of moves into neighbourhoods of any type; one could assume that moves into neighbourhoods organised as contractual communities are motivated by work—or work alone—to a lesser degree and motivated to a greater degree by the characteristics of the neighbourhood in itself and the services available there.

The second criticism of the Tiebout model is that it is not so easy for individuals to become fully aware of the pattern of "expenditures/services" offered by the various public local administrations. As has often been pointed out, individuals are therefore somewhat ignorant of the effective benefits that come with living inside the borders of one particular administrative unit compared to another. Basically, in the case of traditional public municipalities, it is not easy to ensure awareness, whereas contractual communities generally guarantee greater transparency. The internet sites of many American homeowners associations, for example, are clear and very detailed in regard to the rules in force, the expenditures requested, and the services proposed. As such they therefore offer a more straightforward means for comparing the various schemes or packages on offer (albeit within a limited range, for obvious pragmatic reasons).

[23] See Appendix, Table 6, for details.

In conclusion, all this does not imply that the demand will always be perfectly satisfied, but that the mechanism of competition among private units allows the end-user to try out the various proposals.[24]

4.6 Concluding Observations

In terms of institutional innovation, the varied and disruptive phenomenon of the contractual community sheds light on how the civil society is a great advance compared to the traditional rules governing land transformation. Consequently, it is something to be taken seriously: primarily it is vital to point out how the phenomenon of contractual communities should be observed from a non-ideological viewpoint, that is a reading that avoids branding it in terms of "good forms" (such as European cohousing) and "bad forms" (US homeowners associations), and instead inquire into occurrences *for its overall originality*.

This is the only possible approach that avoids creating risky a priori yardsticks that might favour or penalise one type over another. And it is the only possible way to attempt a revision of public policies toward reaping the benefits of the various types of contractual community, while keeping the possible risks in check.

As we have sustained so far, to acknowledge the existence and relevance of various forms of contractual community does not entail doing away with local administrations, nor with the State in its wider sense; it simply means taking a fresh look at the role of public subject and imagining a new subdivision of tasks between the latter and private subjects. In this sense, we firmly believe that contractual communities could provide a fundamental contribution toward establishing a new political and social model geared to a radical form of horizontal subsidiarity.

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[24] As Foldvary (1994, p. 169) writes: "Market incentives do not necessarily induce a mix of goods that meets the demand. But … when it does not, the market can correct the error. … Entrepreneurial failure (which is distinct from market failure) is not necessarily permanent or fatal. In contrast, when government expenditures do not meet the desires of the target population, a means of correction may not exist, even when one set of governing agents is replaced by another".

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Part III
Precursors to the Idea of Contractual Communities

Chapter 5
The Proposal of Ebenezer Howard

Abstract In this chapter we will present Howard's idea. The fulcrum of Howard's proposal is a particular form of organisation of life in common: Garden City. Howard's Garden City is original not so much for the presence and the function of the green areas as, above all, for the organisational model that was proposed. Howard imagined that the organisational form of Garden City would be structured like a "large and well-appointed business". In fact, Garden City is not a public municipality but a private voluntary organisation.

Keywords Garden city · Green belt · Environment · Trust · Freedom · Local organisation

5.1 The Proposal's Main Feature

Howard's ideas were formulated for the first time in his book, *To-Morrow*: *A Peaceful Path to Real Reform* (1898). The first edition of the book was published thanks to a loan he took out and sold a limited number of copies. A few years later, he published a new edition with marginal modifications and a new title, *Garden-Cities of Tomorrow* (1902). From then on, his book met with more and more success.

In the first edition the stress was put on the word "reform" and the expression "garden city" did not appear at all. It, in fact, appeared only in the second edition.[1] In any case, Howard's considerations on the need to interweave city and country

[1] See Ward (1992). Howard had first thought of "Unionville" and "Rurisville" as alternatives for the term "Garden City", but then abandoned them. Howard did not invent the term "Garden City", which had been in use for some time, for example, in the United States, where Howard had lived for several years.

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and on the importance of green areas are much less original than his considerations on the organisational form of his ideal city.

The first section of the book covers the blending of the advantages of the city and the country and is written in a deeply rhetorical tone more apt for public speaking. In fact, this section seems to have been thought of as an oral presentation at a meeting of a Congregationalist church that was held at the time when the book was being written. It is enough to compare and contrast this part with the other parts of the book, where Howard became much more detailed and analytical, to understand immediately which aspects Howard himself gave more weight to, as will be outlined on the following.[2]

For now, it suffices to emphasise that Howard is an author who is very famous, but that he is famous more for the secondary features of his work than for the main ideas of his thought, as we will try to demonstrate. Specifically, the most marginal physical-morphological aspects of his thought have long prevailed over some of its much more fundamental organisational aspects.[3] Besides, even those readers who had paid attention to the organisational features of his proposal have not always managed to do so without an ideological perspective that has led them to minimise the originality of his position.

[2] This chapter covers Howard's theoretical proposal only. It does not cover the first tentative attempts to put it into practice (Letchworth and Welwyn)—which Howard himself took part in. For this see Hardy (1991, pp. 46–55, 150–58); Hall and Ward (1998, pp. 29–39). The experiences of Letchworth and Welwyn are well known, but go against various aspects of the original proposal.

