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ARTICLE

Governing the Company Town

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Abstract. This Article explores the forms of public and private governance that facilitate localized corporate domination. Researchers have documented the oppressive employment relationship that characterized historical "company towns," but few accounts yet have examined these communities as local governments. I use archival research to identify institutional continuities between corporate fiefdoms like industrialist George Pullman's model town outside Chicago (1880-1898) and Disney's self-governed district near Orlando (1967-2023). I demonstrate that local government law has contributed to the recent reemergence of company-dominated enclaves, namely by deferring to private governance and facilitating jurisdictional fragmentation.

During the Gilded Age and Progressive Era, proprietors of company-owned towns exercised absolute control over workers through the private law of property and contract. Mining bosses and industrial barons like Pullman intentionally rejected the municipal form, using dismissal and eviction to enforce company policy as the operative governing authority within their dominions. This strategy became less effective after the New Deal, leading observers to pronounce the demise of the company town. But I argue that parallel developments in local government law have allowed the company town's continuation through new institutional forms, enabling corporate titans to wield public powers without accountability to any broad public. Rather than facilitating domination over captive worker-residents, these institutional forms are used primarily to externalize costs and escape democratic obligations like taxation—goals that also deeply shaped the governance of historical company towns. I review this playbook through several recent

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case studies, demonstrating how territorial and functional fragmentation have facilitated the proliferation of corporate enclaves, allowing spatially concentrated private capital to secede from local democratic control.

This Article suggests that the company town can be understood as a democratic phenomenon: a distinctive form of private tyranny. Since the Founding, theorists have acknowledged the vulnerability of small and nondiverse jurisdictions to tyrannical rule-by-faction. By contextualizing new examples like Elon Musk's efforts to incorporate his model towns in Texas, I show that this fear is realized where corporate interests either commandeer our formal institutions of governance or displace their typical role in structuring public life.

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Introduction

> *Experience in the Colorado coal camps and in many similar communities proves that all the safeguards yet devised for the free exercise of the popular will are futile to prevent political domination when corporations or individuals control absolutely the industrial and economic life of the community.*
>
> —U.S. Commission on Industrial Relations, 1915[1]

> *What has Pullman, as a city, brought forth? . . . Its proprietor, the Pullman Company, knows no local law that is not made in the Board of Directors. Its President is become a functionary not of business but of government. . . . "The State—that is me!" said Louis XIV. So it was. So it is at the Calumet marsh. But why not stop it? Annexation is the remedy.*
>
> —The *Chicago Herald*, 1889[2]

In March 2023, the *Wall Street Journal* published a remarkable scoop: "Elon Musk is Planning a Texas Utopia—His Own Town."[3] According to land records and sources bound to secrecy by nondisclosure agreements, the billionaire—by some estimates, then the world's wealthiest man[4]—had acquired thousands of acres of farmland in Bastrop County, about thirty-five miles outside of Austin, with the goal of incorporating as an independent municipality under Texas law.[5] Doing so "would allow Mr. Musk to set some regulations" in his new model town, the paper reported.[6] Another report noted: "Texas isn't a bad place for a billionaire trying to build a town from scratch, what with its lax zoning laws and environmental requirements (and lack of corporate income tax or state income tax)."[7] Observers soon drew parallels to the historical "company town"—employer-owned communities

1. GEORGE P. WEST, U.S. COMM'N INDUS. RELS., REPORT ON THE COLORADO STRIKE 7 (1915).
2. Editorial, *Pullman and His Suburb*, CHI. HERALD, June 22, 1889.
3. Kirsten Grind, Rebecca Elliott, Ted Mann & Julie Bykowicz, *Elon Musk Is Planning a Texas Utopia—His Own Town*, WALL ST. J. (updated Mar. 9, 2023, 10:22 AM ET), https://perma.cc/8R35-46KX ("Some Boring [Company] employees, including Steve Davis, the company's president and a top lieutenant to Mr. Musk, have at times described even bigger plans, including creating an entire city . . . .").
4. Michelle Toh, *Elon Musk Is Once Again the World's Richest Man*, CNN BUS. (updated May 31, 2023, 10:27 PM EDT), https://perma.cc/2TSN-H3WX.
5. Grind et al., *supra* note 3.
6. *Id.*
7. Matt Stieb, *Elon Musk Wants His Own Town Now*, N.Y. MAG.: INTELLIGENCER (Mar. 9, 2023), https://perma.cc/456F-4E7W.

that facilitated, in effect, a complete merger between the public functions of local governance and the private domination of the workplace.[8]

Reporting and public discussion have focused on Musk's efforts to consolidate his company's landholdings into the municipal form. The Boring Company, a tunnel-construction firm founded by Musk, has filed plans with Bastrop County to construct 110 homes for employees residing in this proposed model community (to be named "Snailbrook," a reference to the company's mascot).[9] This design appears to be crafted to take advantage of the state's permissive jurisdictional formation statute, which allows communities with at least 201 residents to incorporate as a general-law municipality through an election initiated by simple petition process.[10] Even before plans for this new community were reported, SpaceX officials had approached Cameron County officials about incorporating their launch facilities in Boca Chica, near Brownsville.[11] (Musk confirmed the reports in a tweet: "Creating the city of Starbase, Texas."[12]) On May 3, 2025, local residents—almost all SpaceX employees or their family members—voted overwhelmingly (212 to 6) to incorporate.[13] These efforts are reminiscent of a less-noticed 2017 council

8. *See, e.g.*, Abby Vesoulis, *Elon Musk's Texas Takeover*, MOTHER JONES (Jan./Feb. 2024), https://perma.cc/QPE3-E728 ("Such plans evoke the image of the company towns created by Gilded Age moguls, who built enclaves that provided housing, schools, and other necessities to workers.").

9. Grind et al., *supra* note 3.

10. TEX. LOC. GOV'T CODE ANN. § 7.001 (West 2023). The municipal formation process is initiated when an application signed by fifty qualified voters is filed with the county judge, who then—upon demonstrated proof of residential population—orders an incorporation election (satisfied by simple majority agreement within the proposed town boundaries). *See* DAVID B. BROOKS, 22 TEXAS PRACTICE SERIES § 1.11 (2d ed. 1999, Oct. 2024 update) (describing the Texas municipal formation process).

11. Aria Bendix & Morgan McFall-Johnsen, *Elon Musk Is Trying to Create a New City Called "Starbase" at SpaceX's Texas Launch Site*, BUS. INSIDER (Mar. 2, 2021, 4:39 PM PT), https://perma.cc/GXB9-GCCA; *see also* Loren Grush, *SpaceX Seeks Approval to Turn Texas Starbase Site Into New City*, BLOOMBERG (Dec. 12, 2024, 6:44 PM PST), https://perma.cc/6L88-8L85; *cf.* Christopher Hooks, Opinion, *Try Living in Elon Musk's Company Town*, N.Y. TIMES (May 24, 2024), https://perma.cc/DVZ3-C594 ("Brownsville has become something of a company town for SpaceX, its largest private employer . . . . In [a] sense, we're all living in Brownsville now.").

12. Elon Musk (@elonmusk), X (Mar. 2, 2021, 12:31 PM), https://perma.cc/RWP7-HF94. But public information about both proposed municipal incorporations remains limited. As part of an organized effort to entice SpaceX to locate in the state, which also included generous tax abatements and broad exemption from various liability statutes, the county had agreed to withhold corporate information that would otherwise be subject to open-records laws. Vesoulis, *supra* note 8.

13. Lauren McGaughy, *City of Starbase Becomes Official at Elon Musk's SpaceX Rocket Site in South Texas*, KUT NEWS (May 20, 2025, 12:42 PM CDT), https://perma.cc/7B9J-K9CU. This incorporation vote occurred as this Article was in its final revisions before publication. Although too early to make definitive claims about its consequences, we

footnote continued on next page

vote in Georgia to form a new city of "Amazon"—part of the region's bid to attract the internet retail giant's second headquarters—by deannexing 345 acres from the jurisdictional boundaries of an existing suburb just outside Atlanta.[14]

Around the same time that Texas and Georgia officials were moving to accommodate the incorporation of company-controlled municipalities in their respective states, Republican legislators in Florida were fighting to dissolve a similar jurisdictional arrangement in their own state: the Reedy Creek Improvement District. This private government had been created in 1967 by special act of the Florida state legislature—the centerpiece of an extensive multiyear effort to secure the Walt Disney Company's promised $600 million investment.[15] Amid ongoing conflict over Disney's political advocacy, Governor Ron DeSantis now was leading an effort to restrict the company's control over the 25,000-acre autonomous district that encompasses its vast resort campus near Orlando.[16]

The special purpose jurisdiction was created to provide Disney with "freedom from government regulation, from local elected officials, and from the reach of democratic government."[17] Two years prior to the 1967 special act, Florida voters rejected a bond amendment—promoted by the governor as essential to Disney's resort plans—that would have funded transportation infrastructure in the area surrounding the company's land acquisitions.[18] Pivoting after this popular defeat, the state took a different tack: ensuring that the entertainment conglomerate would no longer have to worry about local democratic processes as a constraint on its planned operations. Disney was granted the authority to fund similar infrastructure investments directly—by issuing tax-exempt municipal bonds, requiring approval only from the couple-dozen company officials that resided within its borders.[19]

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may draw inferences from the study of corporate enclaves described in Part IV.B below. *Cf.* Will McCarthy, *"He's Trying to Colonize This Community": Inside Elon Musk's Plan to Take Over This Texas Town*, POLITICO (May 2, 2025, 5:00 AM EDT), https://perma.cc/CV7D-M39J ("'For Disney at least, the special district has worked out very well for their interests, and very poorly for the interests of the people of greater Orlando,' Highsmith said. 'I suspect that would be the case here.'").

14. Mark Niesse, *City of Amazon Proposed to Attract Company's HQ2 to Georgia*, ATLANTA J.-CONST. (Oct. 3, 2017), https://perma.cc/9QH2-R387.

15. *See* RICHARD E. FOGLESONG, MARRIED TO THE MOUSE: WALT DISNEY WORLD AND ORLANDO 55-77 (2001); *see also infra* Part III.B.

16. Brooks Barnes, *DeSantis Declares Victory as Disney Is Stripped of Some 56-Year-Old Perks*, N.Y. TIMES (Feb. 10, 2023), https://perma.cc/S5XF-CS5J.

17. FOGLESONG, *supra* note 15, at 6.

18. Ed Hensley, *What About Disneyland?*, ORLANDO SENTINEL, Nov. 4, 1965.

19. *See* FOGLESONG, *supra* note 15, at 71, 75; *see, e.g.*, John Hill, *Reed Creek Voters Okay Bond Deal*, ORLANDO SENTINEL, Nov. 13, 1986, at D-13 ("Two dozen voters in the Reedy Creek Improvement District unanimously approved a $293.6 million bond package in a

footnote continued on next page

This sovereign authority was provided after Roy Disney (brother of Walt, recently deceased) told state legislators that Disney would require a "solid legal foundation" to move forward with their plans.[20] Within three months, the requested governing authority was granted by the Florida legislature with only one dissenting vote.[21] Under the act, Disney—through its special purpose district—secured the ability to provide its own public services, from water services to policing, while shifting various costs of its amusement empire to the public fisc.[22] The company was given full control over land use and safety regulation within its district and then made responsible for monitoring its own compliance.[23] More broadly, the arrangement provided legal protection from taxation demands of local neighbors and regulatory imperatives of the state.[24]

The recent conflict between Governor DeSantis and Disney, like the public discussion about Musk's now-successful incorporation efforts, has focused on the democratic consequences of jurisdictional autonomy. Promoting legislation that shifted the power of appointment to Reedy Creek's governing board from the company to the state, DeSantis described the change as "bring[ing] accountability to a corporate-run government that sacrificed the

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special referendum Wednesday. . . . Eligible to vote in the election were the 35 residents living in two mobile home parks on the Disney property. All residents are current or retired Disney workers."); *Roads Improvements*, ORLANDO SENTINEL, Aug. 16, 1989, at D-2 ("Twenty-two current and retired Walt Disney World employees have approved a $60 million bond package that will allow Disney's quasi-government to buy land, build and improve roads and expand sewage treatment sprayfields. The issue was approved 22 to 1. . . . Only 23 ballots were cast, but voter turnout was a healthy 60 percent for the Reedy Creek bond vote.").

20. FOGLESONG, *supra* note 15, at 68. Disney promised to open the complex by the summer of 1970, "if the company's legislative package is passed." *Disneyworld Amusement Center with Domed City Set for Florida*, N.Y. TIMES, Feb. 3, 1967, at 38; *cf.* Mark Andrews, *Disney Dream Becomes a Reality, But Not the One Founder Imagined*, ORLANDO SENTINEL, June 6, 1993, at K-2 ("Years later, Disney officials would say privately that they would have gone ahead with the project if the Legislature had granted them one-third of the special powers they wanted. But they got everything they asked for.").

21. FOGLESONG, *supra* note 15, at 73.

22. *See id.* at 55-77 (describing these authorities).

23. *See* Reedy Creek Improvement District, ch. 67-764, § 23(2), 1967 Fla. Laws 256, 311-12 (repealed 2022) ("The jurisdiction and powers of the Board of Supervisors provided for herein shall also be exclusive of any law now or hereafter enacted providing for land use regulation, zoning or building codes by the State of Florida or any agency or authority of the State, and the provisions of any such law shall not be applicable within the territorial limits of the District."). Although the power was never exercised, Disney even was authorized to generate power through "nuclear fission and other new and experimental sources of power and energy." *See id.* § 9(17).

24. *See infra* Part III.B.

people's interests to the interests of a single corporation."[25] His office released a fact sheet that described Disney's "sole control" over its special district as "amount[ing] to an unaccountable Corporate Kingdom."[26] This conclusion was echoed by others from across the political spectrum: *New Yorker* essayist Jelani Cobb, commenting on the conflict, wrote that "Disney presides over what earlier generations would have recognized as a company town."[27]

This term is commonly understood to describe a form of local industrial organization during the half-century spanning the Gilded Age and Progressive Era. The distinctive community form, primarily associated with manufacturing and extractive industries, was common at the time. Figures from the Bureau of Labor Statistics suggest that, as late as 1930, more than two million Americans were living in communities that were owned or organized by employers.[28] In certain regional industries, like West Virginian coal mining and Southern textile manufacturing, over 65% of workers resided in company towns.[29] Classic labor histories have documented the oppressive employment relationship in particular employer-owned communities—including payment in company-denominated currency ("scrip"), regular threats of eviction, suppression of unionization efforts, and elaborate surveillance of private

25. Press Release, Governor Ron DeSantis, Governor Ron DeSantis Brings Accountability to the Central Florida Tourism Oversight District (Feb. 22, 2024), https://perma.cc/96K2-8UKC.

26. Ron DeSantis (@GovRonDeSantis), X (Feb. 27, 2023, 8:00 AM), https://perma.cc/5HPC-RA6C; *see also* Anika Hope (@AnikaHopeTV), X (Feb. 27, 2023, 6:44 AM), https://perma.cc/H8DC-HKQJ.

27. Jelani Cobb, *Ron DeSantis and the Unlearned Lessons of the G.O.P.'s Culture War*, NEW YORKER (May 2, 2022), https://perma.cc/M67U-2WFG.

28. MARGARET CRAWFORD, BUILDING THE WORKINGMAN'S PARADISE: THE DESIGN OF AMERICAN COMPANY TOWNS 2 (1995); *see also* LEIFUR MAGNUSSON, U.S. BUREAU OF LAB. STAT., HOUSING BY EMPLOYERS IN THE UNITED STATES 10-11 (1920) (reporting 160,645 employees housed by 213 studied companies across selected industries of interest). These oft-cited estimates refer to *employer-provided housing*, which represents one of the more common ways of conceptualizing the company town. But this definition—like others that emphasize specific employer behaviors that varied widely across industry, time, and place—is generally unsatisfying as a category definition. Seeking to move beyond these conceptual difficulties, this Article reframes the company town as a democratic phenomenon. *See infra* Part I.B. Nevertheless, this estimate—and other analyses centering the employment relationship (cited throughout)—remains informative as a point of analytical reference.

29. CRANDALL A. SHIFFLETT, COAL TOWNS: LIFE, WORK, AND CULTURE IN COMPANY TOWNS OF SOUTHERN APPALACHIA, 1880-1960, at 33 (1991) ("Company towns characterized the southern Appalachian coalfields. In 1925, when the U.S. Coal Commission completed its study of the industry just past the peak of the coal boom, it found nearly 80 percent of West Virginia's miners living in company towns."); HERBERT JAY LAHNE, THE COTTON MILL WORKER IN THE TWENTIETH CENTURY 36 (1944) (estimating that, in 1938, two-thirds of textile workers in several Southern states lived in mill villages).

affairs.[30] But very few accounts to date have examined company towns as local governments.[31]

This absence is striking. Recent headlines have focused on dominant corporations' efforts to wield public powers through the legal form of the incorporated municipality.[32] But the titans of previous eras went to elaborate lengths to avoid such legal status—opting instead to govern their fiefdoms through the private law of property and contract. With few exceptions, early company towns were not "towns" at all, as a formal matter of public law.[33] The institutional feature was so characteristic that many accounts use it to bound the category, excluding incorporated industrial villages from their definitions of the term.[34] Nor was this uniformity—consistent across employer-owned

30. *See, e.g.*, JOHN GAVENTA, POWER AND POWERLESSNESS: QUIESCENCE AND REBELLION IN AN APPALACHIAN VALLEY (1980) (exploring power relationships in several Central Appalachian mining communities); RONALD D. ELLER, MINERS, MILLHANDS, AND MOUNTAINEERS: INDUSTRIALIZATION OF THE APPALACHIAN SOUTH, 1880-1930 (1982) (documenting the social and economic consequences of industrialization in the Appalachian South); ALMONT LINDSEY, THE PULLMAN STRIKE: THE STORY OF A UNIQUE EXPERIMENT AND OF A GREAT LABOR UPHEAVAL (1942) (providing a history of George Pullman's model community); *see also* CRAWFORD, *supra* note 28, at 4 ("Despite the extent and importance of company towns, a general history of American company towns has yet to appear. . . . In the absence of general works, there are a number of notable small-scale studies, interdisciplinary works focusing on single industrial communities.").

31. Historical accounts often will provide limited information about the prevailing institutional governing arrangements of particular company towns—typically, by briefly noting that the studied communities were not formally incorporated as local governments. Some accounts of more recent corporate-dominated jurisdictions, including Reedy Creek and the "industrial cities" of Southern California, have devoted focused attention to the legal design of those particular jurisdictions. *See generally, e.g.*, FOGLESONG, *supra* note 15; MIKE DAVIS, CITY OF QUARTZ: EXCAVATING THE FUTURE IN LOS ANGELES (1990). But I am unaware of any comparative studies—either within a particular time period or tracing legal developments across time—that focus on the institutional form of local governance in company towns.

32. *See, e.g.*, Grind et al., *supra* note 3; Grush, *supra* note 11.

33. *See* LINDA CARLSON, COMPANY TOWNS OF THE PACIFIC NORTHWEST 6 (rev. ed. 2017) (2003) ("Of these thousands of [employer-built] villages . . . only a few were incorporated towns."); W.J. CASH, THE MIND OF THE SOUTH 200 (1941) ("[M]any of the new [textile] towns were not regularly organized municipal corporations at all, but merely the fiefs of the mills.").

34. *See, e.g.*, ELLER, *supra* note 30, at xx ("[O]ver six hundred company towns were constructed in the southern mountains [between 1900 and 1930], and in the coal fields they outnumbered independent incorporated towns more than five to one."); J.D. Porteous, *The Nature of the Company Town*, TRANSACTIONS INST. BRIT. GEOGRAPHERS, Nov. 1970, at 127, 131 ("The true form [of the company town] remains unincorporated, and thus solely under the control of the entrepreneur."); JAMES B. ALLEN, THE COMPANY TOWN IN THE AMERICAN WEST 5 (1966) ("The existence of private home ownership and self-government and the dominance of independent business firms places Bisbee outside our definition.").

communities that differed widely across other dimensions—mere coincidence. The historical record demonstrates that owners of these towns considered alternative legal forms but determined that their primary goals could be achieved without the state powers sought more recently by Musk and Disney.

Democracy was the primary deterrent. Whatever formal powers might be gained from municipal incorporation were not worth the possibility of losing absolute control through open political processes that the owners had, to that point, so carefully avoided.[35] Consider the most famous historical company town: George Pullman's eponymous planned community, which operated under the full control of his Palace Car Company during the late nineteenth century.[36] Asked whether he planned to incorporate his model town, Pullman dismissed the idea: "As long as the town of Pullman is owned by one association there is little necessity of agitating the subject of its control by any municipal government."[37] Company policy reflected this logic. Writing in 1888, one contemporary observed that Pullman refused to sell any portion of his town, even for the erection of a church: "There is no Lord's acre here."[38]

Rather than seeking to commandeer local democratic institutions, industrial barons during this period used spatially consolidated property ownership and adhesion contracts to displace public law as the operative governing authority within their proprietary dominions.[39] This history contextualizes recent efforts by dominant corporations to separate, jurisdictionally, from the broader political community. The widely feared consequence of Disney's autonomous special district was the eventuality that its corporate imperatives could assume, without democratic friction, the full force of law.[40] Although categorically distinctive with respect to legal form, Pullman's model town—as enforced through the prompt dismissal and eviction of any worker-subject who dared oppose his governing authority—achieved almost precisely this end.[41] Company dictates were imposed as akin to public

35. *See infra* Part II.B.

36. *See infra* Part II.A; *cf.* Richard T. Ely, *Pullman: A Social Study*, HARPER'S MAG., Feb. 1885, at 460 ("The whole [experiment] is the work of the Pullman Palace Car Company and the Pullman Land Association, which are both under one management, and, to a considerable extent, the same practically, although two separate legal persons.").

37. STANLEY BUDER, PULLMAN: AN EXPERIMENT IN INDUSTRIAL ORDER AND COMMUNITY PLANNING, 1880-1930, at 107 (1967) ("When a reporter asked [George Pullman]: 'How in the world do you govern these people?' he replied, 'We govern them in the same way a man governs his house, his store, or his workshop. It is all simple enough.'").

38. JOHN GIBBONS, TENURE AND TOIL; OR, RIGHTS AND WRONGS OF PROPERTY AND LABOR 185 (Philadelphia, J.B. Lippincott Co. 1888).

39. *See infra* Parts II.A, III.

40. *See, e.g.*, FOGLESONG, *supra* note 15, at 71-72 (describing concerns, reported later, by local policymakers that they "were giving government powers to a business").

41. *See infra* Part I.A.

law. These two strategies should be thus understood as alternative paths to a shared aspirational destination: the unchallenged sovereign (or semi-sovereign[42]) control, by owners of the means of production, over the governance of a given territorial domain.

I suggest that this governing outcome—the absence of democratic friction between (1) the governing interests of spatially concentrated private capital, and (2) the authority that governs public life within a territory—is the common feature that distinguishes the company town. This Article traces the historical evolution of the institutional arrangements that have facilitated this particular form of localized corporate domination within the industrialized American political economy. My account emphasizes continuities across these various legal forms, identifying parallels between the governing strategies deployed by contemporaries of George Pullman and those of recent headlines. I suggest that the effectiveness of these vehicles for private governance is contingent—structured not only by the legal rights of property ownership and liberty of contract, but also by factors such as economic geography and the allocation of power between vertical levels of government.

In tracing the history of the company town, researchers (correctly) have observed that consolidated property ownership became less effective, over time, for the related goals of labor exploitation and worker control.[43] Developments like widespread access to automobiles and the emergence of mail-order retail reduced employers' ability to extract rents from—and exercise authority over—their workers through once-widespread practices like employer-owned housing and the company store.[44] Even more importantly, Federal New Deal legislation like the Wagner Act protected workers' right to organize, even in company-run enclaves, thereby defusing one of the primary motivations of the company town.[45] These developments reduced the potential returns from various employment practices that have long been used to define the company town as a distinctive category; many ended as a result.

But it is a mistake to conclude from this observation, as so many have done, that the company town—as a strategy for achieving unchallenged sovereign control over a given territorial domain—died along with those employment practices. A recent Federal Reserve publication is representative of the consensus: "By the mid-20th century, company towns were little more

42. *Cf.* Daniel J.H. Greenwood, *The Semi-Sovereign Corporation*, *in* PROPERTY AND SOVEREIGNTY: LEGAL AND CULTURAL PERSPECTIVES 267, 268 (James Charles Smith ed., 2013) ("Corporations ought to be understood as semi-sovereigns: self-governing institutions to which we have granted a high degree of autonomy from ordinary democratic processes.").

43. *See infra* notes 110-39 and accompanying text.

44. *See infra* notes 117-19 and accompanying text.

45. *See infra* notes 120-32 and accompanying text.

than a relic of a bygone era."[46] This tendency to conceptualize the company town as some historical footnote overlooks the enduring persistence of the distinctive democratic phenomenon through new institutional forms. Around the same time that federal labor protections and other changes reduced the primary "benefit" of governing through private law, developments in local government law effectively removed what employers had long seen as the primary "cost" of the municipal form: democratic accountability to a public beyond the corporate boardroom.

For much of American history, private fiefdoms had been maintained through the playbook articulated by Pullman: by requiring workers to reside within communities that were owned (and therefore controlled) by their employers. But as this strategy became more costly and less effective, parallel developments in local government law provided an attractive alternative.[47] Rather than exercising domination over worker-residents through private law, employers increasingly adopted the public form—and then schemed to exclude from the voting "demos" any residents who might oppose their prerogatives.[48] This strategy (like the previous) centrally involved strategic management of the territorial population, but through near opposite means.

Where historical company towns maneuvered to hold workers captive with the goal of compelling their quiescence, the new corporate enclaves accepted that labor's democratic voice could not reliably be suppressed. Companies sought instead to ensure that workers—and any others who might oppose their interests—would never have the opportunity to provide input. For example, eligibility to serve on Reedy Creek's governing board required ownership of land within the district.[49] Disney maintained political control in part by managing this access—temporarily deeding five-acre plots of land to approved candidates, to be returned to Disney at the conclusion of their "public" service.[50] The result from decision-making processes would remain

46. Aayush Singh, *The Rise and Fall of Company Towns*, ECON. FOCUS, Third Quarter 2023, at 10, 13 (2023); *see also* CRAWFORD, *supra* note 28, at 209 ("The company town slowly disappeared from the American landscape."); Porteous, *supra* note 34, at 139 ("With the rise of welfare-state policies in the Western world, coupled with twentieth-century transport media, the company town has tended to disappear.").

47. *See infra* Part IV.

48. *See infra* Part III.

49. CENT. FLA. TOURISM OVERSIGHT DIST., REPORT ON PAST PRACTICES OF THE REEDY CREEK IMPROVEMENT DISTRICT 7 (2023) [hereinafter REPORT ON PAST PRACTICES], https://perma.cc/7C3F-WHSC ("Members of the Board were selected by a vote of District landowners with votes allocated for each acre owned. Because Disney owned the vast majority of land in the District, this meant that any candidate with Disney's support would be elected and any candidate Disney opposed could not be elected.").