[3] "The social reformism of the garden city idea was quickly converted into an environmental reformism which was in turn technicalised and dissembled to form part of the emergent professional practice of town planning" (Ward 1992, p. 24). "There was no doubt in Howard's mind that the garden city was the path to a higher plane of living, not merely 'a town on a background of open country', as Raymond Unwin later described Howard's physical arrangement. These heroic social objectives were rarely fully grasped, and often curiously ignored. Howard's ideas have continued to reverberate in planning circles in many countries but it is the practical dimensions of his work that have been emphasised, while the vital socio-political ideals were barely understood, much less put into effect" (Aalen 1992, p. 28). Howard's "principal innovation, financing the community from private land rents and thereby dispensing altogether with local taxation, has been forgotten in the literature of city planning…. The purely physical innovations of his cities, on the other hand, such as design and density control, functional zoning, and the greenbelt, are remembered and widely imitated. But what Howard himself considered his lasting contribution to civilisation is worse than ignored; it is simply forgotten" (MacCallum 1997, p. 295). The "physical and design-related aspects of the Garden City project were far from being central to Howard's vision" (Sadoux et al. 2008, p. 59). "Howard's primary goal was the reform of economic arrangements rather than mere architectural innovation… His emphasis was on the city rather than the garden… with a view towards decentralising government" (Foldvary 1994, p. 101).

5.2 A Contractual Community

The fulcrum of Howard's proposal (1898) is a particular form of organisation of life in common. Garden City is original not so much for the presence and the function of the green areas as, above all, for the organisational model that was proposed. Howard (1898) imagined that a group of people would buy uninhabited farm areas in order to found settlements characterised as particular organisations, namely Garden Cities. Howard spoke explicitly of a "voluntary organisation" (p. 60).[4] He hypothesised that the necessary areas (6,000 acres) be bought through a special financial mechanism that involved a financial exposure to debt.[5] This debt was something to be reduced progressively over time. The areas were to be entrusted to four "trustees", who held the property "on behalf of" the citizens (pp. 12–13, 21). Therefore Howard's idea did not consider the state (public) ownership of land; Howard's theoretical proposal, as presented in his book, does not call for the nationalisation of the land, not even through gradual steps (despite the fact that many authors keep asserting this is so). Land was to be owned in common by the citizens; this was just a particular form of private property.

Howard drew a very famous diagram of the city he wants to create. He was perfectly aware that he was making an overall design, something purely indicative. The design foresaw a settlement spread over 1,000 central acres of the 6,000 acquired. It is circular; at its centre there is a great garden surrounded by buildings to be used collectively, such as theatres, libraries, and museums.[6] The rest of the city is divided into six sections by six boulevards. The residents are located inside the sections, while the productive areas are spread around the borders of the sections.[7] The entire city is enclosed within the famous Green Belt, which prevents the city from expanding farther out. Howard foresees a total population of 32,000 inhabitants for his Garden City, living on 5,500 lots available for building (pp. 12–19). He imagines groups of cities of this type that are efficiently served by transportation infrastructure and so could make up efficient multi-centric systems (pp. 128–141).

Every resident of Garden City had the right to use his lot freely and was obliged to pay a kind of *rate-rent*. This rate-rent served to pay for the debt related to the initial purchase of the areas as well as to pay for delivering collective services to

[4] Many uses of Howard's thought leave no trace of the decisive dimension of the voluntary nature of his proposal as a form of private initiative. An example of this gap is in Mumford (1938 and 1961).

[5] We do not go into this point in detail because it is marginal to our general topics: see Howard (1898, pp. 12 ff.).

[6] The building of a Crystal Palace (a "great shopping centre": Howard 1898, p. 73) is called for very close to the centre.

[7] A circular tree-lined Grand Avenue is proposed about halfway between the centre and the rest of the city. It would cross the six sections of the city and be the site of buildings for collective use like schools and churches. Howard specifies that the churches should be of all faiths, according to the religious convictions of the residents.

the community. After the debts generated by the initial purchase were covered, the part of the rate-rent that had been allocated to debt removal could be used to create a common fund destined for other social purposes, such as old-age pensions and insurance for injuries and sickness (p. 21). In Garden City, collective services are therefore guaranteed through a voluntarily accepted system of financing. Howard was convinced that the voluntary organisation of Garden City would manage to spend the resources at its disposal in a much more efficient way than traditional municipalities did.

Howard wrote:

> Amongst the essential differences between Garden City and other municipalities, one of the chief is its method of raising its revenue. Its entire revenue is derived from rents. … The rents which may very reasonably be expected from the various tenants on the estate will be amply sufficient [not only to cover the initial debt but also]… to construct and maintain all such works as are usually constructed and maintained by municipal and other local authorities out of rates compulsorily levied (p. 20).[8]

5.3 Management Bodies

Howard imagined that the organisational form of Garden City would be structured like a "large and well-appointed business" (p. 67). In fact, Garden City is not a public municipality but a private voluntary organisation.[9] For this reason, Garden City does not have to limit itself to acting according to the ways established by Parliament as public municipalities do, but is freer to move because it is a private-property organisation (p. 61).

Let us now concentrate on the "management" of Garden City in more detail. Exemplarily, Howard suggested a division of the city departments into three on the basis of their functions—*Public Control*, *Engineering* and *Social Purposes*. These three departments are themselves subdivided into various sections. Interestingly, the first section, *Public Control*, is subdivided into four. First, *Finance* receives the rents. Second, *Assessment* determines the rents that the tenants must pay. (Howard emphasises that the rents should not be fixed arbitrarily but by trying to determine how much an "average tenant" or "hypothetical tenant" would be ready to pay for the services that he desires). Third, *Law* establishes the conditions of the contracts

[8] This is a point that is often repeated in the book as, for example, in the following passages. Garden City "shall receive all rate-rents, and expend them in those public works which the migratory movement renders necessary or expedient" (Howard 1898, p. 114). The rate-rents "will suffice … to carry on such undertakings as are elsewhere for the most part carried out by means of rates compulsorily raised" (p. 64). The rate-rents "are amply sufficient to discharge all public burdens without any resort to the expedient of compulsory rates" (p. 67).