50. *Id.*

guaranteed—not by quashing dissenters' voices, but by designing governing institutions that prevented their preferences from having legal consequence.

This new possibility—public power without accountability to any public—entirely changed employers' calculus. Where political control can be maintained through strategic manipulation of the demos, the municipal form allows firms to escape democratic obligations to the wider public. The primary subject of domination through this new strategy is not the residents of the company town so much as nonresidents[51] who are affected by its operations but excluded from its democratic control. This institutional arrangement facilitates alternative mechanisms for pursuing the consistent goal of profit maximization—namely, by protecting corporate wealth from taxation, externalizing costs onto a broader public, and escaping local regulation.[52] But rather than prevent this outcome, local government law has actively facilitated its proliferation over the past century.[53]

Identifying the consequences of this shift—and the commonalities across the new institutional forms that state public law has facilitated—requires a broader reconceptualization. I make the case here that the company town is most accurately understood as an enduring democratic phenomenon—a manifestation of James Madison's famous fear of unchecked rule by "faction" in small (nondiverse) jurisdictions within a fragmented polity.[54] Integrating democratic theory with original research from the Pullman and Disney archives, this Article explores the historical relationship between the institutional form of local governance and opportunities for localized corporate domination. I show how this form of private control has been achieved through both pathways that Madison identified: initially, by avoiding representative democracy altogether; and later, through the strategic manipulation of the voting public. I demonstrate that jurisdictional fragmentation has provided an overlooked mechanism for "privatizing" the public functions of governance, by creating politically separated territories where a single interest will reliably dominate in local affairs. These dynamics

51. Because voting rights generally attach to residence, this group likely includes a labor force that commutes to work inside the enclave's jurisdictional boundary. *See infra* Part III.C.

52. Governor DeSantis captured this basic dynamic: "Allowing a corporation to control its own government is bad policy, especially when the corporation makes decisions that impact an entire region." Press Release, Governor Ron DeSantis, Governor Ron DeSantis Signs Legislation Ending the Corporate Kingdom of Walt Disney World (Feb. 27, 2023), https://perma.cc/HX9P-TXBM; *cf.* REPORT ON PAST PRACTICES *supra* note 49, at 7 (describing features of the self-governed special district structure that "gave Disney the ability to pursue its corporate interests at the expense of its neighbors and other stakeholders in the region").

53. *See infra* Part IV.

54. *See infra* Part I.C.

should inform our institutional design: both the level of government at which political decision-making is made and also the degree of fragmentation that our law should facilitate.

This Article devotes particular attention to the underexplored role of local government law, which regulates access to—and obligations of—the municipal form. Over the 150 years since Pullman's founding, state law has directly facilitated jurisdictional fragmentation and the programmatic devolution of municipal services to private interests. These legal developments help explain why dominant employers have recently succeeded in creating their own autonomous jurisdictions, even as George Pullman failed in his efforts to resist the annexation of his company town by Chicago in 1889.[55] Yet despite considerable attention to questions of fragmentation and localism—arguably the central concerns of local government scholarship—academic debates have only rarely centered the democratic consequences of unchecked corporate power as represented by the company town.[56] I integrate this concern into other accounts documenting a relationship between municipal fracture and forms of private domination.[57]

This broader corrective has implications beyond local government law, particularly regarding corporate power as a threat to democratic self-governance. In seeking to bound the company town as a distinctive category, researchers have too narrowly focused their attention on aspects of the employment relationship that varied even among the cases widely recognized as belonging to this category. But industrial villages of yore were not company towns because they paid workers in scrip: Those employers—having secured unaccountable power over their worker-residents—were able to pay in scrip *because they had established a company town.* This basic fallacy has real consequences. For example, one leading account of American company towns specifically excludes certain modern tech outposts from its definition, on the

55. *See infra* Part III.A.

56. Scholars have devoted considerable attention to the question of structural corporate power and the contested (legal and theoretical) distinction between the "public" and "private" interest, although these literatures use different framings or focus on different applications. *See infra* notes 173-75, 452-60 and accompanying text.

57. *See* GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS 22 (1999) ("Metropolitan fragmentation has created too many cities that feel more like a private, gated community than an open and diverse public forum."); *cf.* Margaret Weir & Desmond King, *Redistribution and the Politics of Spatial Inequality in America*, *in* WHO GETS WHAT? THE NEW POLITICS OF INSECURITY 188, 189 (Frances McCall Rosenbluth & Margaret Weir eds., 2021) ("We show that metropolitan America is fragmenting across political jurisdictions, allowing affluent residents to cluster into separate municipalities shielded from fiscal responsibility for low-income residents.").

basis that such communities have few worker-residents.[58] By conceptualizing the company town as a democracy problem, rather than as defined exclusively by the employment relationship, we can see how this design is often precisely what facilitates unaccountable governance today.

Because researchers have misidentified what defines the historical company town, they have incorrectly assumed that the model is now obsolete—and missed its reemergence in new forms. The company town of today often looks different from previous familiar iterations. It is facilitated through distinctive legal forms, deployed most effectively towards different mechanisms for wealth maximization—shielding profits from redistribution, for example, rather than generating them through exploitation of a resident labor force. But these new forms ultimately facilitate a consistent goal: governing power without democratic accountability. This form of antidemocracy[59] is the predictable result of our institutional design. Rather than facilitating the establishment of corporate fiefdoms, or belatedly seeking to remedy the downstream consequences of faction rule, local government law should directly prevent their emergence.

This Article proceeds first, in Part I, by reframing the company town as a specific form of absolute governing authority within a territorial domain. Part II demonstrates how this form of power can be maintained through the public enforcement of private law rights. Part III provides a new account of how the corporate enclave transformed by assuming the public form. In Part IV, I review the implications for local government law before briefly concluding.

58. HARDY GREEN, THE COMPANY TOWN: THE INDUSTRIAL EDENS AND SATANIC MILLS THAT SHAPED THE AMERICAN ECONOMY 199 (2010) ("But can these [remote outposts of new high-tech industries] be anything like company 'towns' if the residents are primarily machines tended by a few humans?").

59. *See* Nikolas Bowie, Comment, *Antidemocracy*, 135 HARV. L. REV. 160, 167-68 (2021) ("To put the point clearly, what has historically distinguished democracy as a unique form of government is its pursuit of *political equality*.").

I. The Company Town as an Enduring Democracy Problem

> *October 20, 2026: Something new is beginning—or perhaps something old and nasty is reviving. A company called Kagimoto, Stamm, Frampton & Company—KSF—has taken over the running of a small coastal city called Olivar.*
>
> —Octavia E. Butler, *Parable of the Sower*, 1993[60]

To the public imagination, the company town represents the extreme manifestation of totalizing corporate power. John Gaventa's classic study of unopposed power examines, as its central case, a company-owned mining community in Central Appalachia.[61] Labor economists use the company town as the (literal) textbook example of pure employer power over wages and working conditions.[62] Constitutional law students read about the absence of free-speech protections in Chickasaw, Alabama—the Mobile suburb that, as the Court observed, had "all the characteristics of any other American town" except that it was "owned by the Gulf Shipbuilding Corporation."[63] Corporate fiefdoms feature prominently in best-selling literary accounts of dystopian futures.[64] But even though the idea of the company town remains powerful, shaping contemporary scholarship and public debate across diverse contexts, there is surprisingly little consensus about what is actually meant by the term.

With few exceptions, existing definitions of the company town focus on observable aspects of the employment relationship. Researchers generally emphasize the sole consolidated ownership, by the primary employer within a local labor market, of the built environment that supports community life.[65]

60. OCTAVIA E. BUTLER, PARABLE OF THE SOWER 109 (1993).

61. *See generally* GAVENTA, *supra* note 30.

62. *See, e.g.*, Suresh Naidu & Arindrajit Dube, *Monopsony Power in Labor Markets*, NAT'L BUREAU ECON. RSCH. REPORTER, Apr. 2024, at 7, 8 ("Concentration refers to having a small number of employers in the market—in the extreme case, a company town."). This literature generally reflects the broader tendency to view the company town as defunct. *See* Orley Ashenfelter, David Card, Henry Farber & Michael R. Ransom, *Monopsony in the Labor Market: New Empirical Results and New Public Policies*, 57 J. HUM. RES. S1, S1 (2022) ("[U]ntil relatively recently, the textbooks viewed monopsony power as either a theoretical curiosum, or a concept limited to a handful of company towns in the past."); Christina D. Romer, *The Business of the Minimum Wage*, N.Y. TIMES (Mar. 2, 2013), https://perma.cc/86CZ-32YA ("In our nation's history, there have been company towns where one employer truly dominated the local economy. . . . [But c]ompany towns are largely a thing of the past in this country; even Wal-Mart Stores . . . faces substantial competition for workers in most places.").

63. Marsh v. Alabama, 326 U.S. 501, 502 (1946).

64. *See generally, e.g.*, BUTLER, *supra* note 60; ROB HART, THE WAREHOUSE (2019).

65. *See, e.g.*, ALLEN, *supra* note 34, at 6 (defining the term as "any community which is owned and controlled by a particular company").

Many seek to bound the category by reference to specific practices like employer-owned housing or the operation of a company store.[66] But historical "company towns"—those widely understood to represent the category—in fact varied widely with respect to housing arrangements, labor practices, and urban design features. It was common in many consensus company towns like Pullman for employers to house only a fraction of their workforce, for example.[67] Particularly in the early twentieth century, others offered approved workers the option to lease or directly purchase housing (though typically retaining ownership control of the land).[68] Some mining and logging towns, notoriously, paid their workers in scrip that could be used only for overpriced goods available at the company store[69]—but many company towns did not. For any given practice that might be used to bound the category, such variation will tend to generate overbroad, underinclusive, or otherwise unsatisfying definitions.[70]

66. Particularly important in many accounts is the combination of the employer-employee and landlord-tenant relationships that was achieved by way of company-owned housing. *See, e.g.*, Horace B. Davis, *Company Towns*, *in* 4 ENCYCLOPAEDIA OF THE SOCIAL SCIENCES 119, 119 (Edwin R.A. Seligman & Alvin Johnson eds., 1957) (describing the company town as a community "inhabited solely or chiefly by the employees of a single company or group of companies which also owns a substantial part of the real estate and houses"); Edward Greer, *Monopoly and Competitive Capital in the Making of Gary, Indiana*, 40 SCI. & SOC'Y 465, 465 (1976) ("Strictly speaking, a company town is one where the work force is employed largely by one company, which also owns the bulk of the land and houses of the community."); CARLSON, *supra* note 33, at 14 ("What defines a company town? Housing provided by the boss and a store run by the company, most people will say."). The company town has been the subject of significant attention also in urban-planning literatures; their accounts tend to focus on employers' control over the community plan, as a built environment, rather than ownership per se. *See, e.g.*, CRAWFORD, *supra* note 28, at 1 (identifying the company town as "a distinctive urban form").

67. Richard Schneirov, *The Pullman Strike*, N. ILL. UNIV. DIGIT. LIBR., https://perma.cc/J8BQ-UFVP (archived Apr. 19, 2025) ("Even as the town grew to 14,700 in 1892, thousands of Pullman's workers lived outside the town's limits in nearby Kensington, Roseland, or Gano. Only two-thirds of Pullman's workers actually lived in the town and one-half of those were boarders."); *see also* Magnusson, *supra* note 28, at 15 (estimating that "only one-third of the employees of the [studied companies] are accommodated in company houses," at rates varying from 71% in Southern cotton mills to 15.9% in copper and gold mining communities of the Southwest).

68. *Cf.* CARLSON, *supra* note 33, at 191-92 ("When the company didn't own all the businesses in town, it often controlled them through land leases.").

69. *See id.* at 101 ("[T]he company store has been called the most typical feature of a company town. Maligned for uncompetitive prices, poor selection, and oppressive credit policies, company stores often have been blamed for ensuring that employees stayed indentured.").

70. *Cf.* ALLEN, *supra* note 34, at 6 ("These variations make a simple definition of the company town impossible.").

Researchers have, accordingly, struggled to identify which features are definitionally characteristic of the company town. In the words of one, "Sometimes it's hard to articulate what was unique about company towns."[71] A few have attempted to disaggregate employer-owned communities into smaller units of analysis based on employers' stated or presumed intentions. For example, Hardy Green's comprehensive history describes the general category as "tend[ing] toward one of two models," which he terms "exploitationville," epitomized in his account by Appalachian coal mining towns, and the more "utopian" vision observed in industrial experiments like Pullman and Hershey, Pennsylvania.[72] Others have arrived at similar distinctions by subcategorizing company towns based on industry or economic geography.[73]

The company town thus remains undertheorized. Even the most rigorous accounts tend to use something like an eye test to bound the concept. This matters for our historiography. But these definitional ambiguities also raise a deeper concern: Have we misunderstood, on a fundamental level, what actually is distinctive about the company town? I make the case here that the company town is best understood as a democratic phenomenon: the ability of concentrated (or coordinated) capital to govern, without challenge or oversight, within a territorial domain.

This form of private governing power is noted by many accounts, even as they use other features to bound the term. Indeed, despite substantial variation across the indicators that have been suggested to define the category, one distinguishing feature seems shared across all variations: the near-total corporate control over all aspects of community life. As Green describes it:

> A company town seems necessarily to be a place where one business exerts a Big Brother-like grip over the population—controlling or even taking the place of government, collecting rents on company-owned housing, dictating buying habits (possibly at the company store), even administering where people worship and how they may spend their leisure time.[74]

I suggest that we might go further still, by understanding this form of absolute governing authority as the single characteristic that best defines the category.

This Part develops an initial account of the company town as an enduring democracy problem. The reframing helps resolve many of the conceptual confusions that have vexed contemporary observers, as I demonstrate below.[75]

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71. CARLSON, *supra* note 33, at 208.

72. GREEN, *supra* note 58, at 4-5.

73. *See, e.g.*, Greer, *supra* note 66, at 466 ("There are two types of company towns. One is a satellite city of some larger industrial center . . . . The other type is a remote and isolated community built to tap some mineral resource.").

74. GREEN, *supra* note 58, at 3.

75. *See infra* Part I.B.

But conceptualizing the company town as a specific form of private control also helps us identify continuities across time and legal form. We should expect the "company town"—understood in this way—to manifest through different institutional forms across different legal, political, geographic, and economic environments. To understand what connects these variations within the American context, it is worth first revisiting prevailing accounts tracing its emergence and (supposed) decline.

A. The "Emergence" and "Decline" of the American Company Town

The company town, as typically understood, is nearly as old as the early American republic. In 1792, Alexander Hamilton convinced New Jersey legislators to charter an industrial town at Paterson, on the Passaic River; the project was abandoned amid funding shortfalls and populist opposition.[76] The introduction of mechanized production processes prompted a shift in textile manufacturing from small hamlet operations to America's first large-scale planned industrial community: Lowell, Massachusetts, founded by the Merrimack Manufacturing Company and then incorporated in 1826.[77] The young women recruited to work as operatives in the mills lived in boardinghouses and attended lectures organized by the company.[78] They were "required to attend church (paying a 'pew fee' to support the institutions), and their morals were the object of close scrutiny by a 'moral police' system" enforced through dismissal and eviction.[79]

This model of industrial organization spread over the next half-century, especially to extractive industries like coal and silver mining in Appalachia and the Western territories.[80] In the postwar South, the plantation agriculture economy transitioned first to sharecropping and debt peonage, then to small-factory cloth production, and finally to integrated textile mills backed by

76. *See* GREEN, *supra* note 58, at 11-12; CRAWFORD, *supra* note 28, at 13-15 ("While outlining their plans for housing Paterson's workers, the directors, almost inadvertently, delineated a completely new social and physical order.").

77. GREEN, *supra* note 58, at 13-16; Lucy Larcom, *Among Lowell Mill-Girls: A Reminiscence*, 48 ATL. MONTHLY 593, 594 (1881). *See generally* 1 FREDERICK W. COBURN, HISTORY OF LOWELL AND ITS PEOPLE 95-130 (1920) (describing the creation and early development of "the first American factory city").

78. GREEN, *supra* note 58, at 18-19.

79. *Id.* at 18. The consequences of violation often included expulsion from the community (and the associated loss of income): "Companies had the power to fire anyone charged with immoral conduct, including consuming alcoholic beverages or even attending dancing classes." *Id.*

80. *See generally* ALLEN, *supra* note 34 (surveying company-owned towns in eleven Western states); ELLER, *supra* note 30, at 182-98 (describing community life and conditions in the mining towns of Appalachia).

Northern capital and competing in international markets.[81] Across rural economies during this period, the company town "came into existence by default in areas where neither small-scale private enterprise nor local government, if any existed, was able to provide even a basic infrastructure."[82]

In extractive industries, many remote settlements adopted a uniform "closed" model, where, as a condition of employment, itinerant workers were required to live in company housing (with rent typically deducted directly from monthly wages).[83] Camps were generally little more than shantytowns: The dwellings were shoddily constructed, sanitation services were rare, and community services were nearly nonexistent.[84] Disease was common.[85] All outsiders were banned from the community, including independent merchants.[86] Workers had little choice but to turn to the commissary for basic needs, often on extended credit terms (as memorialized by the Merle Travis lyric, "I owe my soul to the company store").[87] Injuries were common; where they resulted in the inability to perform labor, workers could be promptly fired and evicted, along with any family members who had joined them, under the terms of their at-will employment.[88] It was, by all accounts, a bleak existence.

Around the same time, a different model emerged: the "utopian" satellite city, exemplified by George Pullman's experimental town in the Calumet marsh.[89] The town is known today primarily as the originating site of an 1894 boycott that—thanks to the organizational efforts of a young Eugene Debs—would spread to disrupt as much as two-thirds of railroad activity across the

81. *See* JACQUELYN DOWD HALL ET AL., LIKE A FAMILY: THE MAKING OF A SOUTHERN COTTON MILL WORLD 5, 24-26, 30, 81 (1987); GREEN, *supra* note 58, at 95-97; CASH, *supra* note 33, at 148-49, 173-78, 216-17; *cf.* CRAWFORD, *supra* note 28, at 177 ("The economic advantages of mill housing were clear to both owners and workers . . . .").

82. Porteous, *supra* note 34, at 131.

83. *See* GREEN, *supra* note 58, at 57-58.

84. *See* ELLER, *supra* note 30 at 182-90.

85. *Id.* at 184-86.

86. *Cf.* CRAWFORD, *supra* note 28, at 30 ("The mine operators claimed these towns . . . as their private property, forbidden to outsiders. . . . To protect the monopoly of the company store, Tioga County miners were forbidden to buy from outside merchants or peddlers.").

87. MERLE TRAVIS, *Sixteen Tons*, *on* FOLK SONGS OF THE HILLS (Capitol Records 1947); *see also* GREEN, *supra* note 58 at 57-58.

88. *See* GREEN, *supra* note 58, at 74; GAVENTA, *supra* note 30, at 87-96; SHIFFLETT, *supra* note 29 at 105-07; *infra* note 188 and accompanying text (discussing at-will employment).

89. *See* GREEN, *supra* note 58, at 5, 29-33.

country, prompting a federal response.[90] But before the planned community attained notoriety for this reason, it had become internationally famous as a model of business efficiency and technocratic progress in urban design.[91] Pullman, who had made his fortune constructing innovative luxury sleeper railcars,[92] oriented his plans for the community around what he called the "commercial value of beauty."[93] In stark contrast to the sparse and unplanned mining towns, he hired a leading architect to design a self-sustaining industrial village supported by extensive investments in municipal services (several of which were still uncommon outside urban centers).[94] Motivated by labor unrest spreading in rapidly urbanizing cities like Chicago, the visionary openly promoted his village as ushering in a new era of industrial peace.[95]

Initially, press reports and government studies about the Pullman experiment gave almost uniformly glowing reviews: The town "was widely cited as evidence that a rationally ordered environment was the key to reducing the alcoholism, crime, and other disorders usually associated with the laboring classes and their neighborhoods."[96] The model community was honored as "the most perfect in the world" by an international jury of urban planners at Prague—who determined that "in the matter of homes, sanitation, water system, shops, public halls, churches, and parks the town of Pullman was

90. *See generally* LINDSEY, *supra* note 30 (providing a history of the strike and federal response); BUDER, *supra* note 37, at 147-201 (same).

91. As reported in an 1887 dispatch from the London *Times*, "No place in the United States has attracted more attention or has been more closely watched." BUDER, *supra* note 37, at 93; *see also* CRAWFORD, *supra* note 28, at 3 ("A watershed between older styles of paternalism and the professionalized welfare methods of the twentieth century, Pullman influenced a new generation of 'model' company towns, based on Progressive concepts of management and labor relations administered by trained professionals."); BUDER, *supra* note 37, at 49 ("Pullman was intended as an example of how forethought and planning could solve community problems" by "demonstrat[ing] how industrialization could resound to the mutual benefit of employer and employee.").

92. LINDSEY, *supra* note 30, at 19-37; BUDER, *supra* note 37, at 3-27.

93. BUDER, *supra* note 37, at 43 (quoting George Pullman in an unspecified interview with French economist Paul de Roussiers).

94. *See* LINDSEY, *supra* note 30, at 38-60; BUDER, *supra* note 37, at 49-59; *see also* ANN DURKIN KEATING, BUILDING CHICAGO: SUBURBAN DEVELOPERS & THE CREATION OF A DIVIDED METROPOLIS 91 (1988) ("Residents in the 'collar' townships demanded water, streetlights, paved streets and sidewalks, and sewers. Township governments had not traditionally provided these urban services, and they did not have the proper powers of assessment and taxation to do so. The only governments which did have the scope to furnish these services were incorporated towns, villages, or cities.").

95. *See* BUDER, *supra* note 37, at 28-45.

96. *Id.* at 97. But some reports hinted at a darker reality: In 1885, the *Cleveland Post* quoted one resident as saying, "the company owns everything and it exercises a surveillance over the movements and habits of the people in a way to lead one to suppose that it has a proprietary interest in [their] souls and bodies." *Id.* at 99 (alteration in original).

without a peer."[97] When a delegation of state labor commissioners visited in 1884, their report concluded that "[i]f the workman at Pullman lives in a 'gilded cage,' we must congratulate him on its being so handsomely gilded; the average workman does not have his cage gilded."[98]

This sympathetic view would not last. Already by 1885, one otherwise-sympathetic *Harper's Monthly Magazine* dispatch from Progressive economist Richard T. Ely reached the "unavoidable" conclusion that Pullman represented "benevolent, well-wishing feudalism, which desires the happiness of the people, but in such way as shall please the authorities":

> Not a few have ventured to express the hope that Pullman might be widely imitated, and thus inaugurate a new era in the history of labor. But if this signifies approval of a scheme which would immesh our laborers in a net-work of communities owned and managed by industrial superiors, then let every patriotic American cry, God forbid! What would this mean? The establishment of the most absolute power of capital, and the repression of all freedom.[99]

Public discussion about the community shifted from its supposed virtues to the dark underbelly of its paternalism and expropriation.[100] The town's nightly curfew and tight regulation of vices like alcohol, tobacco, and sex work—so frequently praised by early visitors as a perceived contrast to the disorder of Chicago's tenement communities[101]—were strictly enforced by company inspectors, who "day and night kept an eye on Pullman resident-workers to make sure that both their opinions and their habits were acceptable."[102] One resident's effort to form a "permanent charitable organization to look after the poor and needy" was discouraged "because it was feared that the impression might get abroad that there was pauperism in Pullman."[103]

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97. LINDSEY, *supra* note 30, at 48.

98. COMM'RS OF THE STATE BUREAUS OF LAB. STAT., REPORT ON THE INDUSTRIAL, SOCIAL AND ECONOMIC CONDITIONS OF PULLMAN, ILLINOIS 22 (1884), https://perma.cc/9RKX-AMMZ.

99. Ely, *supra* note 36, at 465.

100. *See, e.g.*, LINDSEY, *supra* note 30, at 90 (describing an associate of Pullman as "acknowledg[ing] years afterward that there had developed among the Pullman inhabitants by 1894 a feeling that the town was anachronistic and represented some form of medieval barony").

101. *See* BUDER, *supra* note 37, at 72 ("Numerous writers dwelt on the model town's order, contrasted to [Chicago's] social and physical chaos.").

102. GREEN, *supra* note 58, at 31; *see also* GIBBONS, *supra* note 38, at 188 ("The laborers at Pullman believe that 'spotters'—paid eavesdroppers of the company—mingle with them to catch and report to their masters any sign or word expressive of disapproval or criticism of the actions of the authorities."); BUDER, *supra* note 37, at 69-70; LINDSEY, *supra* note 30, at 69-73.

103. Ely, *supra* note 36, at 465.

The 1894 strike was a watershed moment for public perceptions. From the beginning, Pullman had insisted that the town be run as profitable business proposition; he disavowed any charitable intent behind either its initial construction or ongoing operation.[104] According to a national commission empaneled by President Cleveland, this attitude helped explain his refusal to reduce workers' rent payments amid significant imposed wage reductions during the 1893 depression—the action that directly precipitated the fateful walkout.[105] The Strike Commission was not impressed by the town's once-celebrated amenities, observing that "aesthetic features are admired by visitors, but have little money value to employees, especially when they lack bread."[106] In the immediate aftermath of the strike, Illinois's attorney general sued to force forfeiture of the town charter.[107] The case reached the state's supreme court, which in 1898 determined that the company's real estate holdings exceeded the scope of its corporate charter.[108]

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104. *See id.* at 461 ("It should be constantly borne in mind that all investments and outlays in Pullman are intended to yield financial returns satisfactory from a purely business point of view."); GIBBONS, *supra* note 38, at 186 ("There is naught philanthropic in the entire experiment. Everything is conceived in a business spirit, conducted upon purely business principles, and made a source of revenue to the projectors."); LINDSEY, *supra* note 30, at 67 ("George Pullman was convinced that in order to make the experiment a permanent success it would have to be self-supporting, and from the outset he expected a 6 per cent return on the cost of the town."); BUDER, *supra* note 37, at 44, 73 ("If Pullman was the 'most perfect city in the world,' . . . its costs were borne by the inhabitants. The company did not intend to subsidize the town beyond an initial investment which would be repaid with interest." (quoting *An American Hygieia*, PALL MALL BUDGET, Apr. 6, 1883, at 4)).

105. U.S. STRIKE COMM'N, REPORT ON THE CHICAGO STRIKE OF JUNE-JULY, 1894, at XXXII-XXXVI (1895) [hereinafter STRIKE COMMISSION] ("No valid reason is assigned for this position except simply that the company had the power and the legal right to do it.").

106. *Id.* at XXXV. An 1888 press report reached a similar conclusion:

> None of the "superior," "modern," or "scientific" advantages of the model city will compensate for the restrictions on the freedom of the workmen, the denial of opportunities of ownership, the needless and vexatious parade of authority, and the sense of injustice arising from the well founded belief that the charges of the company for rent, heat, gas, water, etc., are excessive—if not extortionate.

The Rents at Pullman: They Are Higher than in the Adjacent Villages, CHI. TRIB., Sept. 21, 1888, at 9.

107. LINDSEY, *supra* note 30, at 342.

108. People *ex rel.* Moloney v. Pullman's Palace-Car Co., 51 N.E. 664, 674, 677 (1898) (reasoning, in part, that "the existence of a town or city where the streets, alleys, school houses, business houses, sewerage system, notels [sic], churches, theaters, waterworks, market places, dwellings, and tenements are the exclusive property of a corporation is opposed to good public policy, and incompatible with the theory and spirit of our institutions"). At the time of the decision, the company's largest shareholders "welcomed the decision in so far as it affected the town of Pullman"; the company did not seek a rehearing and overall "was quite willing to permit the paternalistic

footnote continued on next page

Eventually, Pullman was forced to sell most of its nonindustrial properties.[109]

Among the other notable consequences of the boycott, a new consensus developed within the business elite that the risks of Pullman's model outweighed any benefits.[110] Writing in 1909 about the industry's evolving approach to the "model village," one steel executive acknowledged that "[f]resh in the minds of all of us is the failure of the Pullman Company to maintain its authority over the village affairs of Pullman, Illinois."[111] Few changes were observed in the remote settlements of extractive industries like mining and lumber, as well as the Southern mill towns; they continued to exercise absolute domination over their workers through the same basic model into the early twentieth century.[112] But in the years following the national boycott, manufacturing companies establishing satellite villages—typically near urban centers like Pittsburg, Baltimore, and Birmingham—took great lengths to avoid the specific forms of paternalism that were thought to have contributed to Pullman's loss of control over his model town.[113] The rapidly growing steel industry, in particular, made a point of allowing workers to buy housing in

experiment to pass into the limbo of unsuccessful ventures." LINDSEY, *supra* note 30, at 344; *see also* BUDER, *supra* note 37, at 212-13 ("[I]mportant stockholders were privately delighted to rid themselves of the town.").

109. BUDER, *supra* note 37, at 212-15.

110. It would be difficult to overstate the consequences of the Pullman strike on business leaders' thinking in this respect. *See, e.g.*, ARNOLD R. ALANEN, MORGAN PARK: DULUTH, U.S. STEEL, AND THE FORGING OF A COMPANY TOWN 5 (2007) ("Because of the negative publicity associated with Pullman, other industrialists quickly questioned the underlying principles and practices that were part of its relatively brief history."); CRAWFORD, *supra* note 28, at 3 ("The Pullman strike, the product of a period of increasing labor struggles, led industrialists and reformers to rethink the premises of the company town."); JOHN W. REPS, THE MAKING OF URBAN AMERICA: A HISTORY OF CITY PLANNING IN THE UNITED STATES 424 (1965) ("The unfavorable publicity resulting from these events convinced many industrialists that company towns on the Pullman model were undesirable."); BUDER, *supra* note 37, at 200 ("The model town was an experiment never again repeated by American industry, for pragmatic businessmen would consciously avoid Pullman's mistakes."); *see also* STUART D. BRANDES, AMERICAN WELFARE CAPITALISM, 1880-1940, at 18-19 (1976) (citing the Pullman strike as one of "two factors" that slowed "the rise of [corporate] welfarism" in the early 1890s); *cf.* CARLSON, *supra* note 33, at 187 ("The men who built corporate towns in the early 1900s styled themselves as latter-day George Pullmans, convinced they could avoid the mistakes made by the rail-car manufacturer in his Chicago suburb of the 1880s.").

111. Eugene J. Buffington, *Making Cities for Workmen*, HARPER'S WEEKLY, May 8, 1909, at 15 ("[T]he most successful attempts at industrial social betterment in our country are those farthest removed from the suspicion of domination or control by the employer."); *cf.* Greer, *supra* note 66 at 469-70 (describing Buffington's career as president of the Indiana Steel Corporation and Gary Land Company).

112. *See* GREEN, *supra* note 58, at 74-84, 95-104.

113. *See supra* note 110.

new industrial towns like Gary, Indiana—where executives consciously avoided any comprehensive or professional planning[114] and "essentially sought to avoid any comparison with Pullman."[115]

Henry Ford, similarly, "steadfastly refused to be involved in building worker housing" when he established village industries in small towns across Michigan.[116] But Ford's greater contribution to company town history came indirectly through the 1908 introduction of his Model T, which helped launch the era of mass consumer-automobile ownership.[117] In his history of welfare capitalism, Stuart Brandes describes how the growing "popularity of inexpensive automobiles ended the need for company towns. Workers who bought autos first stopped shopping at company stores and then moved out of company houses."[118] The parallel emergence of mass-market consumer retail, particularly through mail-order catalogs like Sears and Montgomery Ward, had a similar effect on the company-store model—introducing new price discipline by reducing even rural workers' captivity to local merchants.[119]

During the first decades of the twentieth century, these trends began to change the calculus behind the "company town"—at least with respect to several of the particular practices that are widely understood to be constitutive

114. CRAWFORD, *supra* note 28 at 43-44; *cf. id.* at 52 ("The steel companies' major innovation was to sell houses to their workers. . . . [In some instances] steel workers could buy houses at below-market prices or with special mortgage plans. Such programs were part of a campaign to retain skilled workers." (footnote omitted)).

115. ALANEN, *supra* note 110, at 7.

116. GREEN, *supra* note 58, at 148-49 ("When journalist Drew Pearson asked Ford if he intended to create any model towns near the outfits, the Flivver man responded: 'No, I am against such things. If people want to get things done they can do them themselves.'").

117. *See generally* ROBERT CASEY, THE MODEL T: A CENTENNIAL HISTORY (2008) (describing the Model T's development and lasting influence on American life).

118. BRANDES, *supra* note 110, at 141; *see also* ALLEN, *supra* note 34, at 145 ("The gradual disappearance of the company town is a reflection of the general economic development of the West, with modern highways and automobiles making formerly remote areas no longer isolated."); CRAWFORD, *supra* note 28, at 201 ("The availability of inexpensive automobiles greatly reduced the workers' dependence on their employer. . . . Visitors to company towns during the 1920s reported finding numerous houses left vacant by employees who had moved away and now commuted to work.").

119. *See* CARLSON, *supra* note 33, at 106 ("Especially in the company-town stores that continued to operate into the mid-1900s, retailers had to offer reasonable selection, quality, and prices because they had competition [from mail-order retailers]."); CHRISTIAN HOLMES, COMPANY TOWNS OF MICHIGAN'S UPPER PENINSULA 31 (2015) ("Consensus seems to have been that purchasing from mail-order catalogues was a less expensive option than the local store."). *See generally* KATHLEEN THELEN, ATTENTION, SHOPPERS! AMERICAN RETAIL CAPITALISM AND THE ORIGINS OF THE AMAZON ECONOMY (2025) (documenting the emergence of mass-market consumer retail in the United States during the late-nineteenth and early-twentieth centuries).

of the distinctive community form.[120] From the perspective of employers, the perceived costs of employer-owned housing and the company store (negative publicity and labor strife) had increased at the same time as their primary utility (as vehicles for imposing democratic control) was undermined by workers' new outside "exit" options. But a more direct challenge to these early models of the company town arrived in the 1930s, by way of the federal labor protections delivered through the New Deal.

There is little dispute among researchers that the establishment of company towns was centrally shaped—if not primarily motivated—by business leaders' shared goal of avoiding concerted labor activity.[121] During his first hundred days in 1933, and then continuing throughout the remainder of his administration, President Franklin D. Roosevelt's administration enacted and enforced a series of laws that directly undercut this premise of the fully owned company town. This broad political effort included specific attacks on the company town within two sectors where the "closed" model still remained pervasive: the cotton-textile and bituminous-coal industries.

Under initial authority of the 1933 National Industrial Recovery Act,[122] the federal government developed codes of fair competition for both industries; each targeted practices commonly used to suppress wages and enforce control over workers in remote company towns.[123] The cotton-textile code declared that "[t]here is something feudal and repugnant to American principle in the practice of employed-ownership of employee homes,"[124] and required the industry to submit "a plan looking toward eventual employee

120. But see Part III for an argument that the model persisted in new institutional forms.

121. *See, e.g.*, CARLSON, *supra* note 33, at 189 ("Keeping labor from organizing—or keeping unions subservient to the company—was the other most common aspect of company-town control."). Prioritization of this goal is reflected across observed historical variations of the company town. *See* Part II; *see also* GREEN, *supra* note 58, at 65 ("In Colorado, model towns were built specifically to undercut worker militancy and labor organization."); CRAWFORD, *supra* note 28, at 7 (arguing that the "new" company town, starting in the early twentieth century, was "widely publicized as a solution to labor unrest" with "many employers [viewing] company towns as a way of avoiding labor problems"); BRANDES, *supra* note 110, at 32 ("Particularly after World War I, [welfare capitalism] was a protective device aimed largely at trade unionism, the common devil which brought American businessmen together as no other issue did."); IRVING BERNSTEIN, THE LEAN YEARS: A HISTORY OF THE AMERICAN WORKER, 1920-1933, at 7 (1960) (arguing that the Southern mill village "arose historically out of the need to group and house workers for a mill set down in a rural area" but, over time, "the purpose shifted to giving the millowner control over his labor force").

122. Pub. L. No. 73-67, 48 Stat. 195.

123. *See* DONALD R. BRAND, CORPORATISM AND THE RULE OF LAW: A STUDY OF THE NATIONAL RECOVERY ADMINISTRATION 11, 101, 229-39 (1988).

124. 1 NAT'L RECOVERY ADMIN., CODES OF FAIR COMPETITION 11 (1933).

home-ownership."[125] The Administration also sought to ban coal companies from requiring miners to live in company houses and shop in company stores.[126]

More existentially for the company town, federal legislation enacted during this period undercut one of its central premises—by guaranteeing workers' rights to organize, engage in collective bargaining, and take collective action including strikes.[127] Over subsequent decades, these broad protections were undermined by substantive and enforcement weaknesses that have been well documented in legal scholarship (and confirmed by recent empirical study).[128] But within sectors that had most successfully deployed the closed model of the company town to prevent unionization, New Deal legislation like the 1933 National Industrial Recovery Act[129] and the 1935 Wagner Act[130] had an immediate and transformative effect. Within a matter of months, in "one of the most rapid and successful organizing campaigns in American labor history,"[131] the United Mine Workers of America went from "the verge of

125. *Id.* at 1.

126. This effort began with the Competition Code and persisted through several losses at the U.S. Supreme Court. The legislative project was formalized in the 1935 Guffey-Snyder Act, which included various labor provisions including the specific protection of miners' "right of peaceable assemblage for the discussion of the principles of collective bargaining" and a ban on companies' "requir[ing] as a condition of employment to live in company houses or to trade at the store of the employer." Pub. L. No. 74-402, 49 Stat. 991, 1001. After the 1935 Act was ruled unconstitutional in *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936), it was replaced with the 1937 Guffey-Vinson Coal Act—which omitted these specific labor provisions but broadly protected coal workers' right to collectively bargain without interference or retaliation. Pub. L. No. 75-48, 50 Stat. 72.

127. *See* CRAWFORD, *supra* note 28, at 202-03.

128. *See generally, e.g.*, Karl E. Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265 (1978) (discussing this history); JAMES A. GROSS, BROKEN PROMISE: THE SUBVERSION OF U.S. LABOR RELATIONS POLICY, 1947-1994, at 1-14 (1995) (observing that, a decade after enactment of the Wagner Act, "labor had not achieved anything remotely constituting equality of power with regard to the distribution of the nation's income or business profits and had not come close to reaching Senator Wagner's goal of full participation by workers in a system of industrial self-government"); Anna Stansbury, *Do US Firms Have an Incentive to Comply with the FLSA and the NLRA?* 22-30 (Peterson Inst. for Int'l Econ., Working Paper No. 21-9, 2021) (commenting on the lack of penalties for violations of the Wagner Act and providing an empirical perspective).

129. Pub. L. No. 73-67, 48 Stat. 195.

130. Pub. L. No. 74-198, 49 Stat. 449.

131. WALTER GALENSON, THE CIO CHALLENGE TO THE AFL: A HISTORY OF THE AMERICAN LABOR MOVEMENT, 1935-1941, at 194 (1960).

disintegration . . . to an organization that had enrolled almost all of its potential constituency across the country."[132]

The combination of these factors—public (and political) backlash against Pullman's paternalism, changes in economic geography, and federal labor guarantees—is widely seen as ushering in the demise of the company town. As Brandes recounted, "[s]ince the struggle against unions had been lost, there was little reason for continuing welfare programs," including worker housing; "[g]radually companies sold their houses."[133] One real estate firm even developed a robust practice in the purchase of entire towns from employers exiting the business of housing workers.[134] ("The company-to-employee town business came to John [Galbreath] almost by accident. While attending a dinner in 1941, he was approached by a real-estate man who asked, half-jokingly, 'Interested in buying a town, John?'"[135]) Its specialty services included becoming "involved with community government, making suggestions concerning town councils, incorporation procedures, etc."[136]

With some isolated exceptions,[137] the "company town"—as it is commonly understood—faded from the American landscape, even in holdout industries

132. Michael Goldfield & Cody R. Melcher, *The Myth of Section 7(a): Worker Militancy, Progressive Labor Legislation, and the Coal Miners*, LAB.: STUD. WORKING-CLASS HIST. AMERICAS, Dec. 2019, at 49, 52.

133. BRANDES, *supra* note 110, at 145; *see also* GREEN, *supra* note 58, at 84 (describing "New Deal labor legislation backed by the possibility of federal prosecution of flagrant scofflaws [that] made widespread union organization possible" as one of several changes that "doomed the fortress/prison-style company town"); CRAWFORD, *supra* note 46, at 202 ("[R]epeated government attempts to guarantee the workers' right to collective bargaining attacked the anti-union premisses of many company towns.").

134. Joseph P. Blank, *He Turned Company Towns into Home Towns*, AM. BUS., Sept. 1958, at 12, 12-14 ("The results have benefited employees by giving them the security and pride of [home] ownership, the companies by giving them more reliable workers—and John Galbreath by fulfilling his ambition.").

135. *Id.* at 13.

136. ALLEN, *supra* note 34, at 142.

137. *Cf.* Michael Waters, *The California Town Owned by a New York Investment Firm*, NEW YORKER (Jan. 4, 2024), https://perma.cc/8QQZ-M393 ("People sometimes knock on the door of this building looking to pay their water bills . . . having assumed that the workers inside are public employees. . . . 'No, we are a private company,' [company president Steven Deike] tells them. 'We just happen to be called the Town of Scotia.'"). More broadly, many labor markets in rural America continue to be characterized by monopsony and other indicators of distortion, even as particular employment practices have changed over time. *See* Hiba Hafiz, *The Law of Geographic Labor Market Inequality*, 172 U. PA. L. REV. 1183, 1212 (2024) ("There are countless examples of natural monopoly and/or monopsony in 'company towns' across rural and distressed spaces, from traditional mining and manufacturing towns like Gillette, Wyoming, to poultry-processing facilities in Green Forest, Arkansas, and more contemporary Amazon warehousing and logistics centers in towns like Campbellsville, Kentucky, or towns along upstate New York's 50-mile drone corridor.").

like textiles, lumber, and mining.[138] As one researcher summarized: "Owners turned to different methods to fend off the threat of unionization."[139]

B. Many Accounts Misidentify the Shifting Forms of Private Power

Imagine a hypothetical political regime where even rank corruption is openly tolerated or allowed to fester. Now imagine further that, in a particular jurisdiction within this regime, a local employer manages to fix the town's election results, or otherwise reliably guarantee that its preferred policies always prevail in municipal processes (for example, through bribery). I contend that this jurisdiction would fairly be characterized as a company town—irrespective of the dominant company's land holdings or employment practices. If the company initially provided housing to employees, but later determined those operations to be unprofitable, the business decision to offload the residential properties would have no independent effect on this designation. To be sure, we might expect this employer to *use* its power to exploit workers, minimize its tax burden, or bar competition—but we would understand that such observed outcomes represent the downstream consequence of its absolute governing authority.

A central claim of this Article is that researchers have been looking at the wrong indicators, and in the wrong places, to identify what makes a company town. I argue the category should not be defined by particular employment practices—even those, like employers' consolidated property ownership and their provision of worker housing, that are commonly understood as the characteristic features of the company town. More precisely, I suggest that the various practices commonly observed in historical company towns—across both "utopian" and "exploitationville" varieties—have, in certain contexts, functioned as reliable indicators of a specific form of unconstrained governing power that may not, itself, be directly observable.[140] But those practices are not the only way that such authority can be maintained.

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138. *Cf.* CRAWFORD, *supra* note 30, at 195 ("[T]he mill village system gradually dissolved as its social and economic rationale disappeared.").

139. *Id.*

140. It is well established across interdisciplinary literatures that many of the most significant types of power can be observed only indirectly, through their consequences, or not at all. This is best understood as a *measurement* challenge, rather than an indication that the subject of analysis has been poorly conceptualized (or does not actually exist). Indeed, Gaventa's classic study of company towns in the Central Appalachian Valley was motivated precisely by an effort to study the unobservable dimensions (or "faces") of power that operate primarily through nondecisions, strategic agenda control, anticipated reactions, and the subtle shaping of popular belief systems. *See* GAVENTA, *supra* note 30, at 25-32; *cf.* E.E. SCHATTSCHNEIDER, THE SEMISOVEREIGN PEOPLE: A REALIST'S VIEW OF DEMOCRACY IN AMERICA 71 (1960) ("Some issues are organized into politics while others are organized out."). This is no convenient

footnote continued on next page

This reframing suggests that these existing definitions mostly have it backwards: They mistake context-specific consequences of this governing power for the thing itself. The basic fallacy is analogous to conceptualizing "winter"—the seasonal unit of time in the solar calendar—as being "when it feels cold outside." Such a definition may tend to generate accurate results in most cases, but not always.[141] The difference is subtle but consequential. My claim is not that the distribution of real property within industrial villages is unimportant; it is that spatially concentrated property ownership has, under certain conditions, proved to be an effective strategy for achieving particular goals that have motivated the proprietors of particular company towns. But conditions change and strategies adapt.

This form of power, like any other, can be exercised through various strategies; it also can be used to advance different goals.[142] It would be a mistake to conclude from a string of warm days that the astronomical season of winter had concluded—that the Earth had somehow skipped a stretch of its annual rotation around the sun. I suggest that researchers make the same

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subterfuge: The general dynamic is widely recognized in other legal contexts where corporate power—or democracy, for that matter—is the object of analytic concern. *See, e.g.*, Zia Qureshi, *The Rise of Corporate Market Power*, BROOKINGS (May 21, 2019), https://perma.cc/8FDB-VSR5 ("There are measurement issues; market power is not directly observable and must be estimated."); Kyle Marquardt, *V-Dem Methodology*, VARIETIES OF DEMOCRACY, https://perma.cc/B67P-MBML (archived Apr. 21, 2025) ("We use experts because many key features of democracy are not directly observable.").

141. Across particular observations all within the category, for example, wide temperature variation may be observed; over time, ecological changes may result in "feeling cold" less often even during the depth of winter. An observer who does not feel cold cannot, from this, conclude that it is not winter. Indeed, the state of feeling cold (or not) has no independent effect on the season: It is a contingent consequence, not a cause.

142. Many of the policies that bound residents in historical company towns—like payment in scrip and suppression of collective labor action—can be aptly explained by the profit motive. But certain exercises of this private governing authority—like the enforcement of strict (often religion-based) "morality" codes—seem motivated at least in part by other goals. *See* CRAWFORD, *supra* note 30, at 178 ("As in early New England mills, owners [of twentieth century Southern cotton mills] enforced moral values of thrift, temperance, and strict standards of sexual behavior through regulation and punishment. They banned alcohol and cigarette smoking, and quickly evicted unmarried women who became pregnant."). Efforts to encourage church attendance, for example, can be observed even in latter-period company towns. MARK REUTTER, MAKING STEEL: SPARROWS POINT AND THE RISE AND RUIN OF AMERICAN INDUSTRIAL MIGHT 57 (2004) ("Leasing the grounds for church buildings at the nominal sum of $1 a year, [Rufus Wood] encouraged the organization of church congregations . . . . Raised a Unitarian like his brother, Rufus took pride in the religious activities of the community . . . ."). My point is that the common feature that connects these various *ends* is the *means* of absolute (democratic) control. *Cf.* WEST, *supra* note 1, at 55 ("A church building could not be erected in a closed camp without the consent of the company, and the company assumed the right to compel the dismissal of ministers of the gospel who opposed company policies or interests.").

logical error when they conclude that the company town "died out" based on the observation that locally dominant companies—in response to specific legal changes and political economy developments—increasingly reached for different tools (some newly available) to maintain governing authority within their dominions; or, relatedly, used their resulting power towards different ends.

The current lack of historiographic precision complicates the task of placing more recent examples into a general framework. Consider, for example, the wide range of services—hair salons, laundry, and other perks—provided to employees on some expansive contemporary tech campuses.[143] Researchers like Green, who define the company town by reference to specific employer practices, have identified such fringe benefits as being "company town-like in that most all human needs are provided for" by the employer.[144] But others, including economists who conceptualize the category as being defined by workers' inability to use the threat of exit to bargain for better wages, drew precisely the opposite conclusion from the same facts: "Silicon Valley is in many ways the antithesis of the company town," one entrepreneurship professor told the *Wall Street Journal*.[145]

The terms of this debate obfuscate what actually matters here. If Menlo Park or Mountain View might be characterized as company towns in this suggested democratic sense, that designation would have little to do with whether their software engineers play ping-pong on company tables. By similar logic, we should understand that municipal incorporation provides one among several pathways towards the goal of totalizing corporate domination over a local community. Although public attention has focused on the legal form, the degree of antidemocratic control that is facilitated by Musk's outposts in Snailbrook and Starbase will not be determined exclusively by the success of these current incorporation attempts.

The democratic reframing also avoids reductionist "intent" tests that have always operated as unproductive misdirection. Recalling not only the coal towns but also the final chapter of Pullman's experiment, many today conceptualize the company town as being necessarily motivated by worker exploitation—such that the observed presence of high wages or workplace amenities could function as reason to exclude a potential case from the category. But the practices understood as characteristic of the historical

143. *See, e.g.*, Reed Albergotti, *Facebook's Company Town: Social Network Is Building a 394-Unit Housing Community Near Its Offices*, WALL ST. J. (Oct. 3, 2013, 1:29 PM ET), https://perma.cc/CDZ2-QGBZ.

144. GREEN, *supra* note 58, at 6 (citing the provision of residential services like "gourmet food" and "nap rooms" to suggest that "the utopian company town has taken a new form" in the contemporary "corporate campus").

145. Albergotti, *supra* note 143.

company town were not uniformly motivated by wage suppression;[146] many of them, such as new company schools, had notable beneficial effects for communities.[147]

These vaunted "services and features, however, would not come without a price," noted a historical account of one steel town: "As Morgan Parkers learned, residing in a company town meant that a paternalistic sponsor and landlord often managed their lives on a daily basis."[148] Welfarist programs were generally tailored to match the company's goals: Education programs emphasized technical training that prepared workers' male children to take jobs with the company, while girls were taught to be "perfect mates to the young men."[149] Profitability logics explain why programs rarely extended beyond eighth grade: "Many businessmen feared that a high school education would induce youngsters to seek employment elsewhere."[150] Teachers suspected of union sympathies were commonly dismissed.[151] Moreover, even the most generous (or well-intentioned) amenities are not guaranteed to persist: "[W]elfare programs would consistently be among the first areas to feel the pinch when companies tightened their belts."[152]

The observed variation in such features thus obscures the common feature that connects them: democratic control. Pullman did not become a company town when it cut its industry-standard wages[153] while keeping rents high,

146. *See* REPS, *supra* note 110, at 414 ("By no means all company towns arose from the desires of employers to exploit their workers at artificially low wages or to keep them subservient to capitalist economic domination.").

147. *See* BRANDES, *supra* note 110, at 55 ("Evidence suggests that [company schools] improved rates of literacy in some company towns. In Pelzer, South Carolina, the rate increased from 25 percent to between 80 and 85 percent in eighteen years.").

148. ALANEN, *supra* note 110, at 137; *see also* CRAWFORD, *supra* note 28, at 193 ("Improved living conditions were accompanied by increased surveillance, impersonally administered from within a corporate structure.").

149. REUTTER, *supra* note 142, at 57.

150. BRANDES, *supra* note 110, at 58.

151. *See* CARLSON, *supra* note 33, at 56 ("Managers were not averse to applying pressure to school board members, especially to remove teachers believed to be union sympathizers."); WEST, *supra* note 1, at 56 ("Mine superintendents and other company officials dictated the selection of teachers and procured the dismissal of teachers to whom they objected.").

152. BRANDES, *supra* note 110, at 19. The same dynamic holds true today: If industry conditions change, the vaunted tech campus laundry services may not be long for this world. *Cf.* Mike Isaac, Ryan Mac & Sheera Frenkel, *Facebook's Parent Company Will Make Employees Do Their Own Laundry*, N.Y. TIMES (Mar. 11, 2022), https://perma.cc/SC9U-3BLX; *supra* note 143 and accompanying text.

153. STRIKE COMMISSION, *supra* note 105, at XXXII ("The wages paid were about the same as paid elsewhere in the business, Mr. Wickes thinks possibly a little higher.").

prompting the national boycott;[154] it had operated as one from the start, by enforcing company policy as sole operative governing authority within its territorial domain.[155] If what we actually intend to mean when we talk about the company town is this underlying form of private power—the thing itself, rather that its consequences—then we should develop an account of its basic nature. We should look for it everywhere, across place and time—not preemptively limiting our search to the particular practices and governing arrangements that facilitated its incidence during a given period.[156] We should seek to understand the conditions under which it emerges, the institutional forms by which it is maintained, the goals towards which is deployed, and its consequences for our public life.

C. The Company Town Manifests Tyrannical Faction Rule

How should we understand the nature of this democratic phenomenon, and where should we expect to observe it? I suggest that the company town represents a pure manifestation of the classic concern in American political thought—best articulated by James Madison, particularly in *Federalist No. 10*[157]

154. *See supra* note 105 and accompanying text.

155. *See infra* Part II.A (discussing George Pullman's efforts to govern his model town through the private law enforcement of company policy).