[9] From the beginning of his book, Howard (1898) informs us that when he uses the term "municipality", he is not using it in the technical and traditional sense of the term as an indication of a public agency.

of land use and the covenants related to this. Fourth, *Inspection* checks that the reciprocal rights and duties of Garden City and its citizens be respected.

Howard imagines that the citizens would vote for the members of the various departments. The presidents and the vice-presidents of the departments make up the *Central Council*. Howard outlines that the candidates for these offices should not present general programmes, but rather proposals to effect concrete measures addressed to specific problems of urban life:

> The candidates would not be expected to specify their views upon a hundred and one questions of municipal policy upon which they had no definite opinions, and which would probably not give rise within their term of office to the necessity for recording their votes, but would simply state their views as to some special question or group of questions; a sound opinion upon which would be of urgent importance to the electors, because immediately connected with the welfare of the town (p. 71).

Howard faced the complex issue of how broad the range of the collective interventions should be with a word of caution. Howard observed that the Central Council should be careful not to commit itself in too many operations: "The difficulty of raising the necessary funds with which to carry on municipal undertakings would be greatly increased if the Board of Management attempted to do anything and everything" (p. 65). The extension of collective activities "will be measured simply by the willingness of the tenants to pay rate-rents, and will grow in proportion as municipal work is done efficiently and honestly and decline as it is done dishonestly or inefficiently" (*ibid.*). Howard adds that the tenants themselves will be "far more ready to offer adequate rate-rents, if they are given distinctly to understand to what purpose those rate-rents are to be devoted" (*ibid.*).

Furthermore, Howard is convinced that the environment of freedom in Garden City would be conducive to the voluntary formation of many sub-associations and beneficial foundations. These would concern themselves with the various social problems that would not be handled directly by the Central Council. In relation to this, Howard speaks of *Pro-Municipal Work*:

> There will be discovered many opportunities for public service which neither the community as a whole, nor even a majority of its members, will at first recognize the importance of…. but those who have the welfare of society at heart will, in the free air of the city, be always able to experiment on their own responsibility, and thus quicken the public conscience and enlarge the public understanding (pp. 82–83).

5.4 Advantages over Other Organisational Models

Howard marks out the differences between his proposal and the socialist projects of the collectivization of the means of production and forced guidance of the economy. In particular, he underlines that these projects do not consider two basic questions that the Garden City model does:

> First, the self-seeking side of man—his … desire to produce, with a view to possessing for his own personal use and enjoyment; and, secondly, his love of independence and of initiative, his personal ambition, and his consequent unwillingness to put himself under the guidance of others for the whole of his working day, with little opportunity of striking out some independent line of action, or taking a leading part in the creation of new forms of enterprise (p. 97).

In brief, "men … will not be content with such few opportunities for personal effort as they would be allowed to make in a rigid socialistic community" (p. 98). Howard brings up some attempts to create settlements inspired by socialist principles and comments critically on their failures—Topolomambo (founded by Robert Owen, in Mexico) as well as New Australia and Cosme (founded by William Lane, in Paraguay).

In conclusion, Howard differs from many of his contemporaries who seemed to propose solutions that were alternatives to the development of the new industrial era and the market. Howard, instead, tried to insert his project inside the industrial era and the market system, rather than outside or in contrast with it.[10]

5.5 Sources of Inspiration

Much of Howard's proposal is based on specific sources that he cites explicitly; we will mention four of them.

The first source is Wakefield (1849), who wrote in favour of organized migratory movements.

The second source is Buckingham (1849), who published a successful book in which he suggests how to create a planned community of 25,000 residents on a piece of land of 1,000 acres surrounded by farm land. In this way the features of the productive city and the agricultural country could be blended together. There were several analogies between Howard's and Buckingham's designs. However, Howard was quick to specify that there were certain fundamental differences between his own and Buckingham's proposal. According to Howard (1898, p. 113), Buckingham was trying to "annihilate competition" through an organisation that instituted a kind of "complete or integral cooperation". On the contrary, Howard envisioned Garden City as a place where freedom was to be guaranteed and competition welcomed.

The third source is Herbert Spencer. Howard recognised him as a fundamental source of inspiration because Spencer, in one of his first works, had expounded on the advantages of collective ownership of the land and of the payment of rental by those who were effectively to be its users (Spencer 1851). Spencer had written:

[10] See Sadoux et al. (2008, p. 59): "Howard seemed convinced that the British industrial revolution was inevitable and, somehow, beneficial. Building upon the economic, social and political transformations inherited from the revolution, he proposed a new way of living, working and governing within the context of industrial Britain".

> The change required would simply be a change of landlords. Separate ownerships would merge into the joint-stock ownership of the public. Instead of being in the possession of individuals, the country would be held by the great corporate body—Society. Instead of leasing his acres form an isolated proprietor, the farmer would lease them from the nation. Instead of paying his rent to the rent of Sir John or his Grace, he would pay it to an agent or deputy-agent of the community. Stewards would be public officials instead of private ones; and tenancy the only land tenure. … [In short,] the theory of the co-heirship of all men to the soil, is consistent with the highest civilisation (Part II, Chap. 9, § 8).

Nevertheless, Howard observes that, although Spencer grasped the problem perfectly, he took the wrong direction when he assigned the ownership of the land to the state, rather than to local voluntary organisations. Spencer himself (as Howard pointed out) corrected his original position when he again focused on the use of the land as *the* central problem, and wrote that he was decisively against his original idea of solving this issue through the nationalisation of the land. Spencer (1891) rectifies his original position with these words:

> Setting aside all financial objections to nationalisation (which of themselves negative the transaction, since, if equitably effected, it would be a losing one), it suffices to remember the inferiority of public administration to private administration, to see that ownership by the State would work ill. Under the existing system of ownership, those who manage the land, experience a direct connexion between effort and benefit; while, were it under State-ownership, those who managed it would experience no such direct connexion (Appendix B).

The fourth source is Thomas Spence, who deserves particular attention. At the end of the eighteenth century, Spence proposed a model of social organisation that considers common forms of land ownership and the financing of public activities and services through rents paid over into a collective fund.[11] This hypothesis was originally presented in Spence (1775), which is the work that Howard mainly refers to. It was re-elaborated and developed in Spence's subsequent works (for example, Spence 1782, 1795).[12]

Spence (1775, p. 7) opens his work with the observation, "there is no living but on land and its production". To this end, he envisions that the local *parishes* would organise as *corporations* in order to own the land in common. Pieces of land are to be ceded to members for their use. The members are to pay a periodical fee. The proceeds from the fees are to be used in order to build infrastructures for the territory and to give support to the weaker members of the community. In the words of Spence himself (1775, p. 10), "each parish becomes a corporation, and all men who are inhabitants become members. … The land … is in every parish made the property of the corporation…. [Consequently,] are there no more nor other lands in the whole country than the parishes; and each of them is sovereign lord of its own territories" (p. 11).

The rent that individuals pay is to be used by the parish/corporation:

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[11] See Rudkin (1966), Ashraf (1983) and Armstrong (2007) for the life and works of the virtually unknown and forgotten Spence.

[12] Interestingly, Spence may have been the first Englishman to use the expression "the rights of man".

> in maintaining and relieving its own poor, and people out of work … in building, repairing … its … bridges, and other structures; in making and maintaining convenient and delightful streets, highways, and passages … in making and maintaining canals and other conveniences for trade and navigation … in premiums for the encouragement of agriculture … in a word, in doing whatever the people think proper (pp. 11–12).

In short, the rent would be the only tax:

> there are no tolls or taxes of any kind paid among them … but the aforesaid rent which every person pays to the parish, according to the quantity, quality, and conveniences of the land, housing, etc., which he occupies in it. The government, poor, roads, etc. … are all maintained by the parishes with the rent; on which account all wares, manufactures, allowable trade employments or actions are entirely duty free… [Thus, in this situation] a thing is either entirely prohibited, as theft or murder; or entirely free to everyone without tax … and the rents are still not so high (p. 15).

Spence approaches the issue of "membership" in the parishes by imagining the following situation: "A man by dwelling a whole year in any parish, becomes a parishioner or member of its corporation; and retains that privilege till he lives a full year in some other, when he becomes a member in that parish… Thus none can be a member of two parishes at once" (p. 13). In regard to collective decisions, Spence hypothesises: "each man has a vote in all the affairs of his parishes" (p. 14).

Spence subsequently develops such ideas further when he imagines the constitution and functioning of two ideal worlds made up of clusters of local voluntary organisations: first, *Crusonia* (in memory of the well-known character, Robinson Crusoe) and, second, *Spensonia* (in honour of himself). Spence is convinced that, once his ideas are put into practice, they will easily prove their worth and spread through the world spontaneously.

Many authors have interpreted Spence as a sort of proto-communist who prefigured the nationalisation of the land.[13] Interpretations like these put the originality of his contributions (the local nature of the settlement model, and the fundamental role of the *voluntary* self-organisation) totally into the shadows. It is to Howard's merit that he grasps very well that Spence's central idea does not imply the nationalisation of the land, but rather the self-organising forms of local voluntary groups; in fact, it would be hard to imagine anyone more resolutely opposed to a strong central and centralising state.[14]

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[13] As does Thompson (1963), for example. See Bonnett (2007, p. 8) for a critique of this type of interpretation of Spence's thought: "Spence was not a grunting Neolithic ancestor of the more sophisticated and long-winded radicals of later years". Specifically, "Spence is not a good enough proto-Marxist; he is too wild in his determination to bang on about freedom, liberty and democracy, too localist, too contemptuous of authority" (pp. 10–11). In brief, "what Spence wants is the return of the land to a free, self-governing, people" (p. 9). See also Beer (2001, p. viii): Spence is "against nationalisation, his ideal being a nation consisting of a loose federation of autonomous communes". And Ashraf (1983, p. 123): "Spence was not unaware of the alternative of nationalisation but specifically rejected it in favour of parish ownership and autonomy".

[14] The central state remains in Spence's hypothesis, but it only is there to guarantee a general framework leaving wide space for local organisations.

Nevertheless, Howard points out that Spence did not focus much attention on the issue of how the groups in question were to come into possession of the land on which they were to initiate new forms of organisation.[15] Howard, for his part, proposes his own method, namely, buying the land on the open market.

5.6 Concluding Notes

In conclusion, Howard is undoubtedly a pioneer in having grasped the importance that voluntary contractual communities might have in the organisation of land use and in the promotion of a bottom-up advantageous way of living together. It is a curious but perhaps predictable fact that this part of Howard's work has attracted the least attention. The very famous English New Town experiments were allegedly inspired totally by Howard's proposal. In fact, the only element they draw from the Garden City is the spatial and territorial model. The New Towns avoided the organisational and procedural features of Howard's perspective in that they were planned by public authority in terms that were completely *top down*.