156. This conceptual reframing helps identify other commonalities across observed forms of unaccountable governance by private capital, extending well beyond Pullman and Disney's Reedy Creek. Certain aspects of contemporary company towns resemble historical analogues predating even the Gilded Age: As early as the seventeenth century, the East India Company had successfully asserted the legal right to govern on equal terms with other sovereign states. *See* SWATI SRIVASTAVA, HYBRID SOVEREIGNTY IN WORLD POLITICS 76-78 (2022) (finding, contrary to standard histories, "the majority of the Company's sovereign functions were in place before 1700"); PHILIP J. STERN, THE COMPANY-STATE: CORPORATE SOVEREIGNTY AND THE EARLY MODERN FOUNDATIONS OF THE BRITISH EMPIRE IN INDIA 19 (2011) ("By the end of the [seventeenth] century, [the East India Company] had conceived, planted, and begun to govern a relatively scattered but coherent network of towns and islands that stretched from the south Atlantic to southeast Asia."). *See generally* SRIVASTAVA, *supra*, at 70-111 (documenting the sources of sovereign authority asserted between 1600 and 1800). This theoretical framework thus extends Richard Thompson Ford's apt observation that the "'company store' of the antebellum South's sharecropper system [of perpetual indebtedness]" represents one of many "historical and modern-day cousins" of the company town. Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1881 n.16 (1994); *see also* Daniel Farbman, Essay, *Plantation Localism*, 50 FORDHAM URB. L.J. 771, 787 (2023) ("[W]e should understand the plantation as a form of local government that was constitutive of the legal and cultural fabric of the antebellum South.").

157. THE FEDERALIST NO. 10, at 77 (James Madison) (Clinton Rossiter ed., 1961); *cf.* ROBERT A. DAHL, A PREFACE TO DEMOCRATIC THEORY 5 (expanded ed. 2006) ("[P]erhaps in no other political writing by an American is there a more compactly logical, almost mathematical, piece of theory than in Madison's *The Federalist*, No. 10.").

and *Federalist No. 47*[158]—about the tyranny that accompanies the domination of faction within a given jurisdiction. According to Madison, "the very definition of tyranny" is "[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands."[159] In particular, this fear is thought to be realized when such powers are accumulated to some "faction" that can wield them against others, or against the interests of the larger polity, without democratic restraint.[160] The company town, in this understanding, represents an antidemocratic concentration of governing authority to a single group whose interests are adverse to the rights of others.

In Madison's phrasing, a faction is defined not by its numerosity but rather by the nature of the governing interest that unites the group: the quality of being adverse to the rights of others or the community as a whole.[161] One way to understand the democratic harm presented by the company town is as validation of Madison's fear: the unrestrained rule of faction within its own jurisdiction.[162]

The company town is not the only place where this fear is realized, but the framework provides a useful reference point for understanding the basic nature of the democratic concern that it represents. Beyond identifying the nature of the democratic harm that connects historical and contemporary iterations of the company town, Madison's influential account also clarifies the institutional forms through which it is likely to emerge. He identifies two strategies for avoiding the mischiefs of faction, which are key to understanding the two institutional forms—described in Parts II and III below—that have facilitated the company town.

The first strategy operates through electoral suppression: Where representative democracy is absent, even a minority faction can attain total power.[163] In the historical company town, this form of authoritarianism was achieved primarily through property ownership and contract (and strategic

158. THE FEDERALIST NO. 47, at 300 (James Madison) (Clinton Rossiter ed., 1961).

159. *Id.* at 301.

160. *See* DAHL, *supra* note 158, at 4-33 (reviewing Madison's theorization of faction).

161. Faction, famously, is defined as a group of individuals who are "united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." THE FEDERALIST NO. 10 (James Madison), *supra* note 157, at 78.

162. More precisely, we should conceptualize the phenomenon as a subcategory of Madison's concern about tyrannical rule-by-faction within a fragmented polity—defined as distinctive primarily by the type of faction that rules unopposed within its territorial domain (owners of the means of production), as well as the governing interests that motivate their rule (profit maximization).

163. *See* THE FEDERALIST NO. 10 (James Madison), *supra* note 157, at 80; *cf.* DAHL, *supra* note 158, at 15 ("Given [Madison's] definition, it is easy to show . . . that a faction will produce tyranny if unrestrained by external checks.").

rejection of the public form)—illustrating how governance structures that operate without the accountability provided by electoral democracy are vulnerable to this form of private tyranny.[164]

In a representative democracy, minority factions can be defeated through the operation of majority rule (the "republican principle").[165] But Madison understood that majoritarianism was no safeguard against the dominance of single interests within a fragmented polity. In particular, he predicted that small and nondiverse jurisdictions, within a fragmented polity, would be uniquely vulnerable to this form of tyranny—thus identifying an alternative pathway (the second strategy) toward the same goal of faction domination. His observation—"[t]he smaller the society, the fewer probably will be the distinct parties and interests composing it . . . [and] the more easily will they concert and execute their plans of oppression"[166]—precisely captures the logic behind these new institutional strategies for maintaining corporate dominance.

What insights are gained from conceptualizing the company town as a democratic phenomenon? Implicit in Madison's account—his identification of the two ways that faction could be prevented—is an argument about the different pathways by which faction could maintain absolute (tyrannical) governing authority. Madison argued that minority faction could be defeated through the "republican principle" of electoral democracy;[167] implicit here is the idea that the absence of democratic representation can be used to facilitate faction rule. To mitigate the danger of majority faction, Madison suggested "[e]xtend[ing] the sphere" of the electorate through larger units of representation, such that institutional designers could "make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens."[168] The strategic manipulation of boundaries thus provides an opportunity for faction to dominate governance of fragmented jurisdictions even where electoral democracy is operative within them.

As a historical matter, spatially concentrated corporate interests have used both of these strategies to establish dominance—unchecked by democratic processes—over public life within particular territorial domains. In the next Part, I first demonstrate that the owners of capital can use spatially concentrated property ownership to facilitate private control over community life through the first strategy: by displacing public law (and the electoral

164. *See infra* Part II.

165. THE FEDERALIST NO. 10 (James Madison), *supra* note 157, at 80 ("If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote.").

166. *Id.* at 83.

167. *See supra* note 165 and accompanying text.

168. THE FEDERALIST NO. 10 (James Madison), *supra* note 157, at 83.

accountability that might follow) through private governance within its territorial domain. This strategy, which I term "residents without representation," was in fact the predominant mechanism by which historical company towns were governed.

This strategy of governing through company policy—enforced through the employment relationship combined with the right to exclude—allowed the owners of capital to regulate many aspects of public life.[169] But there were drawbacks, too. The historical company town remained vulnerable to the use of public authority (especially from a higher level of government) to expand the rights of labor while constraining the privileges of property ownership.[170] Many accounts have identified such preemptive federal authorities as marking the demise of the company town. But I suggest here that they should be understood instead as facilitating a change in the institutional form by which faction could most effectively secure absolute governing authority. Drawing from Madison's insights, I make the case that jurisdictional fragmentation can be used to achieve the same goal of private governance also through the public form. This strategy—which I term "public power without a public"—allows faction to effectively commandeer ostensibly democratic processes through the strategic manipulation of jurisdictional boundaries and devolution of policymaking authority to the level at which faction is able to govern without meaningful opposition.

These two strategies are distinctive from each other, but share an institutional template for attaining the sort of absolute (tyrannical) governing authority that Madison feared. They are best understood as different paths towards the same goal: the private (semi-sovereign) control of local governance, the rule of capital without the possibility of meaningful democratic constraint.

169. *See infra* Part II.A.

170. *See supra* Part I.B.

II. Residents Without Representation

> *If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote.*
>
> —THE FEDERALIST NO. 10[171]

> *In the management of the town democracy was conspicuously absent, since all town officials were appointed by the Pullman Corporation except the members of the school board who, although elective, were still in the employ of the company and hence subject to the influence of George Pullman.*
>
> —Almont Lindsey, 1942[172]

The form of unchecked governing power that is represented by the historical company town is distinctive from the mechanisms of influence that have been the focus of legal scholarship and other studies of corporate influence over public policy. Interdisciplinary accounts of business influence over local governance have generally focused on the structural power of mobile capital, understood as the ability to influence government policy through anticipated exit threat.[173] Classic theories of fiscal federalism, for example, predict that competition among local governments will restrict localities' practical ability to constrain the interests of mobile capital, regardless of local preferences.[174] But these literatures have a difficult time explaining how the interests of business were protected in the historical

171. THE FEDERALIST NO. 10 (James Madison), *supra* note 157, at 80.

172. LINDSEY, *supra* note 30, at 63.

173. These literatures explain how large firms, through their private control over highly mobile capital investment, exercise structural control over government policy—particularly in local jurisdictions characterized by fiscal decentralization. Understood in this framework, structural corporate power emerges from the mobility of accumulated capital under concentrated private control. *See, e.g.*, Adam Przeworski & Michael Wallerstein, *Structural Dependence of the State on Capital*, 82 AM. POL. SCI. REV. 11, 12 (1988) (the theory of structural dependence "begins with the hypothesis that the entire society depends on the allocation of resources chosen by owners of capital" and "continues with the inference that because the entire society depends on the owners of capital, so must the state"). Structural power has been distinguished from instrumental power, which by contrast "stems from [businesses'] ability to staff governments with business supporters and to exert direct influence on government decision makers through campaign contributions and lobbying efforts." Jacob S. Hacker & Paul Pierson, *Business Power and Social Policy: Employers and the Formation of the American Welfare State*, 30 POLS. & SOC'Y 277, 280 (2002).

174. *See generally* PAUL E. PETERSON, CITY LIMITS (1981). This framework is not without its critics. *See, e.g.*, RICHARD SCHRAGGER, CITY POWER: URBAN GOVERNANCE IN A GLOBAL AGE 136 (2016) (observing that "[d]espite the structural biases that favor mobile capital, cities are engaging in forms of regulation that defy conventional wisdom," such as municipal minimum-wage laws).

company town. Indeed, in certain respects, this form of private dominance would seem to be inversely related to capital mobility: As Jacob Hacker and Paul Pierson have noted, "firms with highly immobile assets will be less capable of exercising structural power."[175]

Some of the most notorious historical examples of absolute corporate power over local communities have been observed in resource-dependent extractive industries that are unable to credibly threaten jurisdictional exit.[176] But coal companies like the Colorado Fuel & Iron Company—whose "arbitrary economic, political and social domination" over two southern Colorado counties was the subject of investigation by a national commission in 1915[177]—secured their absolute control through an entirely different mechanism. This private tyranny was maintained not by influencing democratic processes, but rather by displacing them altogether—substituting company policy for public law on the real property where community life occurred. Quite simply, they owned the whole mountain. The operative mechanism of their influence was not, "if you threaten our interests, we will leave," so much as, "if you threaten our interests, you will leave."

Public law scholarship engaging with Madison's democratic theory typically focuses on his warnings about majority faction and the relationship he posits between the numerosity of representational units and the danger of tyranny within each.[178] His insights about minority faction, it might be imagined, are less relevant in a contemporary constitutional republic where relief is available through majoritarian democracy. But histories of the company town demonstrate that domination by outnumbered faction can be secured not only through authoritarian control over our public institutions, but also, in certain contexts, through the private law of property and contract:

> In southern Colorado coal camps, democracy was unknown. The camps were built near the mines, high in isolated canyons where the company owned

175. Hacker & Pierson, *supra* note 173, at 282.

176. As Elizabeth Elder has noted, "mining companies depend on governments in resource-rich areas for favorable policy, since they generally cannot move their operations in search of a better policy environment." Elizabeth Mitchell Elder, Company Towns: Local Governments Under Industry Dominance and Decline 9 (Aug. 13, 2021) (unpublished manuscript) (on file with author).

177. *See* WEST, *supra* note 1, at 15.

178. The numerosity of representational units is generated by the combination of jurisdictional fragmentation within a given level of government and devolution of policymaking authority to lower (more numerous) levels of government. *See, e.g.*, Frank H. Easterbrook, *The State of Madison's Vision of the State: A Public Choice Perspective*, 107 HARV. L. REV. 1328, 1332 (1994) ("Diversity within the population, which is a source of faction locally, thus provides security in a larger jurisdiction."); City of Richmond v. J.A. Croson Co., 488 U.S. 469, 523 (1989) (Scalia, J., concurring in the judgment) (citing FEDERALIST 10, *supra* note 161, at 82-84).

> everything from houses to land to water. Superintendents ruled the camps and mineguards patrolled them. . . .
>
> . . . They barred union organizers [from entering the camps] . . . .
>
> . . . [They] conducted surveillance in every town, saloon, and camp.[179]

A similar dynamic extended even beyond the (notoriously authoritarian) mining camps.[180] One account summarized the widely observed result: "Internal political activity was generally of little importance in the company town, primarily because very few towns were incorporated or had any form of elected government."[181]

The strategy was not foolproof. From the beginning, this source of governing authority was formally limited by the legal rights of property and limitations on contract enforcement—particularly vulnerable to preemption by higher levels of government that are less beholden to localized corporate dominance (as through federal legislation guaranteeing labor protections).[182] It is indirectly constrained by the mobility of labor: the "structural" power of worker-consumers to exit, whether through the introduction of market competition or technology-facilitated shifts in spatial mobility.[183] As industrial barons like Pullman would learn, governing through consolidated property ownership—while rejecting the public form—also left them vulnerable to the democratic obligations of government (local taxation, in particular) and electoral processes for the handful of municipal services that could not easily be privatized without formal delegation (like education and policing). Local dominance facilitated their efforts to influence those processes—but absent the formal powers of the state, they could not always guarantee control.

But for the subset of business priorities that are achievable through the internal governance over a captive population of worker-subjects, private law has proved to be a highly effective mechanism—arguably understudied by public law scholars—for maintaining tyrannical domination by minority faction. This Part explores the mechanisms by which that took place, the

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179. Priscilla Long, *The 1913-1914 Colorado Fuel and Iron Strike, with Reflections on the Causes of Coal-Strike Violence*, *in* THE UNITED MINE WORKERS OF AMERICA: A MODEL OF INDUSTRIAL SOLIDARITY? 345, 347-48 (John H. M. Laslett ed., 1996).

180. *Cf.* Trang (Mae) Nguyen, *Global Company Towns*, 96 U. COLO. L. REV. 75, 78 (2025) (identifying connections between the historical company town and modern transboundary global "supply chain cities"—including, in particular, the common "expansive corporate control order [that is] facilitated through contract law, property law, international economic law, and regulatory delegation").

181. ALLEN, *supra* note 34, at 120.

182. *See supra* notes 123-32 and accompanying text (discussing the consequences of New Deal federal policy).

183. *See supra* notes 117-20 and accompanying text (discussing the consequences of mail-order retail and consumer car ownership).

conditions that made this strategy effective for certain goals (but less so for others), and the enduring allure of the public form.

A. Avoiding Democracy by Governing Through Private Law

Community life in the historical company town was strictly regulated. Restrictive codes of conduct mandated adherence to employer-imposed morality codes and restrictions on private political speech—all enforced through community surveillance.[184] These industrial communities were not governments, but they were governed: The actions, and even thoughts, of worker-residents were tightly controlled by their employers. Within the domain of its fully owned territory, one account observed, "The company alone was the town legislative and executive body. It handed down all rules and regulations and was responsible for putting them into effect."[185]

Profiling company towns in the Appalachian South, Robert Eller documented how the "power of the mine operator" extended "over almost every facet of village affairs":

> If a miner was selling his home-brewed wine, or a woman was cheating on her husband, he would "learn of it, give them a warning and, if it continued, send them out of town." . . . Convinced that the miners' interests were identical to those of the company, he ruled the town as he ruled the mine, without opposition or debate. . . .
>
> . . . .
>
> . . . The company owned or leased all of the land in and around the mining town and consistently refused to sell or sublet to individual miners. . . . Tenancy was conditional upon a man's service to the mine, and when a worker left his job "for any cause whatsoever," he lost the right to occupy his house as well.[186]

These restrictive codes were backed by threat of dismissal, which Gaventa identified as the mining bosses' "key to control" over the worker-subjects in their domains: "[T]hese men were dependent upon their jobs, and the threat of losing them was the key to ensuring their acceptance of the conditions."[187] In this narrow respect, the workers were governed by a form of "authoritarian" private government that can be observed across even contemporary American workplaces under the employment-at-will baseline.[188]

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184. *See supra* Part I.A.

185. ALLEN, *supra* note 34, at 108.

186. ELLER, *supra* note 30, at 193-97.

187. GAVENTA, *supra* note 30, at 87.

188. In an influential account, political theorist Elizabeth Anderson has argued that the "vast majority [of American workers] are subject to private, authoritarian government . . . through laws that have handed nearly all authority to their employers." ELIZABETH ANDERSON, PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON'T TALK ABOUT IT) 53-54, 71 (2017) ("Under the employment-

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It is not uncommon, today or in the past, for employers to regulate workers' conduct by threat of dismissal.[189] What distinguished the historical company town, by comparison to other employment relationships, is that the private "dictatorship"[190] of the workplace was extended—through the mechanism of spatially concentrated property ownership—to every aspect of community life.[191] This difference was noted in the 1915 commission's report on the Colorado Fuel & Iron Company's political control over its fiefdoms:

> Thus employees were forced not only to depend on the favor of the Company for the opportunity to earn a living, but to live in such houses as the Company furnished, to buy such food, clothing and supplies as the Company sold them, to accept for their children such instruction as the companies wished to provide, and to conform even in their religious worship to the Company's wishes.[192]

Although dominant employers have long sought to exercise control over workers' off-duty behavior,[193] companies operating entire communities used their real property ownership to secure a distinctive form of power.[194]

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at-will baseline, workers, in effect, cede *all* of their rights to their employers, except those specifically guaranteed to them by law, for the duration of the employment relationship."); *see also* Samuel R. Bagenstos, *Employment Law and Social Equality*, 112 MICH. L. REV. 225, 244 (2013) ("The most significant source of workplace hierarchy is the boss's power to fire."); Clyde W. Summers, *Employment at Will in the United States: The Divine Right of Employers*, 3 U. PA. J. LAB. & EMP. L. 65, 78 (2000) (noting the "employer, as owner of the enterprise, is viewed as owning the job with a property right to control the job and the worker who fills it"—including "the right to impose any requirement on the employee, give any order and insist on obedience, change any term of employment, and discard the employee at any time").

189. *See* Summers, *supra* note 188, at 78.

190. ANDERSON, *supra* note 188, at 39.

191. *See* CARLSON, *supra* note 33, at 192-93 ("In those towns where having a home was tied directly to having a job, bosses had a double weapon against infractions on the job, at home, and in school."). The similarities—and complementarities—between these power dynamics was observed by the 1915 investigation into the Ludlow Massacre:

> While company ownership of homes, stores, churches, schools and saloons greatly aided the mine owners in building up and maintaining their arbitrary political and economic power, it should not be lost sight of that substantially the same result could have been attained by means of their monopoly of employment and their power to discharge arbitrarily without stated cause.

WEST, *supra* note 1, at 57.

192. WEST, *supra* note 1, at 56.

193. *Cf.* ANDERSON, *supra* note 188, at 48-49 ("Legally speaking, employers have always been authoritarian rulers, as an extension of their patriarchal rights to govern their households.").

194. Gaventa quotes a miner's intuitive understanding of these dynamics: "I think like any other company, they want to dominate the lives of their people . . . The way they accomplished this was in owning everything." GAVENTA, *supra* note 30, at 93 (alteration in original).

Pullman keenly understood this dynamic.[195] In 1881, he announced as company policy: "We will not sell an acre under any circumstances, and we will only lease to parties whom we are satisfied will conform with our ideas in developing the place."[196] His sole ownership of the town allowed him to administer it like any other real property: "Exclusion of bar and brothel were law in Pullman as company policy in the role of the landlord. . . . As long as Pullman governed through ownership, he could proscribe sinner and troublemaker."[197] Richard Ely's 1885 dispatch observed that because Pullman operated without municipal charter (that would have required local democratic processes), "every municipal act [except for the management of the public school] is here the act of a private corporation."[198]

Through its consolidated property ownership, the company's absolute control extended to all aspects of public life within the community.[199] Daily affairs of the town were managed by a company official—the "town agent"—who was directly appointed (and employed) by the Pullman Company.[200] At the company-owned theater, performances were "selected with an eye to inculcating proper conduct and values."[201] In 1884, the town created a new office of company surgeon, responsible for providing care to residents and

195. *See* LINDSEY, *supra* note 30, at 66 (describing Pullman's early "realization that a unified and purposeful control over the town would be destroyed and the course of the experiment drastically altered if portions of the town were lost to company ownership").

196. *Id.* (quoting *Pullman: A Trip to the City of Brick*, CHI. TRIB., Aug. 16, 1881, at 8).

197. BUDER, *supra* note 37, at 82.

198. Ely, *supra* note 36, at 460.

199. Almont Lindsey, *Paternalism and the Pullman Strike*, 44 AM. HIST. REV. 272, 276 (1939) ("By resorting from the outset to domination over municipal functions, such as maintenance of streets, parks, fire department, sewerage, and sanitary inspection, and by virtue of its wealth, influence, and ownership of the entire town, the company, through George Pullman, conducted the experiment without interference."); *cf.* GAVENTA, *supra* note 30, at 50 ("Other than the courthouse in the county seat, there was little formal governmental organization, nor was there much desire for any."); HALL ET AL., *supra* note 81, at 114 (repeating findings from a 1907-1908 federal investigation that "all the affairs of the village and the conditions of living of all of the people are regulated entirely by the mill company" which "owns everything and controls everything, and to a large extent controls everybody in the mill village" (quoting 1 CHAS. P. NEILL, LAB. COMM'R, REPORT ON CONDITION OF WOMEN AND CHILD WAGE-EARNERS IN THE UNITED STATES, S. DOC. NO. 61-645, at 538 (1910)).

200. This official "was commissioned to operate the experiment in a business-like manner and co-ordinate the various departments of the town by efficient and economical methods." LINDSEY, *supra* note 30, at 62.

201. DAVID RAY PAPKE, THE PULLMAN CASE: THE CLASH OF LABOR AND CAPITAL IN INDUSTRIAL AMERICA 12 (1999).

visitors alike.[202] Working on firm payroll, this health official "always advised injured men to settle and was prepared to testify for the company in case of litigation"—helping safeguard Pullman's interest from liability.[203]

Within the town, "[p]olitical opposition was keenly resented and suppressed whenever possible."[204] When one of the merchants leasing space from Pullman "supported [workers] on one occasion during some labor difficulties," he was promptly discharged.[205] The model town was, as one contemporary reported, "the only community of ten thousand people in the United States that has not a newspaper published within its limits."[206] Labor organizing, in particular, was suppressed through the legal right to exclude: "Labor agitators and radical speakers were barred from the town by the simple expedient of denying to them the right to rent or use public halls."[207]

But such private regulation was accomplished also through other means, beyond the labor contract or the property right to exclude. Pullman was an early innovator in the use of highly restrictive lease agreements to prohibit a wide range of activities that he found undesirable: "Proscriptions were spelled out in exasperating detail which left the tenant with little freedom to decorate his home without written approval."[208] In one coal town, workers' leases

202. LINDSEY, *supra* note 30, at 72-73 ("Certainly the entire system was admirably conceived to protect the corporation from lawsuits and to effect a quick settlement of claims for damages upon terms offered by the company; and, whether because of the precautions or not, the number of cases involving lawsuits for personal damages was comparatively small.").

203. *Id.*

204. Lindsey, *supra* note 199, at 278.

205. LINDSEY, *supra* note 30, at 80. After the incident, the merchant—John P. Hopkins—launched a populist political career in opposition to Pullman that carried him eventually to Chicago's mayorship, a position he held, notably, during the 1894 boycott. *See id.* at 80-83.

206. GIBBONS, *supra* note 38, at 188 ("Many grievances exist, many acts of injustice occur, but no one dare utter a cry for help or redress."). The suppression of unfriendly media can be observed even in more recent, and ostensibly less oppressive, models of the company town. *See, e.g.*, ALANEN, *supra* note 110, at 121 ("During and after the national walkout, newspapers considered radical or subversive were banned from Morgan Park . . . . 'Not one copy of our paper is allowed to go into Morgan Park,' lamented [the editor of one banned newspaper], who reported that workers and residents did not dare have the publication sent to their homes 'for fear they might lose their jobs.'").

207. LINDSEY, *supra* note 30, at 64. This can be observed also in Scotia, California, now owned by Pacific Lumber: "Manicured lawns weren't the only things aggressively enforced in Scotia. Anyone who had ever belonged to a union was placed on a blacklist that was distributed among lumber companies. (Pacific Lumber employees were not unionized.) Workers who expressed Socialist leanings were summarily fired." Waters, *supra* note 137.

208. BUDER, *supra* note 37, at 88; *see also* CARLSON, *supra* note 33, at 191 ("When the company didn't own all the businesses in town, it often controlled them through land leases.").

"prohibited union meetings in homes," while businesses operating on company-owned land "had to agree not to serve striking miners."[209] In another, a saloon keeper "who provided meeting space for union members was punished by having his lights and water turned off."[210]

In the historical company town, the restrictive codes that regulated public life within the communities were not public law, as traditionally understood. To search for a municipal ordinance barring alcohol or regulating political speech in Pullman would be in vain.[211] But even though these restrictions are not, themselves, understood to be legal enactments—in the sense of being enacted by the state or its political subdivisions—they nevertheless could be enforced by state authority. Town bosses—from old mining bosses to utopian visionaries like Pullman—claimed absolute authority to enforce their conduct codes under the property right to exclude and the contract terms of at-will employment. Visiting mining towns notorious for oppressive labor conditions, a Pennsylvania labor commissioner concluded that "the state of things . . . was a very great anomaly in the midst of a free country."[212] In his 1874 report, he recounted a conversation with a company agent:

> To the suggestion . . . [that] the laws of the State and nation were violated in thus creating absolute personal government in the midst of a republic. He replied that this was the company's private property. That every man had a right to do what he would with his own. That these were the rules and conditions under which they chose to conduct their business, and that they would not permit any interference from any quarter in their affairs. . . . [W]orkmen who did not like their rules, were at liberty to move out of their jurisdiction.[213]

Through the law of property and contract, town bosses were able to use sovereign authority—including the police power—to enforce company regulations.[214]

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209. CARLSON, *supra* note 33, at 11-12; *see also* BRANDES, *supra* note 110, at 49 ("Some leases contained clauses worded so that union organizers could not even enter a company house, nor could a union meeting be held there.").

210. CARLSON, *supra* note 33, at 190.

211. *See supra* text accompanying note 198.

212. *Labor Troubles in Tioga County*, *in* PA. BUREAU OF STAT. OF LAB. & AGRIC., FIRST ANNUAL REPORT, FOR THE YEARS 1872-3, at 479, 489-90 (Harrisburg, Benjamin Singerly 1874).

213. *Id.* at 489-90.