It should be said, however, that Howard's proposal is not clear and coherent on every point. For example, Howard hardly says anything about the role of the *trustees* and their relationships with the elected members of the council. In this way he underestimates the potential for conflict between the trustees and the council members whenever their respective responsibilities and functions turn out to be not clearly defined. Yet, Howard's proposal remains one that is pioneering and of great interest in many aspects.

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Chapter 6
The Proposal of Spencer Heath

Abstract In this chapter we will present Spencer Heath's ideas. The main points of Heath's perspective are the following: the market and land ownership are crucial; the land must be managed in a mature market mainly through forms of proprietary communities; proprietary communities can take the place of certain current forms of public administration.

Keywords Market · Landowner · Entrepreneurship · Ground rent · Proprietorship · Single tax

6.1 A Largely Unknown Theorist

In the 1930s Spencer Heath began to publish essays on the idea of the proprietary community (Heath 1936). The compendium of his ideas in terms of social organisation became the book *Citadel, Market and Altar*, which was published in the 1950s (Heath 1957). Unlike Howard, Heath is almost totally unknown,[1] and yet his work is doubtlessly original (focused on forms of land-use organisation that was to develop in a meaningful way only after the second half of the twentieth century).[2]

Heath's (1957) theoretical proposal can be broken down into three main points. First, the market and land ownership are fundamental: they are sources of

[1] See MacCallum (1997, p. 295): "That he was not an academic and was 'political incorrect' may help explain why his social theories gained little hearing".

[2] Foldvary (1994, p. 86) observes: Heath's main work (1957) "appeared, ironically, shortly after the Samuelson and Tiebout models, but … did not attract academic attention". Rothbard (2004) is one of the few authors who recognised the interest and the depth of Heath's thought. MacCallum (1970), Heath's grandson (whose work is quoted often in this book), draws from and develops Heath's thought.

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collective wealth not of personal privilege—factors leading to increased socialisation, rather than to social disintegration. Second, the land must be managed, in a mature market, mainly through forms of proprietary communities, where landowners would characteristically become more and more enterprising. Third, proprietary communities can potentially take the place of certain present forms of coercive public administration, gradually and in the long run.

6.2 The Social Role of Land Ownership

Let us go more into Heath's first point. Heath gives the concept that he calls *socialisation* a specific meaning, one that derives from his emphasis on the *social* purposes tied in with actions that transform and manage goods and resources. Heath elaborates on his concept:

> Things are *socialised* when they are brought under proprietary administration by their owners for the use, benefit or service to others through free contractual relationships of administration and distribution. All real and personal property or its products that is held by its owners for the use or service of others as purchasers is thereby *socialised* property (p. 73).[3]

He explains the beginnings of *socialisation*, namely, that the process through which primitive human energy was transformed in consensual and social forms began with

> the adoption of a proprietary and contractual relationship among and between the individuals as regards the possession of sites and resources. Upon the security of possession and of property so obtained, each creates for others services and commodities. These created things they pool in a common market. … From this process of property and service by exchange, comes all the abundance, the enlargement, the prolongation and elevation of the individual lives that is the function of the social organization to serve (pp. 50–51).

The very existence of private property is what enables the contractual exchanges of the market to take place, the exchanges that we can thank for our growing prosperity. The characteristic of contractual relationships is that they are "impersonal" (p. 72). In effect, they force people to enter relationships that go beyond their substantial spheres of belonging (families, ethnic groups, religions, etc.) without wiping these spheres out. For this reason, contractual relationships are the only ones that can become "universal" (p. 88) and hence the real bond of humanity as a whole.

Heath maintains therefore that landowners fulfil a decisive function, one that is often misunderstood, to the extent that their earnings are mistakenly considered illegitimate. He observes that ownership is more than mere possession; there may be possession without title,

[3] In brief, "When anything, such as land or wealth, has been reduced to a particular ownership and thus become property, it is then capable of being socialised" (Heath 1957, p. 98).

> but only under a socially sanctioned title can valid contracts… be made. The making and performing of such contracts is not a political privilege, not the exclusion but the inclusion of others. It is a vital social function performed under social authority and rewarded by an automatic social recompense. The recompense for this distributive public service is called *ground rent*, often miscalled *unearned* income (pp. 73–74).

Here Heath emphasises his concept o*f ground rents*: "Ground rents… are the exchange equivalent that a community renders to the institution of property in land for the security of possession and access to public benefits that its members thus enjoy. This is the social value and justification of the institution" (p. 132).

There is a persistent idea that the ownership of goods—and of land, in particular—works to the exclusive advantage of the owners themselves. This idea, according to Heath, is something that has come down to us from ancient forms of social organisation, forms that developed in the absence of the market in its mature form. In effect, people normally enjoy the advantages of the existence of the institution of private property

> although their traditional and emotional concept of property in general and of property in land in particular is as a privilege or personal indulgence from which mankind in general are disinherited and none but the fortunate can enjoy. It is as though all property and wealth were personal goods owned only to be consumed or destroyed in self-gratification or sinister and anti-social designs. … [This is] the persistent heritage of the modern mentality from its ancient and totalitarian past, where there was no free exchange economy and few if any free men (pp. 123–124).

Heath maintains that the role of property is totally different in a free economy or market society:

> with its highly specialised services, land, like other property, comes to be owned more and more for the benefits and satisfactions of others. Except when it is used for the owner's personal subsistence, private recreation or place of residence, it is only as a social agency, as a means of giving secure possession and of supplying community services and satisfactions of users … that an owner can practice any dominion over his land (p. 124).