214. *See, e.g.*, CARLSON, *supra* note 33, at 190 ("In some towns, when [striking] miners ignored the eviction demands, the mine managers went to court for a judge's help in forcing out workers."); WEST, *supra* note 1, at 22 (documenting the existence, in a Colorado mining community, of "a small army of deputy sheriffs, employed and paid by the coal companies and deputized by subservient sheriffs who made little or no effort to investigate their records"). This form of private governance—backed by state authority—also has been identified recently in Daniel Farbman's account of governance on the Antebellum plantation. Observing that "plantations were in fact the places where millions of people were governed in a daily, local, and despotic way"—

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Although particular uses of this governing authority were preempted by New Deal labor legislation, the general strategy has long outlasted conventional accounts of the company town. Legal historian Emily Prifogle has documented how agriculture growers and field bosses successfully deployed state power, as deputized through property law, to exclude farmworker organizers and service providers from migrant labor camps all the way into the 1970s.[215] Before a series of legal challenges established a right of access to privately owned migrant-labor camps, "[f]armers and industrial agriculture companies repeatedly asserted their private property rights against farmworker organizers and service providers whom they saw as trespassers."[216] Even today, the city of Bethlehem, Pennsylvania, appears bound by contract language in a land-transfer deed that prohibited specific forms of speech—union organizing and talking unfavorably about the company that gifted the land—at a city-owned public plaza called the "Town Square."[217] Competing mayoral candidates promised not to enforce these terms after a public outcry emerged in 2012, but the contract language remains[218]—a demonstration of the enduring governing power of private law.

B. Limitations of Private Law and the Allure of the Public Form

For the subset of company goals that could be achieved by exercising control over captive worker-residents, this displacement strategy—governing through private law, backed by public enforcement, within fully owned territorial domains—proved highly effective for some time.[219] The federal

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including through "legal codes" that ordered life on the plantations—Farbman notes that "the planters' power [was] itself delegated from the state." Farbman, *supra* note 156, at 783, 786.

215. *See* Emily Prifogle, *Rural Social Safety Nets for Migrant Farmworkers in Michigan, 1942-1971*, 46 LAW & SOC. INQUIRY 1022, 1022-25 (2021). For example, Prifogle describes the violent efforts of Joseph Hassle to prevent migrant aid workers from entering the agriculture camp that he owned in Michigan: "Local law enforcement backed Hassle's property rights and his use of violent self-help when they arrested Valdez and Folgueras for trespass and not Hassle for battery." *Id.* at 1050-51; *see also* David R. Keyser, Note, *First Amendment and the Problem of Access to Migrant Labor Camps After* Lloyd Corporation v. Tanner, 61 CORNELL L. REV. 560, 561 (1976) ("Outsiders who have sought to reach the migrants in their labor-camp homes have been arrested for violating state trespass laws. . . . [C]amp owners have asserted that their rights as owners of the migrant camps allows [sic] them to eject trespassers.").

216. Prifogle, *supra* note 215, at 1051.

217. *See* Lynn Olanoff, *Bethlehem Mayoral Candidates Won't Enforce SteelStacks Speech Restrictions*, LEHIGH VALLEY LIVE (updated May 11, 2013, 6:00 PM), https://perma.cc/4JLC-2589.

218. *Id.*

219. *See supra* Parts I.A, II.A.

preemption of particular rights of property and contract, especially the right to dismiss (and evict) workers for forming a union, in combination with parallel changes in economic geography, eventually would change the strategic calculus that had for so long motivated companies' rejection of the municipal form.[220] But even before the New Deal, town bosses seeking to govern through private law saw the limitations of their strategy—and the early allure of public powers.[221] Although consolidated property ownership provided the primary mechanism by which governance by minority faction was achieved during this period, there remained certain state functions that could not be privatized. For minoritarian control of those public powers, two other strategies emerged: (1) fiscal cost-shifting to the firm, exchanging payment for control, and (2) democratic suppression and public corruption.

The local powers that proved most difficult for town bosses to privatize were education, policing, and tax assessments. Even where district-wide elections for school board were required by state law, governing control over educational instruction was maintained through a familiar strategy: property ownership of the school building and contract relationships with individual teachers.[222] A similar arrangement allowed many companies, notably in mining towns, to wield the formal powers of law enforcement: "Local sheriffs were assigned deputies, generally paid directly by the companies, and these would arrest and jail any suspected union organizers."[223]

Although this contract relationship facilitated company control over compensated officials, the strategy was limited: Elections were required under state law for many county and school district offices. In Pullman, for example, "all town officials were appointed by the Pullman Corporation except the members of the school board."[224] But while town residents voted on their schools' board of directors in an annual election, "[i]n practice . . . Pullman officials were usually chosen."[225] This outcome was typical: In towns that

220. *See supra* Part I.A.

221. *See supra* Part II.A.

222. *See, e.g.*, BERNSTEIN, *supra* note 121, at 8 ("The mills customarily provided all or part of the income of the superintendent and the teachers, thereby gaining dominance over policy and personnel. In addition, they often supplied community buildings, cafeterias, hospitals, playgrounds, and related facilities and equipment.").

223. GREEN, *supra* note 58, at 59.

224. LINDSEY, *supra* note 30, at 63.

225. *Id.* at 75; *cf.* BUDER, *supra* note 37, at 116 ("At a time when businessmen commonly influenced votes, the Pullman Palace Car Company, because of the peculiar nature of the town, had more reason and opportunity to do this than most.").

elected school board members, companies commonly sponsored candidates; the company superintendent frequently served as its chairman.[226]

To ensure these results, companies exercised a heavy hand in whichever local electoral processes could not be displaced or avoided. Particularly before state laws provided limited secret balloting protections, workers' choices were closely monitored; "anyone voting against the interests of the company was in danger of losing his job."[227] The closed-town model provided companies with unique opportunities to manipulate electoral results. Polls were frequently located on company property;[228] sometimes election officials were in the company's employ.[229] Companies operating closed camps could influence local elections through the asserted property right to exclude: "If the votes of their employees were not sufficiently numerous to offset those of outsiders in the same precinct, entrance to the closed camps and the polling places could be denied to voters not under the Company's control."[230]

A 1916 U.S. Labor Department report documented the elaborate "effort to secure the election of 'law and order' nominees" in one coal mining town:

> [T]he precincts were made coterminous with the closed camps . . . these being in some cases protected by fences and in all cases by armed guards. It followed, almost without exception, that the only residents of these precincts were the employees of the coal companies, and that the judges, clerks, and officers of election were also their employees. "The polling places were upon the grounds and in the buildings of these companies; the registration lists were kept within the private offices and buildings of these companies, and used and treated as their private property." . . . Political meetings were made impossible . . . . "Thus were the public election districts and the public election machinery turned over to the

226. ALLEN, *supra* note 33, at 122; *see also id.* at 55-56 ("Although the local school board [of the mining town of Hanna, Wyoming] was elected, for many years it was practically a foregone conclusion that at least one company representative would be a member, giving the company a strong voice in school policies."); CARLSON, *supra* note 33, at 191 ("In [timber] towns like McCleary and Kinzua, relatives of the founder were appointed to the federal postmaster jobs; almost every school board was packed with company management.").

227. ALLEN, *supra* note 33, at 58; *see also* HOLMES, *supra* note 119, at 22 ("Election workers employed by the mine made their preference and expectations for Republican candidates clear. . . . [A]sking for the Democratic ballot put your job at the mine in jeopardy.").

228. ALLEN, *supra* note 33, at 58; *see also* WEST, *supra* note 1, at 57 ("Even the polling places in the closed camps were located on ground owned by the Company.").

229. WEST, *supra* note 1, at 16 (documenting, as one mechanism facilitating the "[p]olitical domination" of mining companies in closed camps, "the appointment of company officials as election judges").

230. *Id.* at 57.

> absolute domination and imperial control of private coal corporations and used by them as absolutely and privately as were their mines . . . ."[231]

This extreme form of electoral fraud was challenged in a case that reached the Colorado Supreme Court; results from these precincts were "thrown entirely out of the count, and the election decided by the results in the other precincts of the county."[232] But it should be noted: The general strategy of electorate manipulation—using jurisdictional exclusion to ensure that legally required elections would not threaten business interests—represents an early preview of what would become the dominant model of company control in subsequent decades, after the turn to the public form.[233]

In company towns that were less reliant on the forms of jurisdictional exclusion facilitated by the closed model—and even, during later years, in industrial communities that operated under municipal charter—companies used other strategies to influence democratic processes. In Morgan Park, Minnesota Steel officials were alleged to have driven employees directly from their work stations to the polls in company vehicles (an election law violation).[234] The company candidate secured 96% of votes cast in the steel town (most of which were marked only for his race)—but could not overcome lopsided margins against him elsewhere in the district.[235] In one lumber town, an upstart challenger toppled the incumbent candidate—who was also, simultaneously, the town's mayor and the president of the lumber company—in a populist campaign for a school board seat.[236] "Let us demonstrate that ours is NOT a one-man community," his campaign material urged residents: "Vote to free our school district from despotism."[237]

These court challenges and electoral losses all demonstrate a broader point: In contrast to the unencumbered control that private law facilitated within a fully owned territorial domain, such electoral contests could be unpredictable

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231. *"Industrial Necessity" for Political Control: An Incident of the Colorado Miner's Strike*, 3 MONTHLY REV. U.S. BUREAU LAB. STAT. 207, 208-09 (1916).

232. *Id.* at 207-09.

233. *See generally infra* Part III (describing how state laws governing jurisdictional formation and boundary adjustment have been used to create unpopulated corporate enclaves).

234. ALANEN, *supra* note 110, at 213-14. A similar practice was deployed to influence election results in Pullman. *See* LINDSEY, *supra* note 30, at 79 ("Wagons belonging to the Pullman Company conveyed large numbers to the polls; and the head timekeeper and the chief accountant of the Pullman shops were among those charged with peddling tickets for the Republican party and standing near the polls in order to observe how the men voted.").

235. ALANEN, *supra* note 110, at 214.

236. CARLSON, *supra* note 33, at 191.

237. *Id.* (quoting Advertisement, *Who Runs Our School District?*, EATONVILLE DISPATCH, Mar. 3, 1932, at 5).

even for locally dominant companies. Their preferences did not always prevail. To overcome this form of risk, companies would eventually seek direct control over these democratic processes—namely, through the strategic manipulation of the electorate within fragmented (fully controlled) jurisdictions.[238] But before this historical turn to the public municipal form, a middle path allowed companies to access certain benefits of the public form without the risk of the democratic processes otherwise required: the informal delegation of public powers from captured state and county officials.

This strategy—the corrupt bargain—is best represented by Sparrows Point, Maryland, which a Senate report prepared by the U.S. Bureau of Labor Commissioner described as the "most noteworthy example of a complete steel community, planned, constructed, and controlled by a steel company."[239] In an early preview of a strategy later perfected in the 1967 Disney deal, Pennsylvania Steel negotiated with state political leaders—seeking to attract economic investment—to secure a unique (company-specific) jurisdictional arrangement that would protect its governing authority. The 1888 "gentlemen's agreement" between the steel company and state party bosses, led by the governor, ensured that the company would "be master of its own political destinies" in return for the promised investments:

> [The state gave Pennsylvania Steel] total political hegemony over the company town, vesting in the manufacturer the right to control everything from the hiring of teachers at the local schools to the enforcement of town justice and collection of residential garbage.
>
> . . . Under the plan . . . all local patrol and arrest functions on Sparrows Point [were vested] to a police department to be established by the company. The company in turn paid the salaries of the local police and assumed all related costs. In effect, Governor Jackson sanctioned a separate and distinct police unit for the company's land, one in which neither he nor any other public official would have supervisory control. . . .
>
> . . . He agreed to oppose any attempt by the legislature to incorporate Sparrows Point as a town, a measure that might require the election of a town board of commissioners. . . .
>
> . . . .
>
> . . . Whatever the company wanted by way of special permits and other favors, the company got.[240]

238. *See infra* Part III.

239. 3 CHAS. P. NEILL, LAB. COMM'R, REPORT ON CONDITIONS OF EMPLOYMENT IN THE IRON AND STEEL INDUSTRY IN THE UNITED STATES, S. DOC. NO. 62-110, at 420 (1913). The report generically identifies this community as one "located in the Eastern district" of its investigation (a region including "New Jersey, eastern Pennsylvania, and Maryland"), but Mark Reutter pinpoints it as Sparrows Point. *Compare id.*, *with* REUTTER, *supra* note 149, at 55.

240. REUTTER, *supra* note 149 at 31-33.

Under this arrangement, "all ordinary governing powers were held by the company" and the town's 3,000 residents "had nothing to say about local governance" of their community.[241]

As a formal matter of law, the unincorporated Sparrows Point lacked any delegation of state authority that would allow it to exercise the public powers of education and policing—or any jurisdictional form that would protect it from incorporation into its neighboring city of Baltimore. But for so long as the dominant political machine held up its end of the deal, Pennsylvania Steel benefited from those benefits of the municipal form. After federal labor protections undermined the key benefit of governance through private law, other companies would increasingly seek a similar institutional arrangement—not through backroom gentlemen's agreements, but rather formalized (and enforceable) through local government law.

During the Gilded Age and Progressive Era, town bosses deployed various strategies to overcome democratic threats that could not be eliminated through the private governance model: especially the use of structural power to secure delegations of authority from states competing for mobile investment, combined with electorate management through jurisdictional exclusion to protect internal control. Beginning in the early twentieth century, companies would extend these same logics by seeking new institutional vehicles for faction domination.

241. *Id.* at 55-56.

III. Public Power Without a Public

> *The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and . . . the more easily will they concert and execute their plans of oppression.*
>
> —THE FEDERALIST NO. 10[242]

> *Local governments, which represent smaller constituencies with a less diverse ecosystem of economic and political interest groups than higher levels of government, are vulnerable to capture by a single powerful interest in a way that higher levels of government are not.*
>
> —Elizabeth Elder[243]

Before the Great Reform Act of 1832,[244] seats in the United Kingdom's House of Commons were allocated across malapportioned constituencies representing, in England, 39 counties and 202 chartered towns ("boroughs").[245] Once a borough had been incorporated by royal charter, its jurisdictional boundaries were fixed;[246] most English constituencies returned two members to Parliament regardless of the current residential population.[247] In the thirty-five "burgage" boroughs where the franchise was attached to certain houses or plots of land, a wealthy patron could purchase outright the public power of parliamentary representation—by acquiring a majority of the burgage properties and installing tenants selected for their willingness to vote the patron's interests.[248] In twenty-nine corporation boroughs, the franchise was

242. THE FEDERALIST No. 10 (James Madison), *supra* note 157, at 83.

243. Elder, *supra* note 176, at 3.

244. 2 & 3 Will. 4. c. 45 (Eng.).

245. *See* MICHAEL BROCK, THE GREAT REFORM ACT 19-20 (1973).

246. *See* MARTIN SPYCHAL, MAPPING THE STATE: ENGLISH BOUNDARIES AND THE 1832 REFORM ACT 21 (2024) ("[E]ach [of the English boroughs] had its own unique franchise and boundary configurations, establish largely by individual royal charters granted since the medieval period.").

247. BROCK, *supra* note 245, at 19 (identifying 195 two-member boroughs and 5 single-member boroughs in England).

248. *See id.* at 20, 22. A similar dynamic could be observed in smaller boroughs where all householders or enfranchised residents paying "scot and lot" were eligible to vote. *See* CHARLES SEYMOUR, ELECTORAL REFORM IN ENGLAND AND WALES: THE DEVELOPMENT AND OPERATION OF THE PARLIAMENTARY FRANCHISE, 1832-1885, at 26 (1915) ("If [a patron] once possessed himself of a larger part of the property within the parliamentary area, he had merely to fill the houses with tenants who would obey his instructions as the elections recurred."). Prior to the Ballot Act of 1872, ballots were openly declared rather than cast in secret; voting against the patron in one of the pocket boroughs would be expected to result in eviction. *Cf.* BROCK, *supra* note 247, at 26 ("This was not a system based on property, but the caricature of one. The borough

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limited to members of a close corporation; in Marlborough, for example, voting corporators "consisted usually of the marquess' steward, butler, footmen, and dependents."[249]

Election results in these closed "pocket" boroughs were predetermined. Although the minimal formality of internal democratic processes remained, governing control already had been secured through various combinations of concentrated land ownership, ownership stake in a close corporation, and the strategic management of the (enfranchised) resident population. These constituencies were openly traded by "boroughmongers"; the Duke of Newcastle is estimated to have acquired seven seats through his land holdings.[250] This strategy was most effective in the so-called "rotten" boroughs like Old Sarum, an abandoned hamlet that counted no inhabitants—but retained parliamentary representation through its royal charter.[251] On voting day, its seven burgage holders gathered under a tent in an empty field to register an outcome that had been long predetermined.[252]

This source of aristocratic governing power "largely disappeared when those boroughs were enlarged or merged in the more populous constituencies" through a half-century of institutional reforms.[253] Responding in part to the "genuinely revolutionary threat"[254] feared from public outcry, the 1832 Reform Act reallocated parliamentary seats through "the complete or partial disfranchisement of more than eighty, mostly small, borough constituencies"

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proprietor might not own much in the place apart from his voters: they frequently owned nothing at all. He was often an absentee: so were many of them." (footnote omitted)); J.V. Beckett, *The Making of a Pocket Borough: Cockermouth 1722-1756*, J. BRIT. STUD., Fall 1980, at 140, 140 ("Pocket boroughs were one result of the oligarchic structure that came to characterize English political life by the middle of the eighteenth century.").

249. BROCK, *supra* note 248, at 20, 23.

250. *See* LEWIS NAMIER, THE STRUCTURE OF POLITICS AT THE ACCESSION OF GEORGE III, at 145 (2d ed. 1968).

251. *See* SEYMOUR, *supra* note 248, at 26, 59 n.2; *see also* A.A.W. RAMSAY, SIR ROBERT PEEL 142 (1928) ("In such a case as Old Sarum, [a potentate] had little to do but nominate his candidate."). Thomas Paine decried the rotten boroughs for denying fair representation of the people in government. THOMAS PAINE, RIGHTS OF MAN: BEING AN ANSWER TO MR. BURKE'S ATTACK ON THE FRENCH REVOLUTION 61 (London, J.S. Jordon 2d ed. 1791) ("[T]he town of old Sarum, which contains not three houses, sends two members; and the town of Manchester, which contains upwards of sixty thousand souls, is not admitted to send any.").

252. RAMSAY, *supra* note 251, at 142; *see also* NAMIER *supra* note 250, at 76; *cf.* BROCK, *supra* note 247, at 27-28 (noting that, by the 1820s, Old Sarum had become a tourist attraction for visitors well aware of its corruption).

253. SEYMOUR, *supra* note 248, at 3.

254. DANIEL ZIBLATT, CONSERVATIVE PARTIES AND THE BIRTH OF DEMOCRACY 56 (2017). *See generally id.* at 55-64 (describing the political dynamics prompting institutional reform).

and new representation for larger industrial cities and counties.[255] When widespread corruption and boroughmongering persisted, the "traditional method of dealing" with egregious cases was to either suspend the offending borough or, alternatively, "swamp the votes of the corrupt electors by an increase in the size of the constituency."[256]

Observers have noted parallels between the unreformed rotten boroughs and the contemporary malapportionment created by small-state overrepresentation in the U.S. Senate.[257] But the relevant lessons from this history, for our public law and institutional design, are not limited to legislative representation. For the landed British aristocracy, sparsely populated (and permanently chartered) boroughs proved highly useful as a tool of minoritarian governance. In America today, precisely the same institutional dynamics have allowed corporations like Disney to evade democratic accountability.[258] After federal preemption and economic geography combined to reduce the returns to governance through private law, town bosses regrouped. Rather than giving up on the possibility of unchallenged self-rule, they used this basic playbook to protect and extend their private governing authority—only this time, through the public form. This Part documents how dominant corporations learned to wield public power without a public: by creating their own chartered pocket boroughs.

A. Shrinking the Sphere: Domination Through Concentration

Madison warned that any "faction"—of any size, including a single corporation or wealthy patron—can evade democratic accountability by self-governing, as an unchallenged majority, within its own fragmented domain.[259] Where powerful incumbents control the adjustment (or strategic nonadjustment) of jurisdictional boundaries, their lack of numbers is no obstacle to the attainment of public governing authority. It was through this playbook that the Pitt family represented the notorious Old Sarum pocket borough without democratic challenge: as nominated by "popular" majority among its seven fully owned burgages.[260] Through jurisdictional

255. John A. Phillips & Charles Wetherell, *The Great Reform Act of 1832 and the Political Modernization of England*, 100 AM. HIST. REV. 411, 414 (1995).

256. SEYMOUR, *supra* note 248, at 200-01.

257. *See, e.g.*, STEVEN LEVITSKY & DANIEL ZIBLATT, TYRANNY OF THE MINORITY: WHY AMERICAN DEMOCRACY REACHED THE BREAKING POINT 215-16 (2023) ("America's heavily malapportioned Senate also remained intact. . . . As a result, America's state-level 'rotten boroughs' persist.").

258. *See infra* Part III.B.

259. *See supra* Part I.C.

260. *See* Julia Herdman, *The History of Politics: The Rotten Boroughs of England*, JULIA HERDMAN BOOKS (Apr. 21, 2017), https://perma.cc/253C-9E79; *supra* notes 251-52.

fragmentation, any minoritarian faction can thus become a "majority"—not by popular persuasion, but through strategic (re)definition of the whole.

Drawing from Madison's institutional analysis, let us stipulate that tyrannical rule-by-faction requires three components—all of which are regulated, in the United States, by local government law. First, its members or beneficiaries must be able to sort across territorial space, namely by excluding from the electorate any who might challenge their interests. As a historical matter, this is typically achieved through concentrated land ownership (as in the pocket boroughs).[261] Second, a faction—once neatly sorted—must be able to exit, jurisdictionally, from the larger and more diverse democratic whole. The initial establishment of faction rule requires only these two components.[262] But even after a faction has secured its own self-governed territorial dominion, the arrangement remains vulnerable to future efforts to "[e]xtend the sphere" (in Madison's memorable phrasing).[263] The ongoing maintenance of jurisdictional dominance is thus contingent on the ability of faction-ruled enclaves (the final requirement): blocking boundary adjustments that would threaten their governing control.

Over the past century, changes in the law of local boundaries have made it easier for dominant corporations to establish self-governed proprietary fiefdoms—operating with the delegated powers of government, but absent meaningful democratic accountability—by meeting each of these components. If federal labor law "killed" the old model of company town during the New Deal, then local government law allowed its continuation in new institutional forms. To identify the consequences of this shift, it is useful to understand how the previous regime provided a check on localized corporate dominance by facilitating the annexation of corporate enclaves. This feature, now lost, is illustrated in George Pullman's unsuccessful effort to prevent the annexation of his model town by the fast-growing Chicago.

Throughout the nineteenth century, major American cities grew primarily through the geographic expansion of municipal boundaries.[264] Local

261. *See supra* Part II.

262. The order of these two steps can be reversed—by commandeering a public form that already has been formally segmented off from the larger public (rather than seeking jurisdictional exit after spatial sorting has been achieved). Indeed, that is the mechanism by which the historical pocket boroughs were achieved: identifying rotten boroughs that had secured permanent public powers by royal charter, and then purchasing enough land as to establish control through territorial sorting of the electorate. *See supra* note 248 and accompanying text.

263. THE FEDERALIST NO. 10 (James Madison), *supra* note 157, at 83.

264. *See* KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 140 (1985) ("Without exception, the adjustment of local boundaries has been the dominant method of population growth in every American city of consequence."); *cf. id.* at 138 ("Throughout the nineteenth century, [boundary expansion through

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government law facilitated central cities' ability to annex (that is, jurisdictionally subsume) their surrounding communities—even in instances where local preferences (as enumerated within the annexed communities) opposed the merger. As reviewed in Kenneth Jackson's classic account: "No small territory could be allowed to retard the development of the metropolitan community; the most important consideration was simply the greatest good for the greatest number."[265] Even where faction-dominated satellite enclaves had been established, the larger metropolitan community was—at the time—able to utilize various legal and political vehicles for democratically reconsidering whether such jurisdictional boundaries actually served the common good.

Chicago's 1889 annexation is representative of the previous regime that Jackson describes. George Pullman governed within his proprietary model town by company policy, but his private fiefdom was politically organized within the suburban village of Hyde Park.[266] Although this institutional structure offered some formal trappings of democratic process, "company executives ran for [local village] offices as Pullman's proxies."[267] At one point, every member but one of the local board of education was an officer of the Pullman Company, as were the town clerk and treasurer.[268] Even relative to the permissive norms of his day, Pullman's ownership of the town had provided "more reason and opportunity" to influence residents' voting choices over Hyde Park's affairs.[269] On several occasions, investigations were opened into reports of unlawful election interference—including allegations that the Pullman Company used surveillance and company resources to defeat, in the 1887 election, a slate of local candidates who had proposed to reexamine some of the taxation preferences the company had secured for its property assets.[270]

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annexation] was predominant as American cities annexed adjacent land and grew steadily larger in area and in population."). *See generally id.* at 138-48 (reviewing this history).

265. *Id.* at 147.

266. LINDSEY, *supra* note 30, at 61-62; BUDER, *supra* note 37, at 109.

267. RICHARD WHITE, THE REPUBLIC FOR WHICH IT STANDS: THE UNITED STATES DURING RECONSTRUCTION AND THE GILDED AGE, 1865-1896, at 776 (2017).

268. GRAHAM ROMEYN TAYLOR, SATELLITE CITIES: A STUDY OF INDUSTRIAL SUBURBS 62 (1915).

269. BUDER, *supra* note 37, at 116; *see also* LINDSEY, *supra* note 30, at 79 ("Because elections in the model town seldom went against the wishes of George Pullman, the question of political pressure is raised. The evidence indicates that, when circumstances required, Pullman did not hesitate to influence voting.").

270. *In Hyde Park: Republicans Successful There Also—Intimidation at Pullman Charged*, CHI. HERALD, Apr. 6, 1887 (reporting charges that Pullman bosses "endeavored to induce some of the Laborites to peddle Republican tickets" through bribery and by using company wagons to drive workers to vote "under the eyes of the [company's] officers");

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The *Chicago Herald* reported on charges that Pullman workers "who disobeyed orders of the company as to the ticket they should vote, and vindicated their manhood by exercising their own choice, were instantly and for that reason discharged from the company's service."[271]

In practice, as one contemporary described, Hyde Park sought "to exercise no authority over [Pullman's] territory."[272] The town was functionally allowed to exist as an independent entity:

> Even though the model town was a part of this large political organization, George Pullman exercised over the town a control virtually absolute. Only in such matters as police, taxes, and wholesale water rates did the village government exert any control; and even here the trustees were restricted by the tremendous influence which George Pullman wielded in the affairs of Hyde Park. . . . By assuming from the start full control over municipal functions, the company was able to render unnecessary the establishment of such services by the village government.[273]

As a result of this jurisdictional forbearance, Pullman's power was absolute within his domain: "In many respects the power of the Russian Czar pales into utter insignificance in comparison with the power of the close corporation which rules at Pullman."[274]

As the population of urbanizing Chicago expanded southward, towards the Calumet marsh where Pullman had been constructed, public discussion quickly turned to annexation.[275] Throughout the 1880s, various proposals

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see also BUDER, *supra* note 37, at 110-11. Indeed, remarks given by Pullman to a *New York Herald* reporter at the time of the 1894 strike led to speculation that the magnate had deliberately cut his workers' wages—the action that precipitated the fateful walkout in 1894—as punishment for disobeying his instructions to vote for his preferred candidate, incumbent Republican Benjamin Harrison, in the 1892 presidential election. *See id.* at 114; *see also* LINDSEY, *supra* note 30, at 84 ("In the campaign of 1892 George Pullman was extremely anxious to have Cleveland defeated and made a very indiscreet and impulsive speech to his employees, declaring that, in case they did not sustain tariff protection and vote the Republican ticket, he would not be accountable for their folly.").