Notably, Heath's approach turns the traditional viewpoint upside down. Traditionally, ownership of a piece of real estate is justified more by its direct *use* than by its use for *profit*. Heath, on the contrary, maintains that a person who only makes direct use of his property (certainly) acts legitimately, but believes that this person exhibits a behaviour with very little social worth, much less worth than a person who makes his property a means for profit. In short, ownership of the land is not so much a privilege but a form of "social responsibility" (p. 124).

6.3 The Proprietary Community as an Effective form of Organisation

This is where we come to Heath's second point. If land ownership is "social responsibility", then this is all the more valid for one particular land-administration form—proprietary communities.

In general terms, we can say that the administration of real estate involves the administration of community property—that is, of the whole capital and lands. However, there is one problematic issue:

> So far as this administration is political, its products or benefits are politically distributed and not sold for value received—hence produce no income or value. But so far as the community administration is *proprietary*, its benefits attach to and are distributed through the community sites and lands, hence can be sold for an income or value called rent—a free *contractual*, instead of a political, distribution among free men (p. 174).

In other words, "a proprietary authority, unlike the political, does not have to force and rule in order to protect and serve" (p. 82).

Heath's vision of society pivots around the free market, which is the factor that determines the creation of proprietary communities, which operate as advanced forms of land organisation and management. They must operate under conditions of freedom of initiative and exchange that are unhindered by uselessly intrusive restraints imposed by the state. Only under these conditions, in fact, can the figures of entrepreneur and of land owner bond together in the pursuit of the social betterment of the territory and hence in the service of the common good.

According to Heath, the landowners are interested in the proper care of a given piece of territory, and thus take actions that transform the land for the better. These improvements are what enable the owners to deliver collective services effectively. They therefore act according to a complex logic that leads them to cede these pieces of land to other individuals for their own use, in exchange for rent. This organisational form is efficacious because each landowner works towards his or her main aim, namely, the enrichment of the territory of a proprietary community, which is, virtually, "productive capital". He or she does this through a kind of development and improvement of land that fosters a logic of "inclusion". In fact, in this organisational mode, the landowners/entrepreneurs obtain advantages by creating infrastructures and services; yet, it is very evident how well their own advantages combine with those of the tenants, and hence generate a steady stream of investment opportunities and development prospects.

With these observations in mind about proprietary communities, we find more reason to distance ourselves from the traditional vision that interprets the landowner as the sole and illegitimate receiver of the added value that the land has acquired: according to Heath, this value could, instead, be shared socially among the renters, who themselves are pursuing similar aims of well-being and development.

6.4 The Extension of the Model

Heath's third point is the logical consequence of his first two. He imagined that proprietary communities would bloom, develop, and gradually replace certain local public administrations. He observed that a shift to social forms of *proprietorship* could lead a good part of private capital towards the constitution not only

of single proprietary communities but also of associations of proprietary communities. These would administrate collective goods and services on a voluntary basis and on a broader scale.

The steady development and spread of proprietary communities would lead to a reduction of mandatory taxation by replacing it gradually with voluntary payments for the services that are performed. As Heath writes, "the institution of property in land is transformed in modern times from a political and coercive authority into a most essential non-political department of society for the social, that is, the *free contractual* distribution of sites and lands, and for the vastly further public functions that is destined, as it evolves, freely and with enormous profit to perform" (p. 95). In this case, "automatic *social* revenue to the community owners, suitably organised to take over increasingly the public services, is the grand creative alternative to the tax and deficit practices … of all political administration" (p. 103).[4]

Heath's logic is of the evolutionary kind, whereby all this has been emerging through a lengthy process that began with the ancient pre-social *tribal forms*, passed through *feudal models* of social organisation, and is now passing through the institutions of the *welfare state*. This process will reach a mature form of social organisation only when the market becomes the main mechanism for the delivery of services. This would enable proprietary communities and associations of proprietary communities to form and spread.[5]

6.5 The Encounter with Henry George

One of the authors who influenced Heath most deeply is Henry George, whose ideas he contributed to spreading, such as in his role as secretary of the Chicago Single Tax Club (since 1897), and as one of the first supporters of the Henry George School (founded by Oscar Geiger in 1932).

George (1879) maintained that there needed to be one tax alone levied on rent from real estate so that the state could acquire the "passive" added value that the landowners had heretofore enjoyed. This would go toward amassing a public fund to finance collective services. George (1879) writes:

> I do not propose either to purchase or to confiscate private property in land…. Let the individuals who now hold it still retain, if they want to, possession of what they are

[4] In the case of traditional public administrations, in fact, collective services are delivered without any reference to their market value, which is the only measure for comparing alternative options and monitoring the effectiveness of the actions taken. Moreover, services are delivered, in this case, without any direct connection with the benefits actually obtained by the users (Heath 1957).

[5] Therefore Heath did not see this type of evolution as a return to feudalism, but rather the definite route to overcoming feudalism. (See MacCallum 1997, for the complete difference between a proprietary community and a feudal organisation).