271. *Intimidating Voters*, CHI. HERALD, Apr. 10, 1887 (noting also the existence of an investigation by the "election commissioners" and calling for the involvement of "the State's Attorney in making prosecutions").

272. GIBBONS, *supra* note 38, at 185.

273. LINDSEY, *supra* note 30, at 62.

274. GIBBONS, *supra* note 38, at 188.

275. *See* Louis P. Cain, *To Annex or Not? A Tale of Two Towns: Evanston and Hyde Park*, 20 EXPLS. ECON. HIST. 58, 58-59 (1983). By 1884, the population in the new industrial village had reached 8,513. DUANE DOTY, THE TOWN OF PULLMAN: ITS GROWTH WITH BRIEF ACCOUNTS OF ITS INDUSTRIES 34 (rev. ed. 1974) (1893). Construction of this new (and instantly world famous) industrial town had caused a "commotion" in the surrounding neighborhoods, where new jobs quickly appeared and land values soared. Janice L. Reiff, *"His Statements . . . . Will Be Challenged:" Ethnicity, Gender and Class in the*

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were floated to reorganize the Hyde Park village government;[276] eventually, some form of legal absorption into Chicago seemed inevitable.[277] But Pullman concluded that merger of his town into the larger political community represented a threat to his ability to govern without opposition.[278] According to one of his local political opponents, Pullman "opposed annexation because he feared that his taxes would rise and his one-man rule of the town would end."[279]

It is worth emphasizing that the legal status of Pullman's company town would not have changed as a result of annexation by Chicago; the town was a town only in the colloquial sense (formally existing only as a village administrative district),[280] and so it would have remained. But Pullman did not fear a legal change: He feared the consequences of what Madison described as "[e]xtend[ing] the sphere."[281] His ability to exercise control within Hyde Park—influencing those remaining municipal services and democratic processes that he could not privatize—was facilitated by the existing level of jurisdictional fragmentation, which annexation would reduce.[282] The more populous and diverse city of Chicago might prove less susceptible to the levers of structural and instrumental power that he had used to secure practical independence from the small and undeveloped Hyde Park village.

The legal absorption of his town into the larger metropolitan community represented a serious threat to Pullman's authority for an additional reason. Through spatially concentrated property ownership, he had successfully avoided most forms of electoral democracy within his town. But residents

Evolution of the Pullman/Roseland Area of Chicago, 1894-1917, 74 MID-AM. 231, 235 (1992) (quoting SIMON DEKKER, HISTORY OF ROSELAND AND VICINITY 86 (1938)).

276. 3 BESSIE LOUISE PIERCE, A HISTORY OF CHICAGO: THE RISE OF A MODERN CITY, 1871-1893, at 331-33 (1957).

277. *See* LINDSEY, *supra* note 30, at 81 ("The need for reorganizing the antiquated village government . . . was incontrovertible, and the course which appeared most logical was annexation to Chicago."); *Annexation in Favor: Hyde Park All Ready to Come In*, CHI. HERALD, Oct. 20, 1887 (reporting, in 1887, that Pullman believed annexation was "inevitable").

278. *Id.* ("It was the firm conviction of George Pullman that the absorption of Hyde Park by Chicago would endanger the success of the experiment.").

279. BUDER, *supra* note 37, at 112.

280. *Cf.* PAPKE, *supra* note 201, at 11 ("Located on a previously unincorporated tract near Lake Calumet, the town was not a municipality in the normal sense but just a two-square-mile tract of private property, maintained and rented out [to temporary tenants] by the company.").

281. *Cf. supra* Part I.C.

282. *See supra* notes 278-79 and accompanying text. During the 1889 campaign, one newspaper reported that the local tax assessor "has offered to show to Mr. Pullman that his taxes would be reduced $12,000 if Pullman is annexed, but Mr. Pullman refuses to support annexation." *Enthusiastic for Annexation*, CHI. INTER OCEAN, June 23, 1889.

retained their membership in the larger political communities of the nation, state, and village—including the ability to vote in elections for those offices. This included the question of annexation, which was put to Hyde Park voters (Pullman residents included) on two occasions in the late 1880s, providing them an opportunity to weigh in directly on the question of their town's democratic governance.[283] In the words of historian Almont Lindsey, "[t]he struggle waged by Pullman against [annexation to Chicago] furnishes an excellent insight into the question of political control."[284]

George Pullman's motivations in these political fights were hardly hidden. Before waging an extensive campaign against the (successful) 1889 annexation, the industrialist had been one of the more prominent champions of an 1887 annexation referendum.[285] The salient difference? In the 1887 referendum, Pullman had used his political influence to exempt the model town from the boundaries of proposed annexation.[286] Pullman's governing control became a campaign issue. At an anti-annexation meeting in neighboring Kensington (which had been exempted along with Pullman), "the people were told that if they voted for annexation [under the proposed boundaries] they only voted to have themselves ruled by George M. Pullman, who is in favor of annexation for this purpose only."[287] The initial vote was successful, but the gerrymandered annexation was voided after legal challenge.[288]

After the Illinois legislature amended its municipal incorporation law, a new vote was scheduled; this time, all of Hyde Park would be included, including Pullman's company town.[289] Contemporaneous reporting captured the popular enthusiasm for the merger: "The sentiment is almost unanimously in favor of taking in the entire village of Hyde Park without any division

283. LINDSEY, *supra* note 30, at 81-82.

284. *Id.* at 81.

285. *Id.* at 81-82.

286. *Id.* One newspaper reported that he felt "annexation is inevitable" but that "his only wish is that the town in which he is so deeply interested shall not be included in any scheme which has for its object the establishment of one municipal government." *Annexation in Favor*, *supra* note 277.

287. *Let Them Be Annexed: It Will Put an End to Lake View Jobbery*, CHI. TRIB., Nov. 8, 1887, at 6.

288. The legal issue concerned not the Pullman exclusion, but rather a technicality: The court found that the annexation-authorization law allowed for the unification of one town to another but "nowhere provides for uniting a village, or a part of a village, to a town." Village of Hyde Park v. City of Chicago, 16 N.E. 222, 223 (Ill. 1888).

289. James I. Gottreich, The Annexation of the Town of Hyde Park: The 1887 Attempt and the 1889 Achievement 30-32 (Feb. 1968) (M.A. thesis, Roosevelt University) (on file with author).

whatever."[290] In particular, residents expressed concerns that if they were left out of the annexation, they would "become part of a town that will be entirely tributary to Pullman and Pullman influence."[291] Another article speculated about the consequences of a boundary expansion that would leave the neighboring towns "at the mercy of the Pullman Company": "There is not the slightest doubt but Pullman would control every election in spite of any force that could be brought against it."[292]

Indeed, the feudalistic nature of the model town was a central campaign issue: Contemporaneous political cartoons satirized Pullman as a bumbling monarch; one depicts him drowning in the "popular will" for suburban annexation (pictured below).

Figure 1
They Can't Stop the Wheel[293]



290. *Coming with a Rush: Suburban Residents Anxious to Join the City at the Earliest Possible Moment*, CHI. TIMES, Apr. 27, 1889.

291. *Id.* ("The citizens of Kensington, one of the important subdivisions of Hyde Park, are very emphatic upon this point. They do not want to be left out in the cold under any circumstances. They have no desire to become a part and parcel of an outside satrapy."); *see also Joining the Big City*, CHI. HERALD, June 18, 1889, at 2 ("Kensington is very anxious to be annexed and much opposed to the proposition which is made to leave out Pullman, Kensington, Roseland, and Riverdale and annex the balance of Hyde Park."). Kensington residents circulated a petition ahead of the annexation vote that declared, "Let us have no division of the territory of Hyde Park, no vexed questions to settle hereafter by a division of property interests between a portion taken and a portion left." *Id.*

292. *Enthusiastic for Annexation*, *supra* note 282 ("Only such men as suit Mr. Pullman would be elected. They might be men above reproach, but nevertheless they would be Pullman men.").

293. Cartoon, *They Can't Stop the Wheel*, CHI. HERALD, June 29, 1889.

In a letter to the editor, one Kensington resident reasoned:

> Is it not better for the people to join the city . . . than to join with Pullman (the city of brick), where there would be only one saloon and one church, and people would have to be of one mind, for it already has been shown that a person in Pullman who asserts his rights as a citizen generally has to vacate and seek liberty in some other clime?[294]

Other supporters argued that the boundary change would "'free' Hyde Park from the 'stranglehold' of industrialists such as George Pullman."[295] One editorial argued that "[t]he inhabitants of the southern end of Hyde Park are threatened, as before [under the 1887 boundaries], with a domination which all should oppose—which all certainly fear."[296] A pro-annexation bulletin circulated ahead of the referendum declared,

> The most disturbing elements in Hyde Park affairs are the henchmen of the duke of Pullman. As a whole the village of Hyde Park has for years been dominated by a gang of mountebanks either on the pay roll of this gigantic monopoly or else owned body and soul by it by reason of direct purchase. Every power possible to bring to bear to influence local legislation favorable to and in the interest of Pullman as against the taxpayers, has been produced . . . . Did the potentate of this little one-horse kingdom pay his just proportion of the expenses of keeping up the local government there might be less cause for complaint; but, as it is, he pays less and receives more in return than other portions of the village, and there is no hope for a change under the present form of government. He virtually attempts to say what proportion of the taxes he shall pay—and generally succeeds in doing it.[297]

As the *Chicago Herald* reported, disaffected residents "are fully awake to the danger of the situation, and realize that the only hope for them is to join forces with the city of Chicago, and thereby obliterating those whose influence is so potent against the common weal."[298]

To block the jurisdictional merger, Pullman engineered an extensive "antiannexation campaign in which large sums of money were spent and numerous meetings held in Pullman and throughout the village of Hyde Park."[299] In the weeks before the referendum, the Pullman Company faced allegations that it had unlawfully suppressed political speech through the employment relationship: One local politician "claimed that several men had been fired for signing annexation petitions, while others had been threatened

294. Thomas A. Foley, Letter to the Editor, *Enthusiasm from Kensington*, CHI. TIMES, May 16, 1889.

295. Cain, *supra* note 275, at 69 n.31.

296. *Pullman and His Suburb*, *supra* note 2.

297. *Part of a Great City: To-Day's Ballots Will Settle It*, CHI. HERALD, June 29, 1889.

298. *Id.*

299. LINDSEY, *supra* note 30, at 82.

with dismissal for expressing support."[300] An anti-annexation meeting was organized in the (company-owned) town theater ahead of the referendum.[301] On election day, the *Chicago Daily News* captured a striking scene:

> At that beautiful little suburb the men at the [rail]car shops were marched right up to the polls by their bosses to vote against joining Chicago. There was not the slightest attempt at concealment, and the business of driving the industrial slaves up to the polls where they were given anti[-annexation] ballots was witnessed by hundreds. The independent men of the place, however, . . . were confident that the power held by the Pullman company would be wrested from that close corporation.[302]

In the end, the company town was one of only two voting districts in Hyde Park to vote against the annexation; the local "preferences" registered within Pullman were overruled, and the full village was subsequently absorbed into Chicago.[303] As one historian would later recount, the 1889 annexation represented "the beginning" of a yearslong process "whereby the feudalistic power was dislodged and shifted to the shoulders of the community": "The vigor with which the company opposed this step indicated a realizing sense that it foreshadowed the end of company control of the town."[304]

This episode has (surprisingly) escaped scholarly attention, receiving a total of several pages' treatment across an extensive library of historical research about Pullman and Chicago's growth.[305] It reveals how the most

300. BUDER, *supra* note 37, at 112-13; *see also Some Annexation Gossip*, CHI. HERALD, May 14, 1889 (reporting that Pullman employees who refused to sign anti-annexation petitions were similarly dismissed).

301. *See Pullman*, CHI. INTER OCEAN, June 16, 1889.

302. *Hyde Park Will Come In*, CHI. DAILY NEWS, June 29, 1889.

303. LINDSEY, *supra* note 30, at 82.

304. TAYLOR, *supra* note 268, at 33; *see also* RAY GINGER, ALTGELD'S AMERICA: THE LINCOLN IDEAL VERSUS CHANGING REALITIES 147 (1958) ("The Pullman Company maneuvered and manipulated and coerced for years to prevent Hyde Park from becoming part of Chicago, but in 1889 it lost that fight, and thereafter George Pullman had to go into Chicago politics to keep his taxes low."). Of note, Pullman was able to retain control over many of the municipal services that otherwise would have been provided by Chicago. Primarily for this reason, the annexation did not initially disturb Pullman's ability to govern without democratic opposition: "Schools, taxes, fire protection, and wholesale water rates were now subject to control by Chicago, though the actual administration of these did not change greatly." LINDSEY, *supra* note 27, at 83 ("Not even in the matter of taxes did the Pullman interests suffer . . . .").

305. The two most comprehensive historical accounts of Pullman's model community devote, between them, fewer than twenty paragraphs to the annexation fight. LINDSEY, *supra* note 30, at 81-83 (describing Pullman's efforts); BUDER, *supra* note 37, at 111-14 (same). In historical accounts of Chicago's growth, Pullman's role receives comparatively little attention—if it is noted at all. *See, e.g.*, GINGER, *supra* note 304, at 147 (describing Pullman's role in the annexation fight in a single sentence); PIERCE, *supra* note 276, at 331-33 (recounting the annexation history without mention of Pullman's campaign); KEATING, *supra* note 94, at 104-10 (same); ROBIN F. BACHIN,

footnote continued on next page

prominent town boss in American history understood the relationship between municipal fragmentation and the ability of corporate faction to govern without meaningful democratic accountability. George Pullman recognized that this prerogative would be threatened by alternative—less fragmented (jurisdictionally) and more centralized (in the administration of municipal functions)—forms of governance. This history thus offers lessons for researchers of local government law about the relationship between corporate power and the institutional design of local decision-making.

These institutional dynamics also preview one of the critical downsides of companies' rejection of the municipal form: vulnerability to annexation by a larger metropolitan community, and the concomitant loss of governing control.[306] But soon, town bosses would have new options for protecting their proprietary domains from outside interference. In the several decades after the 1889 annexation, state laws governing municipal formation would change in ways that would have provided Pullman with an additional option for maintaining his political independence from the greater metropolis: defensive municipal incorporation. As Jackson recounts, during the early twentieth century—after Pullman's demise—a wave of new state laws "made incorporation easy and annexation unworkable."[307] Pullman's immediate goal—continued jurisdictional separation from Chicago—could have been easily secured.[308]

BUILDING THE SOUTH SIDE: URBAN SPACE AND CIVIC CULTURE IN CHICAGO, 1890-1919, at 17, 40 (2004) (same). The most extensive secondary account of Pullman's political involvement in the annexation fight is provided in an unpublished 1968 master's thesis of a Roosevelt University student, which gives a general history of the two annexation campaigns. *See* Gottreich, *supra* note 289.

306. That downside would emerge only in time. During Pullman's brief existence, even the legal incorporation of his pocket borough would have provided little defense against its elimination. Throughout the nineteenth century, binding annexation elections (of the sort that Pullman sought to influence) were rare: "[S]tates tended to exercise [the power of annexation] without the advice of those who would be affected; that is, rarely were public referendums held on the issue. And when a vote was taken, it was often ignored if it was negative." JACKSON, *supra* note 228, at 147.

307. *Id.* at 150. As a result of these changes, "it is now commonly held that annexation should be a voluntary affair that must gain the approval of the residents of an affected area"; even where this process is initiated, "rigorous procedural and substantive requirements block the way." *Id.* at 152.

308. Today, for example, Elon Musk's incorporation of Snailbrook would effectively eliminate the future possibility of annexation by the nearby Austin (or any other proximate local jurisdiction)—securing the goal of jurisdictional independence that eluded George Pullman. *See infra* Parts III.C, IV.B. Of course, municipal incorporation requires some additional forms of democratic decision-making, which Pullman also fought to avoid. *Cf.* Grind et al., *supra* note 3 ("During an all-hands meeting of Boring employees last year, Mr. Davis said they would have to hold an election for mayor, according to text messages and people familiar with the meeting."). But as discussed in

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George Pullman's efforts to block Chicago's annexation illustrate a broader point. Although local government law structures the institutional arrangements that facilitate corporate dominance over local communities, only very rarely has it been useful for preventing the emergence of private enclaves or mitigating the democratic abuses that they perpetuate. Under the old model, company towns rejected the municipal form altogether; they were governed by private law, and local government law was effectively displaced within these fully owned domains.[309] But even after the "turn to the public" during the mid-twentieth century, well after Pullman's dissolution, this body of state laws has tended to facilitate rather than hinder the political separation of spatially concentrated private wealth from democratic forms of accountability (and economic obligations) to a broader community.[310]

B. Pocket Boroughs: The Democratic Stakes of Fragmentation

Writing in 2019 about the "constitutional problem" presented by small states with nondiverse economies, David Schleicher observed that "Vermont could theoretically suffer the same fate as former British pocket boroughs like Old Sarum."[311] As he noted, an interest group "can be quite small and still be a large part of a small state like Vermont's economy and politics";[312] its "relative power" within the state can be "exert[ed] over [U.S.] Senators," distorting political outcomes for all affected by federal legislation.[313] For all the reasons that Schleicher recounts, such outsized influence in our federal legislative chamber is indeed a democratic problem. But the underlying problem presented by contemporary pocket boroughs—the legally protected use of public power, attained by faction through its control over a sparsely populated ("rotten") jurisdiction—is even more pronounced at the local level, manifested in institutional form as the corporate enclave.

It is true that a small handful of billionaires today are, in theory, wealthy enough to purchase all the real property in Vermont.[314] Such concentration of land ownership, were it to be achieved, would certainly provide plenty of

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the next Part, other subsequent developments in local government law have provided ways to escape even those minimal forms of public accountability.

309. *See supra* Parts I.A, II.

310. *See infra* Part IV.B.

311. David Schleicher, Essay, *Vermont Is a Constitutional Problem*, 61 ARIZ. L. REV. 253, 269 (2019) ("As of 2017, there were four Americans—Jeff Bezos, Warren Buffet, Bill Gates, and Mark Zuckerberg—who each have enough money to buy every single piece of property in Vermont.").

312. *Id.* at 270.

313. *Id.* at 272.

314. *Id.* at 269.

opportunities to exert political influence over Vermonters—perhaps enough to secure the nomination of one or both of the state's seats in the U.S. Senate. It would, of course, be difficult to extend such powers at scale, from the handful of enfranchised voters in the old rotten boroughs to the roughly 650,000 residents who live in Vermont today.[315] But suppose this monitoring problem could be overcome. The specific combination of democratic deficits, property rights, and institutional design that allowed British potentates not just to influence but rather to guarantee election results is no longer available—preempted, as it were, by some of the same federal legal protections that are thought to have "ended" the company town.

The old company town bosses could influence but generally not—in all but the most oppressive (and unlawful) examples—guarantee control in those few electoral processes that they were unable to displace.[316] Jeff Bezos similarly could purchase all of Vermont today, but doing so would not eliminate the risk of electoral unpredictability in its elections. The politics (and economics) of the state would be distorted, but the specific form of unchallenged governing authority that is represented by the company town would remain elusive.[317] But while the "pocket state" would be difficult to achieve, the chartered "pocket borough"—as a local government phenomenon—is no mere theoretical possibility. Though most prominently illustrated by Disney's special district and Musk's recent incorporation efforts, contemporary examples of formally protected corporate enclaves can be found across the country.[318] The critical differences between the state and local levels, in addition to sheer scale (and the operative distinction between representative and executive governing authority), are the adjustability of borders and feasibility of jurisdictional exclusion.

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315. Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia, and Puerto Rico: April 1, 2020 to July 1, 2024, U.S. Census Bureau (2024), https://perma.cc/SNE3-CDFP (to locate, click "View the live page," then download the table with the label above).

316. *See supra* Part II.B.

317. The desired outcome is not merely influence over public policy but a tyrannical power absolute: *L'État, c'est moi*.

318. In a forthcoming analysis of property tax assessment data, my co-authors and I identify numerous corporate enclaves with virtually no residents but millions (even billions) of dollars' worth of commercial property: for example, Irwindale, California, home to a giant speedway and not much else; Black Hawk, Colorado, which has a big casino and barely over 100 residents; an industrial park in Illinois; a township in New Jersey that includes a private airport and corporate jet storage facility, and not much else; and a town in Texas that has a major industrial power plant and 156 residents. Robert Manduca, Brian Highsmith & Jacob Waggoner, Tax Base Fragmentation as a Dimension of Metropolitan Inequality (unpublished manuscript) (on file with author).

With respect to the feasibility of faction rule, decentralization to local governments is distinctive for the simple reason that local governments—unlike states—can be so small as to be entirely homogenous as to their governing interests. Migration across state boundaries can be made costly, but is rarely prohibitive; by contrast, local jurisdictions have many tools available to (legally) control who is able to reside within their boundaries. Aspects of this strategy can be achieved through exclusionary zoning, but—notably, in the company town context—concentrated land ownership creates unique possibilities for electorate management through jurisdictional exclusion. Nor is this dynamic limited to the ability to manipulate the migration of people across jurisdictional boundaries: Local governments, unlike states, are uniquely able to proliferate and adjust their boundaries. Where allowed by public law, faction can thus guarantee absolute governing control by "shrinking the sphere" to match the territorial domain of its influence.

Each of these features is structured by local government law, and each has become more conducive (at least in particular respects) to faction domination over the past century. Their interaction has created a playbook—substantially similar to the one used by early nineteenth century aristocrats to secure control over the unreformed pocket boroughs—for corporate faction to attain, without relinquishing control, what George Pullman never had: the formal powers of the sovereign. This strategy of demos manipulation has been adapted in recent decades to take advantage of recent level developments, but the basic institutional logic can be traced back to the pocket boroughs. One of its early innovators in the American local government context was the entertainment mogul Walt Disney.

The uniform rejection, by early town bosses like George Pullman, of the municipal charter was driven by a fear of the internal democratic processes required under the institutional form. When Disney was in the early stages of planning its "Eastern Disneyland" in central Florida, the company commissioned a report about potential institutional designs that aimed to circumvent precisely this fear.[319] Completed in December 1965, it was this report that identified Chapter 298 in the Florida Code as a potential vehicle for consolidating governing control.[320] Chapter 298 enabled landowners to form special drainage districts[321] with bond-issuing authority. The report

319. FOGLESONG, *supra* note 15, at 60-64 (citing and discussing GEE & JENSEN CONSULTING ENG'RS, PRELIMINARY REPORT ON WATER CONTROL: THE DISNEY PROPERTIES, ORANGE AND OSCEOLA COUNTIES, FLORIDA (1965)).

320. *Id.* at 61.

321. The "most common purpose" of these districts is to remove excess water from swampland so as to make it suitable for agricultural purposes and to protect farmland from water overflow. JOHN C. BOLLENS, SPECIAL DISTRICT GOVERNMENTS IN THE UNITED STATES 167-72 (1957).

emphasized two features as key advantages. First, such a district could be created through a nondiscretionary administrative procedure; no political process or public vote would be necessary, and approval of qualifying petitions was legally guaranteed.[322] Second, Florida law allowed for such special districts to be "controlled on the basis of acreage rather than residents"—ensuring that Disney, through its 98% ownership stake of the land, would never lose governing control even after the district was created (and internal democratic processes were implemented).[323] Both of these factors were immediately attractive to the company, which "wanted the powers of government but not real residents who could challenge their managerial prerogatives."[324]

To avoid external regulation, Disney innovated the use of functional fragmentation (in addition to, and complementing, spatial fragmentation) through a creative multitiered governance model. Under Florida law, only a popularly elected general-purpose government could regulate buildings and land use.[325] But Disney did not want to be subjected to the whim of genuine popular democracy. So it created, in effect, its own pocket borough: two municipalities within the larger (landowner-controlled) special purpose district, the electorates of which would be comprised exclusively of loyalist (company-selected) employees.[326] These new municipalities would not only "empower the Disney Co. to exercise planning and zoning authority, while shielding itself from external regulation"—they would guarantee avoidance of Pullman's fate, by "prevent[ing] residents from incorporating" independent of the company's wishes while also providing legal protection against any future annexation efforts by Orlando.[327] The institutional arrangement also allowed

322. FOGLESONG, *supra* note 15, at 61.

323. *Id.* (quoting GEE & JENSEN CONSULTING ENG'RS, *supra* note 319). A significant expansion of these powers would later be achieved by special act of the state legislature, but the initial district creation was a formality. *See supra* notes 20-24 and accompanying text.

324. FOGLESONG, *supra* note 15, at 8. The report cautioned that a competing strategy, avoiding the public form and instead relying on the county government for land development priorities, was rejected on the basis that it would subject the company to "control by a political board serving countywide and subject to the influences of surrounding land owners." *Id.* at 61 (quoting GEE & JENSEN CONSULTING ENG'RS, *supra* note 319).

325. *Id.* at 63.

326. *Id.* at 63-64; *see also supra* note 19.

327. *Id.* at 63; *see also* DOUGLAS FRANTZ & CATHERINE COLLINS, CELEBRATION, U.S.A.: LIVING IN DISNEY'S BRAVE NEW TOWN 69 (1999) ("If the company wanted to build a new ride, it did not need to seek approval from the Orange County planning department. If the parks needed new sewers, the company did not need to seek approval through a voter referendum. When Disney put up a new building, the only construction codes it met were its own.").

Disney to offload various costs while pulling in specific benefits (and then protecting the remaining difference, in profits, from taxation).[328]

Disney's multilayered governance structure operated under special legal authority that had been granted based on a promise to create residential neighborhoods on its properties.[329] "But there were no [public] inhabitants and there never would be" within the new general-purpose municipalities, ensuring that the company's governing authority continued without challenge.[330] As summarized in a 2023 state audit: "[T]hese 'cities' . . . are, in fact, nothing like a real city, with only a dozen residents in each, all current or former Disney employees or tenants."[331] As a result, internal democratic processes presented no risk to the company's prerogatives. One 1989 news report—its headline, "Disney's always a winner in Reedy Creek elections"—captured an election day scene that bears striking resemblance to the notorious voting proceedings in the unreformed pocket boroughs:

> They raised no money, gave no stump speeches, shook no hands outside the local shopping mall. But three of the least visible and most powerful quasi-public officials in Central Florida were re-elected Wednesday.
>
> The election of incumbents William Dial, [the president of Disney's primary local bank,] Elizabeth Duda[, the wife of an influential local developer,] and Donald Greer[, a former planner now working for a different local bank,] to the Reedy Creek Improvement District Board of Supervisors took less than 30 seconds. Two votes were cast for each candidate.
>
> . . . .
>
> There has never been a contested election in the 22-year history of the [special tax district].
>
> . . . .
>
> After the annual election ritual Wednesday, the supervisors started flexing some of the governmental muscle permitted under the special legislation.