> pleased to call *their* land. … Let them buy and sell, and bequeath and devise it. We may safely leave them the shell, if we take the kernel. It is not necessary to confiscate land; it is only necessary to confiscate rent. … What I, therefore, propose, as the simple yet sovereign remedy … is to appropriate rent by taxation. (Book VIII, Chap. 2)

The idea is "to abolish all taxation save that upon land values" (*ibid.*). George's proposal is entirely based on the premise that the simple (land) rent value can be distinguished from the value deriving from improvements that have been purposely made. In this perspective,

> no owner of land need be dispossessed, and no restriction need be placed upon the amount of land any one could hold. For, rent being taken by the State in taxes, land, no matter in whose name it stood, or in what parcels it was held, would be really common property, and every member of the community would participate in the advantages of its ownership. (Book VIII, Chap. 2)

George maintains that this enables the government to eliminate all other taxes, and hence brings countless benefits:

> The advantages which would be gained by substituting for the numerous taxes by which the public revenues are now raised, a single tax levied upon the value of land, will appear more and more important the more they are considered. … With all the burdens removed which now oppress industry and hamper exchange, the production of wealth would go on with a rapidity now undreamed of. (Book IX, Chap. 1)

George continues:

> All would be free to make or to save, to buy or to sell, unfined by taxes. … Instead of saying to the producer, as it does now, "The more you add to the general wealth the more shall you be taxed!", the State would say to the producer, "Be as industrious, as thrifty, as enterprising as you choose, you shall have full reward!" (*ibid.*).

What Heath (1952) accepts about the issue as raised by George is *how the issue is set up*: specifically, Heath accepts the idea that land rent could be the key to rethinking the question of funding collective services. What Heath rejects is *the way George wants to solve the problem*. Heath makes three main objections.

The first objection is that land rent is not an illegitimate reward—or, at least, it is not *always* illegitimate. Heath maintains that landowners often serve a social function. In the terminology he uses, they serve a *distributive* function. George considers that the only activities worth remunerating are the *direct* activities for the transformation and improvement of the land. According to Heath, this ignores the fact that these activities are not the only ways that landowners can employ to increase the value of their lands. Heath maintains that land has what he terms *social value*: social value is tied to actions of a more "immaterial" nature also—for instance entrepreneurial choices that can satisfy certain tastes without altering the physical nature of the land. Fundamentally, Heath maintains that the existence of property (land property) is the basis for the very existence of a market system—that is, a form of organisation of the economy founded on contractual relationships capable of raising the general level of well-being.

Heath's second objection to George is that the *total* acquisition of land rent by a coercive public authority compromises the very meaning of the institution of land ownership. If the land rent is removed completely from the owners, the result is not very different than the nationalisation of the land, because the owners are left only with "an empty shell". In addition, landowners would be at the complete mercy of politicians and their arbitrary non-economic turns of logic. Heath observes how well George evaluated the damage that harsh public taxation does to producers and business people, and how poorly George does by ignoring this same damage in the case of landowners. In this way, George's proposal would destroy land ownership, and would not eliminate taxation at all; what it would wipe out would be the very rent that George had proposed to use as an alternative to other forms taxation.

Heath's third objection to George is that society has the potential to develop if and when this development is centred on forms of proprietary communities: these communities would manage to make land rent the means they use in order to deliver collective services without recourse to mandatory measures. Specifically, the owners would conduct works devoted to urbanisation and building infrastructures. These works would generate and increase land values. This increase in land values would enable the landowners to cede pieces of land in exchange for rent and so make a profit. This profit would enable them to reinvest again in further improvements, in order to maintain and increase income.

In conclusion, Heath does not consider land rent in itself to be antisocial; what he considers antisocial are the excessively intrusive systems of land taxation that prevent everyone from taking collective advantage of the mechanism of land rent in a voluntary way.

While Heath's objections to George's position may not be considered conclusive (Foldvary 2004), they do show that the issue of land rent is more complex and articulated than generally thought.[6] Besides, Heath's objections show that making room for several voluntary mechanisms can enable people to reap common benefit from the mechanism of land rent.

6.6 Concluding Notes

In conclusion, Heath's position is not convincing in every point. Specifically, there is no reason to think that proprietary communities can become institutions that *replace* public administrations. Rather, a better way would be to think of them as effective *integrative* institutions that would spur everyone to review the role of the public administrations themselves (see Chap. 4). In any case, Heath undoubtedly deserves recognition for having foreseen several relevant phenomena with

[6] See Andelson (2003, 2004) for a more general presentation and discussion of the criticisms of Henry George that several authors point out.

considerable insight, and for having helped us examine them without preconceptions or prejudices that would lead us astray.

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Appendix
Data and Figures

Table A.1 U.S. association-governed communities trend (Homeowners associations and other similar planned private planned communities account for 52–55% of the totals; condominiums for 38–42%; housing cooperatives for 5–7%)

Year	Communities	Housing units	Residents
1970	10,000	701,000	2.1 million
1980	36,000	3.6 million	9.6 million
1990	130,000	11.6 million	29.6 million
2000	222,500	17.8 million	45.2 million
2002	240,000	19.2 million	48.0 million
2004	260,000	20.8 million	51.8 million
2006	286,000	23.1 million	57.0 million
2008	300,800	24.1 million	59.5 million
2009	305,400	24.4 million	60.1 million
2010	309,600	24.8 million	62.0 million

Source: Community Association Institute (www.caionline.org)

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Table A.2 Features of the contractual communities. (For a similar attempt to draw up a scheme of features of residential associations—in particular, the gated ones—see Grant and Mittelsteadt 2004)