328. *See* FOGLESONG, *supra* note 15, at 180 ("On the tax side, Disney escapes from paying approximately $15 million a year, according to the county comptroller's office."); *id.* at 131-37 (describing an instance where the Reedy Creek district received the full allocation of capped bond-issuance authority to expand sewage treatment for a new line of hotels, preventing the Orange County housing authority from being able to access funding to build 1,200 affordable homes).

329. *Id.* at 75 ("As the legislature had done, the state Supreme Court approved Disney's autonomous political district on a false premise."); *cf.* FRANTZ & COLLINS, *supra* note 327, at 27 ("Some critics suspected that there was never any intention of building Epcot and that it was a smoke screen to secure approval of Reedy Creek.").

330. FRANTZ & COLLINS, *supra* note 327, at 27.

331. REPORT ON PAST PRACTICES, *supra* note 49, at 11, 19 ("Only people approved by Disney are permitted to enter into leases and live within such mobile home parks within the two cities. Thus, only registered voters handpicked by Disney to live within Disney's mobile home parks are eligible to serve on the City Councils of the two cities.").

> . . . .
>
> The public hearing on the bond issue attracted nearly a dozen opponents . . . .
>
> . . . .
>
> . . . [but] the bond validation vote should be a lock.
>
> . . . .
>
> "The [bond] vote shouldn't be a problem," said Reedy Creek Finance Director Ray Maxwell. "We have to go through the motions."[332]

When Disney, in the early 1990s, decided to convert an unused portion of its property into a residential development called Celebration, the company decided to deannex the community from its special district into the surrounding county—exchanging certain benefits of the public form for the guarantee of continued governing control.[333] Even as the studied companies have taken strikingly different positions across the annexation attempts examined here, a common theme emerges. George Pullman campaigned for Chicago's annexation of Hyde Park in 1887, when he had managed to exempt his model town from the proposed jurisdictional expansion; when, in 1889, the boundary extension would have diluted his governing control, he led the campaign against it.[334] Having previously demanded a special act of the state legislature to jurisdictionally exit from county governance, Disney rushed to deannex its landholdings at the moment that its absolute governing control was threatened by residential population change. Jurisdictional form is manipulated strategically, fragmentation always conditional on the maintenance of unchecked governing control.

To the extent that Disney was able to innovate these strategies, it was only because recent developments in local government had made them feasible for the first time. This use of the special district form as umbrella shell, for example, was not available to Pullman and his contemporaries.[335] The innovation represents a broader shift in the purposes towards which corporate enclaves have been deployed. The central consideration for old town bosses

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332. Lawrence J. Lebowitz, *Disney's Always a Winner in Reedy Creek Elections*, ORLANDO SENTINEL, June 1, 1989, at B1 (final alteration in original).

333. *See* FRANTZ & COLLINS, *supra* note 327, at 70 ("If Celebration had remained part of Reedy Creek, its residents would have been entitled to vote on matters within the district. . . . The solution was to de-annex Celebration, transferring the land from the jurisdiction of Reedy Creek to that of Osceola County and the various state agencies that would be involved in approving the creation of the new town."); FOGLESONG, *supra* note 15, at 152 ("Keeping Celebration in the District also imperiled Disney's political control of the Reedy Creek government, which hinges on the carefully selected residents of their two mobile home park 'cities,' Bay Lake and Lake Buena Vista. . . . Unsurprisingly, the company chose to de-annex Celebration.").

334. *See supra* Part III.A.

335. *See infra* Part IV.A.

was worker control, and especially union avoidance. But after federal labor law preempted the property and contract rights that had been used to secure this goal, the strategy shifted. The new institutional model that Disney was innovating was, accordingly, shaped by different motivations. In devising its plan, the company identified its primary needs, "requiring the support of both county and state government, center[ing] on taxes, roads, and—of particular interest—an autonomous political district."[336] Disney would not be able to use its company town to avoid a union,[337] but through these institutional forms it would be able to wield new public powers—generating significant financial returns—that were inaccessible under previous models.

In particular, Disney's district proved highly effective for achieving three goals: to avoid external regulation, access capital on tax-preferred terms, and minimize its tax burden. Like proprietors' shared goal of suppressing labor action during the heyday of the historical company town, these motivations are broadly shared across firms and sectors—leading to the possibility of common use of a single institutional form. A notable example is the phenomenon of "phantom cities" in southern California that were profiled by late urban theorist Mike Davis.[338] The *Los Angeles Times* described one of them, Vernon, as the county's "most industrial city with a daytime population of 51,000 and a nighttime population of 152"[339]—whose management and ownership constituted a majority of the city's voting residents and so could set municipal policy without democratic constraint.[340]

Vernon was founded in 1905 as an industrial town; its motto remains "Exclusively Industrial."[341] When manufacturing declined, the jurisdiction sought to attract new industry through promises of regulatory forbearance

336. FOGLESONG, *supra* note 15, at 57.

337. *But cf. id.* at 184 ("Yet the unions are weak at Disney, as elsewhere in central Florida. In this right-to-work state, the Trades Council unions have only about 9,000 dues-paying members among the 25,000 employees covered by their union contract.").

338. Mike Davis, *The Suburban Nightmare: While Older Suburbs Experience Many Problems of the Inner City, "Edge Cities" Now Offer a New Escape*, L.A. TIMES (Oct. 23, 1994), https://perma.cc/HWT8-SJB7 (describing the City of Industry as a "special-interest 'phantom city' (population, 680) [that] monopolizes most of the tax assets of the southern San Gabriel Valley"). *See generally* DAVIS, *supra* note 31 (examining the urban history of Los Angeles and its surroundings).

339. Miles Corwin, *Vernon Redevelopment Plan Is Sticky Business*, L.A. TIMES (Nov. 10, 1991), https://perma.cc/WH79-4ZN3.

340. Hector Becerra, *Vernon Shoo-Ins Shoo Outsiders*, L.A. TIMES (Feb. 12, 2006), https://perma.cc/TG7N-723F ("There are fewer than 60 registered voters in Vernon, and almost all are either city employees or related to a city official.").

341. *See* CITY OF VERNON, CALIFORNIA, https://perma.cc/3AMP-8CU8 (archived Apr. 25, 2025) (motto located on the seal).

and minimal taxation.[342] Vernon is a rotten borough: In 2006, it had only 93 residents—despite its location just four miles south of downtown Los Angeles—and fewer than 60 registered voters, "almost all [of whom] are either city employees or related to a city official."[343] A 2023 article describes life in the town:

> A small population was great for city politicians. The votes of just a handful of relatives and friends could secure an election, and council members could pay themselves high salaries, and control lucrative city jobs without the fear of losing reelection.
>
> Not only did Vernon limit its housing, but the city owns much of what housing there is. That can be useful if you want to bully electoral challengers. A 2006 LA Times investigation found that, for years, Vernon officials harassed or even evicted those who disagreed with them, including residents who tried to run against the mayor and council.[344]

For over a quarter-century after 1980, not a single contested city election was held; in 2006, all five of its council members had served continuously (and unopposed) for at least three decades.[345] Vernon provided so few actual "municipal utilities" that revenues went almost entirely to compensation; one city employee collected nearly $600,000 in salary, bonuses, and unused vacation compensation before retiring.[346] One former resident told a reporter: "By strictly limiting who can live in the city, Vernon officials handpick their constituents . . . They only allow people who are city employees. Anything that smells like residential property, they disallow."[347]

Following the 2010 criminal indictment of the industrial city's administrator, a Los Angeles council member introduced a motion calling for Vernon to be annexed into the city of 3.8 million that surrounds it on three sides: "By virtually any measure, Vernon does not appear to be operating as a city," the motion read.[348] But in stark contrast to Chicago's 1889 annexation of Pullman, a significantly more populous town, this effort went nowhere. Changes in local government law that defer to existing boundaries on border-

342. *See generally* Corwin, *supra* note 339 (describing the efforts of Vernon to attract new industries and noting "talk of private deals for big business").

343. Becerra, *supra* note 340.

344. Jackson Cantrell, *Vernon's Population Could Quadruple Due to New Zoning Change*, KCRW (Oct. 5, 2023), https://perma.cc/88GM-TFK6 (citing Becerra, *supra* note 340).

345. Becerra, *supra* note 340.

346. *Id.*

347. *Id.*

348. Sam Allen, *L.A. Councilwoman Janice Hahn Urges City to Annex Vernon*, L.A. TIMES (Oct. 28, 2010), https://perma.cc/7D5A-LSG2.

adjustment questions meant that the rotten borough, once established, could be annexed only with its mutual consent.[349]

If we are to conceptualize the "company town" as a democratic phenomenon—a territorial domain where no democratic friction exists between the governing interests of capital and realized policy outcomes—the parallels to our historical examples become clear, even as the paths (to the same destination) diverge in important respects. If Pullman represents the displacement of public governance through private law, the contemporary corporate enclave demonstrates how the same goal can be achieved alternatively through the commandeering of the public form. Rather than securing corporate dominance in local affairs through the captivity of vulnerable worker-residents (successfully excluded from local democratic processes), as in historical company towns like Pullman, industrial interests have governed Vernon without opposition through the strategic and intentional exclusion of residents who might challenge corporate rule.

C. The Distinctive Harms of the Incorporated Company Town

These foregoing examples represent the "pure case" corporate enclave: contemporary pocket boroughs, governed by spatially consolidated capital as unencumbered by internal democratic constraint. This strategy can be observed today also in the successful effort by Elon Musk to incorporate the real property under his corporate control as an independent jurisdiction, formally empowered by the state of Texas to self-govern through public lawmaking. [350] Among the broad universe of general-purpose local jurisdictions today, his model town and other similar corporate enclaves stand out as distinctive outliers—illustrating the danger of abuse under current law, in the absence of meaningful constraints.[351]

We should expect that these various forms of effective secession will remain attractive to firms seeking market advantage for as long as they remain effective vehicles for escaping democratic regulation, evading shared obligations like taxation, and accessing the powers of public authority. Many of the consequences of this form of jurisdictional exit—including the shielding of accumulated wealth from democratic use—are shared with other forms of

349. *See infra* Part IV.B. After a different former Vernon official was convicted of voter fraud in 2011, the state of California threatened to dissolve the city entirely. The Vernon City Council responded by adopting term limits, capping members' salaries, and opening a new forty-five-unit housing development that doubled its population overnight (to 200). Cantrell, *supra* note 344.

350. *See supra* notes 3-12 and accompanying text.

351. Future empirical study should seek to identify other corporate enclaves and to understand, more broadly, the degree to which these examples are representative of broader trends.

fiscal fragmentation, and well documented in those contexts.[352] But Disney's special district illustrates some of the distinctive harms presented by the self-governed corporate enclave: distorting market competition, harming local workers and other (nonresident) neighbors, and undermining democratic accountability.

A recent state audit concluded that "[b]eing exempt from the requirements that bound other large developments clearly gave Disney a leg up on the competition."[353] When Universal Studios, a few miles away, wants to expand its amusement infrastructure, it must raise capital through private borrowing and then navigate local land-use processes; once that new park is in operation, Universal pays local taxes on its assessed value and complies with various local regulations. By contrast, Disney can fund capital projects by issuing a tax-preferred municipal bond;[354] with financing secured, the company gives itself permission to build. Disney's special district allows it to avoid redistributive local taxes; the company also writes its own building codes and then enforces them.

These suggested harms are not merely speculative. During the 1980s, Disney's amusement empire was racing the nearby Universal Studios—which

352. *See infra* Part IV.B (discussing the literature on fiscal fragmentation). An analogy might be made to tax sheltering in the (more familiar) federal context. If Big Tech Co (BTC) parks its intellectual property in the Cayman Islands, it can be hard to point to a specific person who is directly harmed by that arrangement. But we generally understand that BTC's successful avoidance of tens of millions in federal tax obligations harms the public: namely by reducing the resources available for collectively funded public goods, requiring either less-generous public welfare programs or a shift in the incidence of their funding to other taxpayers. That group includes BTC's competitors, introducing distortions to market structure; we might then expect those competitors to look for opportunities to minimize their own tax burdens through similar legal vehicles. If the law provides no backstop, these strategies may become universally adopted by companies in the position to do so—in which case the forgone revenue might be quite substantial. The resulting budgetary pressures might then be used to justify cuts to antipoverty programs, or higher taxes on working families. The harmed parties are not (mainly) the BTC employees, but groups *outside* the Cayman Islands (the legal location of BTC's corporate wealth): BTC's competitors, other taxpayers now asked to pay more, participants of underfunded public programs, etc. This an extended causal chain, but is not merely speculative—the harm is quite real, particularly in the aggregate. It is the same basic playbook at the local level: Instead of moving the *legal location* of its taxable wealth offshore, BTC could achieve the same goal by drawing a new jurisdictional boundary around its taxable assets.

353. REPORT ON PAST PRACTICES, *supra* note 49, at 7.

354. Because the interest on municipal debt is generally exempted from federal income taxes, investors are willing to accept a lower interest rate than they would otherwise demand. This tax differential thus allows issuers—that is, qualifying local governments—to fund investments at a reduced cost, as compared to the alternative of (nonexempt) private financing. *See* GRANT A. DRIESSEN, CONG. RSCH. SERV., RL30638, TAX-EXEMPT BONDS: A DESCRIPTION OF STATE AND LOCAL GOVERNMENT DEBT 1-2, 7 (2018).

lacked its own government—to open the area's first movie-studio theme park. "Universal was hobbled in this competition by having to comply with land-use regulations and building inspections" while also being assessed local impact fees.[355] Disney beat its market rival by thirteen months: "about the same time it took Universal to go through the land-permitting process."[356] After decades of competing on these uneven terms, Universal has more recently demanded that its own local authorities spend public money to reduce its capital cost disadvantage.[357] Universal's vice president of properties told historian Richard Foglesong, "We saw that Disney had their interchanges paid for by the public sector . . . 'What's wrong this this picture?' we asked. We thought we should get some help too."[358] In 2023, Universal Studios petitioned to create a special purpose district encompassing its new Epic Universe theme park, scheduled to open in the summer of 2025.[359] Orange County's board of governors approved the request by unanimous consent, granting sovereign authorities—including the ability to issue tax-exempt bonds—to the territory's two landowners, Universal and Hilton.[360]

The result is a distorted playing field that shifts the determinants of market success away from fair competition and towards efforts to secure targeted state favors—including, as highest aspiration, the sovereign power of the state itself. In addition to the (firm-specific) benefits of wielding sovereign power, we should understand the corporate enclave as a vehicle for new forms of targeted deregulation—with consequences that extend beyond distortions to market competition. The commandeered municipal form functions as an effective blocking maneuver for corporations: preventing regulation and taxation by (more democratically inclusive) local governments. Foglesong describes how Disney operated its Florida parks, through the special district, as

355. FOGLESONG, *supra* note 17, at 114.

356. *Id.*

357. *Id.* at 174.

358. *Id.* While particular sovereign powers—like writing building codes and land-use regulations—are particularly helpful for companies in the amusement park industry, the example here generalizes: Governing goals like minimizing capital costs and tax obligations are compelling for any company. *Cf.* Brian Highsmith, *Regulating Location Incentives*, 74 DUKE L.J. 741, 795-96 (2024) ("When structurally powerful firms receive . . . targeted benefits from states and localities, they secure an artificial market advantage (in the form of access to capital) that is unavailable to their competitors that lack the same bargaining power vis-à-vis the state.").

359. Stephen Hudak, *Commissioners OK Special District Around Universal's Epic Universe*, ORLANDO SENTINEL (updated Oct. 11, 2023, 1:28 AM EDT), https://perma.cc/8MRY-5ES6.

360. *Id.* This new district lacks the (unusually broad) powers that had been granted to Disney's Reedy Creek district, but Universal's demand for the government—and Orange County's eagerness to facilitate it—capture the tendency towards escalation that we should expect to see, absent reform. *See infra* Part IV.B.

"an island, immune from most forms of nonfederal regulation."[361] Groups harmed by this institutional arrangement include all that could be protected by local-level regulations now voided by this effective immunity.

This category of regulation includes the various labor protections that are authorized by state and local authority, from worker safety regulation to minimum wage ordinances. The stakes are most clearly illustrated in the different conditions for workers at Disney's Florida and California parks. In California, Disney's original theme park (Disneyland) is located within the municipal jurisdiction of Anaheim, a city of around 350,000 residents.[362] In early 2018, a coalition of local unions commissioned a survey that found more than 10% resort workers had recently experienced homelessness.[363] After years of unsuccessful demands on Disney for higher pay,[364] the local union representing Disney workers succeeded in getting a local ballot question mandating that qualifying "area resort workers" be paid a wage of $18 an hour by 2022 (higher than the state minimum of $11).[365] After the initiative qualified for the ballot, Disney agreed to a $15 minimum wage for about 10,000 new Disneyland workers;[366] the company also gave more than $1.2 million to a political action committee supporting a slate of "Disney-friendly" candidates.[367] But although Disney was then (and remains today) a powerful player in local politics, Anaheim is not a company town in the democratic sense; some degree of friction exists between its governing interests and policy outcomes. This distinction matters greatly for regulatory possibilities: The

361. FOGLESONG, *supra* note 15, at 114.

362. *Cf. id.* at 58-59 (explaining the "private government idea" arose, in part, due to Walt Disney's frustration that, in Anaheim, he did not "own[] the land surrounding the park").

363. PETER DREIER ET AL., URB. & ENV'T POL'Y INST., OCCIDENTAL COLL. & DANIEL FLAMING ET AL., ECON. ROUNDTABLE, WORKING FOR THE MOUSE: A SURVEY OF DISNEYLAND RESORT EMPLOYEES 2 (2018), https://perma.cc/UH8S-EV75.

364. *See* Margot Roosevelt, *Disney Unions' Ballot Drive Seeks to Raise Wages Up to $18 an Hour for Hospitality Companies That Take Anaheim Subsidies*, ORANGE CNTY. REG. (Mar. 4, 2018, 9:50 AM PST), https://perma.cc/V9U7-M9LD ("Duarte[, head of Workers United Local 50,] said the unions decided to push for a higher living wage after Disney negotiators in Orlando's Walt Disney World refused to raise wages more than 50 cents an hour in contract talks, and when they held to a 40-cent-an-hour raise for most hotel workers in talks with Anaheim's Unite Here union.").

365. Mark Kreidler, *After Five Years in Fighting Disney in Courts, Anaheim Living Wage Law to Take Effect*, CAPITAL & MAIN (Nov. 9, 2023); https://perma.cc/G5PB-YW49; David Wagner, *Anaheim Says the Ballot Initiative to Raise Disneyland Wages Doesn't Apply to Disneyland After All*, LAIST (Oct. 9, 2018, 10:55 AM), https://perma.cc/UGB9-QPA4.

366. Wagner, *supra* note 365.

367. David Wagner, *Anaheim Passes a Minimum Wage Measure Targeting Disneyland*, LAIST (Nov. 12, 2018, 10:23 AM), https://perma.cc/N9HM-L7QD.

living-wage referendum passed, finally taking effect in 2023, after years of legal challenges.[368]

Similar forms of local-level social-welfare regulation have been the focus of recent scholarship emphasizing the progressive promise of decentralization. Richard Schragger, for example, has cited municipal minimum wage ordinances as illustrating how "cities can adopt [redistributive] policies that are not solely driven by the chase for mobile capital and [how] citizens normally marginalized by the politics of capital attraction can still assert influence over local economic policy."[369] As he observes, "municipalities have become fertile sites for labor and employment policy."[370] This is an important corrective to the fiscal federalism literature, but the corporate enclave threatens to upset the whole cart. The ability of marginalized workers to overcome mobile capital's structural power and successfully shape local policymaking processes requires that those groups be included in the relevant democratic process in the first instance. And the availability of such democratic inclusion, in turn, is directly structured by the degree of (horizontal) fragmentation at the (vertical) level of political decision-making where such policy is made.

Workers at Florida's Walt Disney World, which operates through its own special district, are not able to access this alternative avenue to a living wage; they commute to labor in a corporate enclave, where the local government that regulates their employer is their employer. This structure was no accident: Walt Disney's expansion to the jurisdiction, made contingent on the associated demand for his own government there, was specifically motivated by his frustration with the local democratic processes to which he was subjected in Anaheim.[371] This is no isolated case. Indeed, it was opposition to locally enforced workplace-safety regulations (in addition to state taxes) that had motivated Elon Musk's initial relocation of Tesla and Boring corporate headquarters to Texas.[372] At the time, Alameda County had imposed a

368. *See* Iman Palm, *Disneyland's Legal Fight Against Anaheim Wage Law Nears Conclusion*, FOX 40 (Oct. 27, 2023, 9:35 AM PDT), https://perma.cc/XG9C-GER3.

369. SCHRAGGER, *supra* note 174, at 136.

370. *Id.* at 141; *see also* Benjamin I. Sachs, Essay, *Labor Law Renewal*, 1 HARV. L. & POL'Y REV. 375, 389 (2007) (describing a shift in labor law from "a field exclusively defined by federal law to one that increasingly incorporates state and local regulation").

371. *See* FOGLESONG, *supra* note 15, at 58-59 ("He could not fix the problem[s] [of uncontrolled growth, limitations to development, and urban unrest] in Anaheim, since he neither owned the land surrounding the park nor controlled the government that should regulate it.").

372. *See* Niraj Chokshi, *Tesla Will Move Its Headquarters to Austin, Texas, in Blow to California*, N.Y. TIMES (updated Oct. 13, 2021), https://perma.cc/U6KY-DJ7C ("The move makes good on a threat that Mr. Musk issued more than a year ago when he was frustrated by local coronavirus lockdown orders that forced Tesla to pause production at its factory
footnote continued on next page

pandemic public-health closure that required the temporary halting of Tesla's manufacturing operations; Musk sued the county,[373] also threatening to shift his operations to other states "immediately" if his demands were not met.[374] The state of California took the side of Tesla, easing distancing restrictions across the state, and Alameda ultimately relented[375]—but in the meantime, lawmakers in Texas (as well as in Nevada, Georgia, Utah, and Oklahoma) had already put together generous incentive packages to entice relocation.[376]

There is little reason to believe that the outer limits of this strategy have yet been realized. Indeed, the available evidence suggests that dominant firms—wielding structural power over fragmented (and economically vulnerable) jurisdictions competing for mobile capital—will continue to innovate new forms of jurisdictional exit.[377] Recent scholarship has observed that corporate giants like Amazon are becoming more sophisticated at "devising new schemes by which state and local governments can act to reduce the firms' business costs and other liabilities in a targeted manner" through the location-incentive megadeal.[378] Many such strategies—which seek broadly to reduce business costs by eliminating taxation, offloading private costs onto the public fisc, and avoiding local regulation—share an underlying logic with the contemporary corporate enclave.

If not prevented by law, why would dominant corporations seeking competition advantage (or other benefits of sovereign power) *not* demand their own state? We may eventually come to see Reedy Creek and Snailbrook not as curious outliers but, rather, as early templates: the next iteration of an arms

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in Fremont, Calif."); J. David Goodman, *As Elon Musk Moved to the Right, His Businesses Moved to Texas*, N.Y. TIMES (updated Nov. 23, 2024), https://perma.cc/92V4-38RV.

373. Tina Bellon & Sinéad Carew, *Tesla Sues California County in Virus Factory Closure Fight, Threatens to Leave*, REUTERS (updated May 11, 2020, 11:31 AM PDT), https://perma.cc/7MR5-73JJ.

374. Elon Musk (@elonmusk), X (May 9, 2020, 9:44 AM), https://perma.cc/4ZDU-F95P ("Frankly, this is the final straw. Tesla will now move its HQ and future programs to Texas/Nevada immediately. If we even retain Fremont manufacturing activity at all, it will be dependen [sic] on how Tesla is treated in the future. Tesla is the last carmaker left in CA.").

375. Chauncey Alcorn, *California Officials Capitulate to Elon Musk, Allow Tesla Plant to Reopen*, CNN BUS. (updated May 13, 2020, 2:20 PM EDT), https://perma.cc/MN5H-FVZE.

376. Ben Klayman, *Tesla's California Fight Heats Up Competition for Jobs*, REUTERS (updated May 13, 2020, 5:50 AM PDT), https://perma.cc/PPW6-5SE5. The details were hidden from the public at the time of initial announcement, but subsequent reporting has revealed that his companies received state and local tax breaks of roughly $64 million to build the new facility. Isabelle Gius, *Tax Breaks Cushion Tesla's Texas Landing*, AM. PROSPECT (Apr. 25, 2022), https://perma.cc/UG78-DFHV.

377. *See* Highsmith, *supra* note 358, at 746.

378. *Id.*

race that has already begun to transform the political economy of American local governance.[379] Particularly in a historical moment when long-settled labor rights and other forms of regulation are under resurgent legal and political threat at the *federal* level,[380] we should indeed expect to see increased efforts by dominant corporations to escape various forms of *local* regulation. Under these dynamics, the task of ensuring that workers and other vulnerable groups retain the ability to pursue basic protections—through policymaking processes in which their interests are represented—will require new efforts to prevent (and reverse) enclaving through the municipal form.

IV. Local Government Law and the Corporate Enclave

> *Inside the containers of nations are unusual legal spaces, anomalous territories, and peculiar jurisdictions. There are city-states, havens, enclaves, free ports, high-tech parks, duty-free districts, and innovation hubs. The world of nations is riddled with zones—and they define the politics of the present in ways we are only starting to understand.*
>
> —Quinn Slobodian[381]
>
> *A good kingdom is better than a poor democracy.*
>
> —Henry McCleary, founder and town boss of McCleary, Washington[382]

In his 2021 State of the State address, Nevada's Democratic governor Steve Sisolak outlined a series of policy proposals to attract economic investment to the state.[383] In addition to initiatives supporting job training, infrastructure improvements, and community education, Sisolak proposed authorizing a new form of political subdivision that would be available to "new companies

379. *Cf.* RICHARD WHITE, THE TRANSCONTINENTALS AND THE MAKING OF MODERN AMERICA 512 (2011) (observing how, through demands of state aid that preview the contemporary location-incentive megadeal, "transcontinental railroad corporations transformed [the American state] by making the government an arena in which the corporations themselves competed").

380. *See, e.g.*, Dylan Gyauch-Lewis, *The Supreme Court's War on the NLRB and Workers*, PROMARKET (Sept. 10, 2024), https://perma.cc/VW3J-YV8W ("Both injunctions are part of an ongoing challenge to the NLRB's very existence based on the premise that its basic structure is unconstitutional. The end goal? To enable corporate titans like Elon Musk to elude federal enforcement of workers' rights.").