1. *Location*
– urban
– suburban
– rural
2. *Size*
– single building
– group of buildings
– neighbourhood
– village
– town
3. *Enclosure*
– no enclosure
– with enclosure
  – hedge
  – fences (opaque, visually-open, barbed…)
  – walls
4. *Secured access*
– no secured access
– with secured access
  – armed guards (at all times, at designated times)
  – surveillance cameras
  – card entry or other electronic systems
5. *Tenure*
– leasehold
– freehold
– commonhold
6. *Leadership*
– single owner
– board
– assembly
7. *Decision rule*
– single decision-maker
– simple majority
– supermajority
– unanimity
8. *Facilities*
– streets
– open spaces
– green spaces
– facilities and sports building (schools, common house, fitness centres…)
9. *Promoter*
– resident-driven
– non-profit developer-driven
– developer-driven
10. *Land-use*
– residential
– commercial
– entertainment-leisure
– mixed use

Table A.3 Services provided by large-scale homeowners associations (with a minimum of 1,000 acres). *Source*: McCabe and Tao (2006)

Type of service	Percentage providing service (%)
Services related to streets and transportation	
Initial construction	33
Street repair	62
Street cleaning	61
Street lighting	55
Sidewalks	51
Bike paths	51
Services related to recreation	
Swimming pool	82
Golf course	33
Gym/fitness centre	48
Playlot/totlot	67
Trails	63
Community centre	77
Tennis court	77
Greenway/natural area	75
Sports field (e.g., baseball or soccer)	43
Services related to security	
Security guard	48
Security patrol	63
Call box	14
Gates	50
Fences	45
Services related to public works	
Drinking water	19
Sewer	19
Cable	23
Trash collection	41
Storm drainage maintenance	61
Other community maintenance services	
Grass cutting/weeding common areas	95
Trimming trees/plants in common areas	97
Painting/outside maintenance of residences	26
Maintenance/landscaping outside community boundaries (e.g. medians, easements)	47

Table A.4 The role of large-scale homeowners associations (with a minimum of 1,000 acres) and their relationship with local governments—Community Managers' Views. *Source*: Tao and McCabe (2011). The survey instruments were addressed to the community managers

Agree	Disagree (%)
Fiscal matters	
Community services keep local taxes down	
44%	35
Local governments make financial grants available	
20%	65
Share costs of capital improvements	
17%	73
Pay full cost of capital improvements outside community boundary	
79%	15
Civic or political engagement	
Local political candidates hold meetings in my community	
57%	23
Local governments contact HOA to involve residents in civic affairs	
48%	21
Local governments contact community members for volunteer programs	
33%	29
Public safety	
Police patrols in my community	
59%	31
Local governments enforce traffic regulations on community streets	
45%	47
Local governments enforce parking restrictions in HOA community	
22%	69
Material and operational roles	
Help maintain property values	
98%	1
Provide substitute services	
61%	29
Provide supplemental services	
85%	6
Help lower community residents' taxes	
22%	49
Links between residents and local governments	
62%	16
Educate members re. local taxes and regulations	
30%	27
Are active in local government affairs	
63%	11
Symbolic and social roles	
Create pride in community	
97%	1
HOA governments are closer to people than local governments	
88%	5
Are a good place to learn political skills	
50%	18
Are a good venue for voice	
81%	6
Help residents get to know one another	
83%	4
Help residents resolve disputes	
77%	6

Table A.5 U.S. Secured Communities (Numbers in thousands). *Source*: United States Census Bureau (2009)

Characteristics	Total units	Tenure	Tenure	Household characteristics	Household characteristics	Regions	Regions	Regions	Regions
		Owner	Renter	Black alone	Hispanic	Northeast	Midwest	South	West
Community access secured with walls or fences	10,756	5,337	5,422	1,738	1,992	1,355	883	4,346	4,175
Special entry system present	6,091	2,682	3,410	940	1,061	613	320	2,651	2,507
Special entry system not present	4,653	2,648	2,005	791	931	742	559	1,688	1,664
Special entry system not reported	14	7	7	8	–	–	3	8	3
Community access not secured	100,124	70,410	29,714	12,152	10,655	18,964	24,337	36,821	20,002
Community access not reported	923	682	242	104	82	132	149	418	224
Total	**111,806**	**76,428**	**35,378**	**13,993**	**12,739**	**20,451**	**25,368**	**41,586**	**24,401**

Table A.6 Main reason for choice of present neighbourhood (numbers in thousands). *Source*: United States Census Bureau (2009)

Main reason	Total units	Owner	Renter
All reported reason equal	1,905	551	1,354
Convenient to job	3,535	611	2,924
Convenient to friends or relatives	2,485	570	1,915
Convenient to leisure activities	331	87	244
Convenient to public transportation	266	29	237
Good schools	1,087	289	798
Other public services	221	36	185
Look/design of neighbourhood	1,798	635	1,163
House was most important consideration	1,765	801	964
Other	3,313	750	2,563
Not reported	757	264	493
Total	**17,463**	**4,623**	**12,840**

Table A.7 Neighbourhood crime in the United States (numbers in thousands). *Source*: United States Census Bureau (2009)

Serious crime in past 12 months	Total units	Regions			
		Northeast	Midwest	South	West
Yes	19,298	2,912	4,318	7,482	4,586
No	90,116	17,159	20,615	33,055	19,287
Not reported	2,391	379	435	1,049	528
Total	**111,806**	**20,451**	**25,368**	**41,586**	**24,401**

Table A.8 Satisfactory/unsatisfactory police protection in U.S. neighborhood (numbers in thousands). *Source*: United States Census Bureau (2009)

	Total units	Regions			
		Northeast	Midwest	South	West
Satisfactory police protection	101,373	18,594	23,406	37,316	22,056
Unsatisfactory police protection	7,356	1,304	1,444	3,004	1,604
Not reported	3,078	553	519	1,266	740
Total	**111,806**	**20,451**	**25,368**	**41,586**	**24,401**

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