381. QUINN SLOBODIAN, CRACK-UP CAPITALISM: MARKET RADICALS AND THE DREAM OF A WORLD WITHOUT DEMOCRACY 2 (2023) (emphasis omitted).

382. ERNEST C. TEAGLE, OUT OF THE WOODS: THE STORY OF MCCLEARY 9 (1956).

383. Riley Snyder, Michelle Rindels, Megan Messerly & Tabitha Mueller, *Sisolak Sets Vision of a Future Nevada Economy in State of State Address Amid Economic, Health Crisis*, NEV. INDEP. (Jan. 19, 2021, 6:34 PM), https://perma.cc/3NFR-KGWU.

creating groundbreaking technologies."[384] If enacted, qualifying tech companies would have the legal right to govern, as sovereign, through autonomous "innovation zones."[385] Upon promising to make significant capital investments, such companies could secede from the jurisdiction of the existing county and govern through an unelected local board of supervisors—a majority of whom (two of three) would be nominated by the company.[386] Provided that the total number of registered voters residing within the zone remained under 100, no general elections would be required.[387] Historian Quinn Slobodian described the proposal as representing "the return of the company town a century later, made over as the 'innovation zone.'"[388]

Subsequent reporting revealed that the proposal had been championed by the cryptocurrency company Blockchains LLC, which had provided $60,000 to Governor Sisolak's campaign and affiliated political action committee.[389] In 2018, Blockchains purchased 67,000 acres of land at an industrial center located outside Reno;[390] it later announced plans to develop a futuristic "smart city" on the site.[391] To qualify for use of the legal authority, companies would need to be developing "innovative technology" on "at least 50,000 contiguous acres" of

384. *Id.*

385. *Id.*

386. Bill Draft Authorizing the Creation of Innovation Zones §§ 11(1)(d)-(e), 14(1)-(3), 15(1) (2021), https://perma.cc/GGW4-YJH4.

387. *Id.* § 30(1).

388. SLOBODIAN, *supra* note 381, at 3 (quoting Kimberly Adams & Benjamin Payne, *Nevada Considers Bringing Back the "Company Town" for the Tech Industry*, MARKETPLACE (June 30, 2021), https://perma.cc/KD87-AQAR).

389. Riley Snyder & Michelle Rindels, *"Innovation Zones" Promoted by Sisolak Would Create Semi-Autonomous County at Behest of Blockchains LLC*, NEV. INDEP. (Feb. 3, 2021, 5:52 PM), https://perma.cc/SKM6-DDSA; Sam Metz, *In Nevada Desert, A Technology Firm Aims to Be a Government*, AP NEWS (Feb. 13, 2021, 8:13 AM PDT), https://perma.cc/MVD6-2RM2 ("[Blockchains CEO Jeffrey] Berns, whose idea is the basis for draft legislation that some lawmakers saw behind closed doors last week, said traditional government doesn't offer enough flexibility to create a community where people can invent new uses for this technology.").

390. Nathaniel Popper, *A Cryptocurrency Millionaire Wants to Build a Utopia in Nevada*, N.Y. TIMES (Nov. 1, 2018), https://perma.cc/2PYZ-Q4AE ("Mr. Berns has managed to win over local officials who are eager for economic development. Nevada's governor, Brian Sandoval, read a proclamation that named the Blockchains property 'Innovation Park' at an event last month where Mr. Berns sat on a panel with the governor and Elon Musk, the chief executive of Tesla.").

391. Snyder & Rindels, *supra* note 389 ("Blockchains already envisions developing 'Painted Rock Smart City,' which over a 75-year period would include an estimated 36,000 permanent residents. . . . The smart city is envisioned to eventually employ 1 in every 50 Nevadans and account for nearly 2 percent of all wages produced in the state.").

undeveloped land in their possession.[392] According to a promotional memorandum prepared by Blockchains, this new authority would "provide the legal, fiscal and governmental structure for [the company's proposed] Smart City to develop, operate and grow."[393]

Blockchains' proposal would allow the company, and other qualifying tech firms, to assume control over "police and fire protection, public works, parks and public recreation facilities, planning and zoning, business licensing and regulation, water, treatment of wastewater, and other public utilities, public health and healthcare, and social services" within their self-governed zones.[394] The proposed statutory language would grant the new governing body sovereign power to "perform the duties and provide the services" of an extensive list of county offices,[395] which could be consolidated into a single office as determined by the (self-governed) board.[396] The draft further clarified that the governing body's authority would "supersede[] the exercise of that power or duty by the county in which the Innovation Zone is situated."[397] Among the state powers expressly delegated to qualifying firms: the right to establish an independent local judicial system with "jurisdiction over cases filed [within the Zone] on or after the date that the creation of the justice court takes effect."[398]

Amid opposition from a "broad coalition of progressives, Republicans, tribal leaders and Storey County officials," Governor Sisolak later backed away

392. Bill Draft Authorizing the Creation of Innovation Zones, *supra* note 386, § 11(1)(a), (2)(a).

393. BLOCKCHAINS, OPPORTUNITY & INNOVATION IN NEVADA 36 (2020), https://perma.cc/7NG9-M5UN; *see also* Metz, *supra* note 389 ("'For us to be able to take risks and be limber, nimble and figure things out like you do when you're designing new products, that's not how government works. So why not let us just create a government that lets us do those things?' Berns said.").

394. BLOCKCHAINS, *supra* note 393, at 37.

395. Bill Draft Authorizing the Creation of Innovation Zones, *supra* note 386, § 20(1) (identifying the "offices of county clerk, county recorder, sheriff, county treasurer, county assessor, county auditor, district attorney and public administrator").

396. *Id.* § 20(2).

397. *Id.* § 14(3); *see also id.* § 22(1) ("The board of county commissioners and the officers of the county within which the Innovation Zone is situated no longer have authority over the Innovation Zone and may not impose any taxes, fees or other charges within the Innovation Zone."); *id.* § 22(2) ("County ordinances no longer apply within the Innovation Zone.").

398. *Id.* § 19(3). This provision was reminiscent of a provision, offered by Wisconsin Governor Scott Walker to Foxconn as part of an elaborate incentive package, creating an exclusive legal right to "appeal any unfavorable judicial or regulatory decision immediately and directly to the state's business-friendly Supreme Court." Highsmith, *supra* note 358, at 782.

from the Innovation Zone legislation.[399] Citing this lack of support, Blockchains announced that it would no longer pursue the construction of its smart city.[400] But the proposed legal framework is worth our careful study, not only because it previews the likely destination of this domestic trend.[401] The proposed Innovation Zone bears a striking resemblance to various capital-governed private cities that have been implemented globally, typically through iterations of the semi-autonomous "special economic zone."[402] The consequences can be observed in the for-profit city of Próspera, located on the Honduran island of Roatán, privately operated by a Delaware-based company that "courts foreign investors through low taxes and light regulation."[403]

After hasty elections following a 2009 military coup, leaders of the newly incumbent right-wing National Party—aided by a group of American advisors—undertook a restructuring of the Honduran constitution.[404] Under

399. Zachary Bright, *Blockchains Stays Bullish on "Innovation Zones," Promises Economic Opportunity to Skeptical Lawmakers*, NEV. INDEP. (Aug. 13, 2021, 2:00 AM), https://perma.cc/3GU4-H35Y; *see also* Riley Snyder & Michelle Rindels, *Governor Stepping Away from Plan for Autonomous "Innovation Zones," A Concept Backed by Blockchains*, NEV. INDEP. (updated Apr. 26, 2021, 11:35 AM), https://perma.cc/L889-3NQ9.

400. Letter from Jeffrey Berns, CEO, Blockchains, to Steve Sisolak, Governor, Nevada (Sept. 30, 2021), https://perma.cc/6YCJ-D8N2 ("Blockchains was fully prepared to double down on this commitment through its smart city project in an Innovation Zone, but the State has not put its full support behind the project. As we have always maintained, we cannot make the massive investment on our part, bring in other investors, or bring in the necessary partners to develop the project without that.").

401. Whether the cases described here should be understood as representing a new or growing "trend" is substantially an empirical question that lies beyond the scope of this Article.

402. *See* Nguyen, *supra* note 180, at 95-113 (identifying "the globalization of the company town business model" and documenting "the rise to prominence of transnational suppliers, the proliferation of special zones, the creation of modern industrial towns, and the horizontal networks of global supply bases"); *cf.* SLOBODIAN, *supra* note 381, at 4 ("Champions of the zone suggest that free-market utopia might be reached through acts of secession and fragmentation, carving out liberated territory within and beyond nations, with both disciplining and demonstration effects for other states.").

403. Rachel Corbett, *The For-Profit City That Might Come Crashing Down*, N.Y. TIMES MAG. (updated Sept. 19, 2024), https://perma.cc/PJT6-UC3Y.

404. *See* SLOBODIAN, *supra* note 381, at 187-201; RAYMOND B. CRAIB, ADVENTURE CAPITALISM: A HISTORY OF LIBERTARIAN EXIT, FROM THE ERA OF DECOLONIZATION TO THE DIGITAL AGE 227-32 (2022). The membership of the "Committee for the Application of Best Practices" overseeing the governance of the Honduran special economic zones is revealing:

> There are twenty-one people on the committee. Three are Honduran. U.S. members include Mark Klugmann, speech writer for presidents Reagan and George H.W. Bush, and image consultant to Honduran post-coup president Lobo; Grover Norquist, founder of Americans for Tax Reform; Richard Rahn, vice president of the Chamber of Commerce during the Reagan administration and senior member of the Cato Institute; Loren A. Smith, federal judge and chief campaign advisor to Reagan in 1976 and 1980; Reagan's son, Michael;

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this restructuring, "the Honduran state has established the legal and institutional framework for conceding control of fragments of its sovereign national territory for the creation of pockets of corporate autonomy."[405] New legislation, authorized by these amendments, allowed private investors to secede from the country's legal authority through the creation of "zones for employment and economic development" (ZEDEs) within its territorial domain.[406] The Honduran Supreme Court initially rejected the charter-city law as a violation of national sovereignty;[407] weeks later, congressional president (and future president of Honduras) Juan Orlando Hernández unseated the four justices who had ruled against it—replacing them with reliable loyalists who would later, following a 2013 constitutional amendment, approve the ZEDEs in 2014.[408] (Hernández currently is serving a forty-five-year prison term in the United States, extradited for trafficking-related corruption charges.[409])

Under this authority, the self-governed zones "allow private corporations to enjoy an astonishing level of autonomy, including establishing their own courts, laws, tax systems, and private police forces—all with virtually no transparency or accountability mechanisms."[410] Of particular note, "the decisions of ZEDE courts are not subject to appeal to the Honduran Supreme Court."[411] Historian Raymond Craib summarizes the institutional structure of the new jurisdictions:

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and Mark Skousen, former CIA economic analyst and Forbes columnist. The list also includes a Danish banker, a Peruvian economist, and an Austrian general secretary of the Friedrich Hayek Institute.

Danielle Marie Mackey, *"I've Seen All Sorts of Horrific Things in My Time. But None as Detrimental to the Country as This."*, NEW REPUBLIC (Dec. 14, 2014) ("These people are responsible for deciding the bottom-line environmental, legal, and labor standards investors must follow.").

405. Beth Geglia, *Honduras: Reinventing the Enclave*, 48 NACLA REP. ON AMERICAS 353, 354 (2016).

406. Guillaume Long & Alexander Main, *How a Start-Up Utopia Became a Nightmare for Honduras*, FOREIGN POL'Y (Jan. 24, 2024, 11:13 AM), https://perma.cc/4A67-E7UH.

407. *Honduras Court Bans Private Cities Project*, BBC NEWS (Oct. 18, 2012), https://perma.cc/95ZE-TRQD; RNS, *Model Cities Definitively Unconstitutional*, HONDURAS CULTURE & POLS. (Oct. 17, 2012, 9:34 PM), https://perma.cc/HDH3-R7UC.

408. CRAIB *supra* note 404, at 225-26; Adriana Peralta, *Honduran Supreme Court Rejects Claims of ZEDE Unconstitutionality*, PANAM POST (June 21, 2014), https://perma.cc/AE9E-U2EE; Geglia, *supra* note 405, at 356.

409. Press Release, U.S. Dep't of Just., Juan Orlando Hernández, Former President of Honduras, Sentenced to 45 Years in Prison for Conspiring to Distribute More than 400 Tons of Cocaine and Related Firearms Offenses (June 26, 2024), https://perma.cc/QS67-R4MA.

410. Long & Main, *supra* note 406.

411. Geglia, *supra* note 405, at 355.

> [Special zones] would be exempt from nearly all local and federal laws. As few as six of the Honduran constitution's 379 articles would have to apply within a ZEDE. Neither freedom of the press nor habeas corpus would have to be guaranteed and the cities could be built in areas that were populated without the prior consent of the inhabitants.[412]

Mechanisms of local democracy are suppressed as a feature of the private city's design: The right to vote for certain council seats in Próspera is reserved for property owners (and then allocated on the basis of acreage).[413]

This global private-city movement is representative of what historian Vanessa Ogle describes as "archipelago capitalism": a distinctive form of political economy that is facilitated by an "economic, legal, and political regime of smaller, often enclave-like territories and spaces that [have] thrived on the sidelines of a world otherwise increasingly dominated by nation-states."[414] Reviewing the intellectual history supporting this trend, Slobodian describes how this form of "crack-up capitalism" works by "punching holes in the territory of the nation-state, creating zones of exception with different laws and often no democratic oversight."[415] Craib has similarly documented a form of "exit libertarian[ism]" that seeks market freedom "not through collective struggle and social solidarity but through territorial and individual secession"—a form of jurisdictional exit that "would allow one to . . . become a member of an alternative, even if state-like, territorial entity governed solely by private contract."[416]

But one need not look beyond our own borders to find examples of capital-governed private cities. To a degree that is not widely appreciated, American local government law has provided an effective vehicle for capitalists to escape—through private governance and jurisdictional exit—the democratic obligations of political community. Doctrinal developments over the past century have facilitated private tyranny through two pathways that match, with neat precision, the strategies that Madison identified so long ago[417]: (1) by allowing owners of capital to evade democratic processes through new forms of governance-by-contract, and (2) the facilitation of territorial fragmentation

412. Craib, *supra* note 404, at 226 (footnote omitted).

413. Corbett, *supra* note 403.

414. *Vanessa Ogle*, YALE UNIV., https://perma.cc/U2XL-9GN5 (archived Apr. 27, 2025); *see also* Vanessa Ogle, *Archipelago Capitalism: Tax Havens, Offshore Money, and the State, 1950s-1970s*, 122 AM. HIST. REV. 1431, 1432 (2017) ("An archipelago-like landscape of distinct legal spaces—sometimes carved out within a national territory, sometimes located in smaller territorial units on the margins of more sizable states, sometimes hosted in city-states—re-created some of the [legal and political] unevenness that had characterized the nineteenth-century world of empire.").

415. SLOBODIAN, *supra* note 381, at 3.

416. Craib, *supra* note 404, at 8-9.

417. *See supra* Part I.C.

that allow domination by faction within contemporary pocket boroughs. These developments have, in turn, shaped the institutional trajectory of the American company town.

A. Functional Fragmentation and the Public-Private Collapse

Over the past half-century, since shortly before Disney's 1967 special legislation, local government law has been defined by a shift *away* from the general-purpose municipal form—and a return to governance-by-contract in new institutional forms. In the unincorporated ski-resort community of Big Sky, Montana, for example, one private-equity firm (CrossHarbor Capital Partners) has used a patchwork of hundreds of spatially overlapping special districts, homeowners' associations, volunteer boards, and nonprofits to consolidate its private control over the traditional functions of local government.[418] In their use of real-property ownership and private contracting to displace public law, these institutional innovations bear a striking resemblance to the forms of private governance that structured community life in the historical company town.[419]

Recent research has documented how "the proliferation of quasi-public institutions insulates much of the policy apparatus of urban regions from the 'political'—that is to say, the democratic—realm."[420] Consider, for example, the emergence of the special-district/special-purpose government, which by the end of the twentieth century had emerged as "the most common and fastest growing government type in the nation" despite being "relatively rare as recently as the 1950s"[421] The institutional form itself had dated back to the

418. Nick Bowlin, *Slippery Slope*, HARPER'S MAG. (May 2024), https://perma.cc/JAT4-8TAA. In 1972, the oldest and largest homeowners' association in Big Sky "assumed the mantle of municipality" in the absence of a town government. *Id.* (quoting *About*, BIG SKY OWNERS ASS'N, https://perma.cc/V8HV-UQ5A (archived Apr. 27, 2025)).

419. *See supra* Part II.A; *cf.* EVAN MCKENZIE, PRIVATOPIA: HOMEOWNER ASSOCIATIONS AND THE RISE OF RESIDENTIAL PRIVATE GOVERNMENT 20 (1994) ("Ebenezer Howard wanted his Central Council [governing the planned communities that he proposed in 1902] to have greater powers than a city, and he accomplished that goal by basing the council's powers in property ownership rather than in principles of government. . . . [H]e would probably recognize the same power dynamic at work in today's residential private governments.").

420. Dennis R. Judd, Evan McKenzie & Alba Alexander, *Introduction: Shadow Governments and the Remaking of the American Local State*, *in* PRIVATE METROPOLIS: THE ECLIPSE OF LOCAL DEMOCRATIC GOVERNANCE 1, 3 (Dennis R. Judd, Evan McKenzie & Alba Alexander eds., 2021) ("Much of the responsibility for [local governance and service provision] is now located outside the municipality, in a local state made up of a multitude of institutions that exist largely beyond public awareness and accountability.").

421. KATHRYN A. FOSTER, THE POLITICAL ECONOMY OF SPECIAL-PURPOSE GOVERNMENT, at ix (1997).

early days of the republic: created by special legislative act to build roads, canals, bridges, and other local infrastructure.[422] But the New Deal marked a turning point in its *usage*[423]—which has continued to expand over the past half-century, rising over threefold between 1952 and 2022.[424] The scope of these districts' governing authority has likewise expanded: growing in some states—like Florida, as illustrated by Reedy Creek—to include "nearly all the powers of municipalities, without the [democratic] limitations of general-purpose local government."[425]

Almost precisely at the historical moment that the previous form of the unincorporated "company town" was nearing its end,[426] this trend opened up new possibilities for institutionalizing private governance through the quasi-public legal form. But it was not the only emerging legal mechanism by which owners of (spatially concentrated) real property would displace the general-purpose municipality. Around the same time, beginning in the mid-1960s, private residential communities "became the predominant form of new housing construction in the United States," quickly expanding in both number and reach, to "carry out what once would have been the responsibilities of local governments."[427] These community forms are characterized by "virtually all of

422. Barbara Coyle McCabe, *Special Districts: An Alternative to Consolidation*, *in* CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES: RESHAPING THE LOCAL GOVERNMENT LANDSCAPE 131, 142 (Jered B. Carr & Richard C. Feiock eds., 2004); FOSTER, *supra* note 421, at 15; *cf.* Conor Clarke & Henry Hansmann, *Special-Purpose Governments*, 92 U. CHI. L. REV. 633, 639 (2025) (reviewing this history and arguing that "modern [special-purpose governments (SPGs)] do not descend from the early SPG-like corporations in the original United States, but from later efforts to solve property and resource problems in the western United States").

423. During the early twentieth century, progressive reformers "saw special districts as problematic"—"valued as apolitical, technically proficient entities, but decried as generators of metropolitan fragmentation." McCabe, *supra* note 422, at 143. Responding to the Great Depression, President Roosevelt "promoted the use of public authorities and special districts to accomplish many public aims"; over the next several decades, "the chief proponents of special districts began to shift from national leaders to state and local executives and private entrepreneurs." Jerry Mitchell, *Public Enterprises in the United States*, *in* PUBLIC ENTERPRISE MANAGEMENT: INTERNATIONAL CASE STUDIES 67, 69 (Ali Farazmand ed., 1996); McCabe, *supra* note 422, at 145.

424. Special-Purpose Local Governments by State: Census Years 1942 to 2022, U.S. Census Bureau (2022), https://perma.cc/4QQK-662N (to locate, click "View the live page," then download Table 4).

425. Evan McKenzie, *Phantom Governments: Multiple-Function Special Districts as Substitutes for Municipalities*, *in* PRIVATE METROPOLIS, *supra* note 420, at 45, 45.

426. *See supra* Part I.A.

427. EVAN MCKENZIE, BEYOND PRIVATOPIA: RETHINKING RESIDENTIAL PRIVATE GOVERNMENT, at ix (2011). For example, Joel Garreau describes Sun City, Arizona, a "privately owned development" with 46,000 residents "that has fervently resisted incorporation into any municipality in order to avoid a new level of taxation," while having simultaneously "taken on many trappings of a city" including the operation of

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the indicia that [legal theorists] would have us associate with a government"[428]—but are governed through the private law of contract: ruled by "covenants and servitudes, instead of city ordinances."[429] The resulting transformation of local governance has been described by Evan McKenzie as representing perhaps "the most extensive and dramatic privatization of public life in U.S. history."[430]

One of the common features across these various institutional forms is the use of private law to avoid representative electoral democracy (which Madison termed the "republican principle"[431]). Under a line of Supreme Court decisions beginning in 1973,[432] many special-purpose districts have been exempted from "the requirements of local democratic representation" that otherwise attach to the municipal form—including, notably, universal adult resident enfranchisement and equal population representation.[433] Meanwhile, state

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libraries and parks and an art museum. JOEL GARREAU, EDGE CITY: LIFE ON THE NEW FRONTIER 184-85 (1991). Within municipalities, jurisdictional subunits like the "business improvement district" have additionally proliferated to assume the responsibility for many local services; their "stated objective is to advance the interests of the business community within [their] boundaries." Clayton P. Gillette, *The Subdivided City*, 133 YALE L.J. 2701, 2712-15, 2728 (2024).

428. Robert C. Ellickson, *Cities and Homeowners Associations*, 130 U. PA. L. REV. 1519, 1522 (1982).

429. GERALD E. FRUG, RICHARD T. FORD, DAVID J. BARRON & MICHELLE W. ANDERSON, LOCAL GOVERNMENT LAW: CASES AND MATERIALS 65 (7th ed. 2022); *cf.* Maureen E. Brady, *Covenants and the Contract Clause*, VA. ENV'T L.J. (forthcoming 2025) (manuscript at 6), https://perma.cc/LTD3-KHCU ("[A]lthough covenants were in use as a planning tool in the United States by the 1820s and 1830s, they achieved much more power and prominence after the Civil War, in the nascent 'suburb' in the 1890s and accelerating after World War II.").

430. MCKENZIE, *supra* note 427, at 1.

431. *See supra* Part I.C.

432. *See* Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719, 720-21, 734-35 (1973); Ball v. James, 451 U.S. 355, 357, 371-72 (1981). *See generally* Richard Briffault, *Who Rules at Home?: One Person/One Vote and Local Governments*, 60 U. CHI. L. REV. 339, 359-84 (1993) (describing this case law).

433. Briffault, *supra* note 432, at 366; *see also* Nadav Shoked, *Quasi-Cities*, 93 B.U. L. REV. 1971, 1988 (2013) ("An array of modern court decisions and legislative acts created a set of rules that apply to cities, as the primary units of political local government, but not to special districts. As a result, the distinction between a city and a special district in contemporary U.S. law is extremely significant: if an entity is considered a special district, then certain rules respecting representation, financing, and administration apply."). Indeed, Disney actually debated governing through special district without the municipal form, but the law on one-person-one-vote was still developing at that time—and Disney's lawyers feared loss of control. *See* FOGLESONG, *supra* note 15, at 58-64. Under this more recent line of case law, however, such concerns would have been allayed. In combination with other changes in Florida state law that have "facilitate[d] the rapid spread" of multiple-function special districts, many of the authorities that Disney desired could be attained today without needing to secure a special act of the

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legislatures have generally avoided interfering with the regulatory prerogative of residential private governments[434]—even as they "engage in many activities that would be prohibited if they were viewed by the courts as the equivalent of local governments."[435]

These contemporary examples of governance-by-contract have been defended, by lawmakers and scholars alike, through market logics that are notably similar to those used by town bosses like Pullman to justify the absence of representative democracy in their model towns.[436] McKenzie has described how residential associational entities "operate outside constitutional restrictions because the law views them as business entities rather than governments."[437] A similar logic has been extended to certain *public authorities*, created by the states and operating under their delegated authority.[438] For many scholars, particularly those influenced by the public-choice perspective, legal deference to such quasi-public authorities is celebrated precisely because their governance structures allow them to evade representative democratic processes.[439]

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state legislature—even while maintaining property-based voting. McKenzie, *supra* note 425, at 48.

434. *See* MCKENZIE, *supra* note 427, at 93 ("[N]early all state legislatures have been reluctant to tamper too dramatically with the private governments of [common-interest development] housing."); *see also* MCKENZIE, *supra* note 419, at 150-74 (reviewing court decisions and legislation in California related to the public regulation of common-interest developments).

435. MCKENZIE, *supra* note 419, at 154.

436. Robert Ellickson's classic defense of the homeowners' association as a vehicle for the exercise of decentralized power ("the obvious private alternative to the city"), for example, emphasized the efficiency benefits of property-based voting. Ellickson, *supra* note 428, at 1519, 1544 ("Because the intensity of a voter's interest in a community matter is likely to be positively correlated with the voter's economic stake in the community, voting by economic stake appears to be a surer route to allocative efficiency than voting by residency would be."); *see also* MCKENZIE, *supra* note 419, at 143 ("The rationale [for deferring to common-interest developments' governing authority] is neither completely authoritarian nor one that rests entirely on cooperation with and respect for the rights of neighbors. It is a corporate, business, and property-oriented rationale.").

437. MCKENZIE, *supra* note 419, at 21; *see also* Lee Anne Fennell, *Contracting Communities*, 2004 U. ILL. L. REV. 829, 831 ("The servitudes that form the backbone of private developments are usually treated as autonomy- and value-enhancing private contractual arrangements that are presumptively valid.").

438. The Supreme Court has justified its constitutional relaxation of voting-weight requirements for proprietary governments on the basis that their essential purpose is akin to "business enterprises, created by and chiefly benefiting a specific group of landowners." Ball v. James, 451 U.S. 355, 368 (1981).

439. Writing in 1981, for example, Paul Peterson praised the law's deference to independent authorities like special-purpose districts precisely because their structure allowed them to evade democratic processes. PETERSON, *supra* note 174, at 134 ("Operating like

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Public law's increasing deference to private (and quasi-public) shadow governance has provided new pathways for consolidated capital to govern without democratic constraint. Although corporate domination does not represent a typical use of these institutional arrangements, particular design features—including the use of property-based voting and the legal insulation of regulation through private contract—make them ripe for this form of abuse. Moreover, these various contemporary governance-by-contract strategies can all be combined with jurisdictional fragmentation to protect private prerogatives from public accountability. Consider the resolution to Disney's recent conflict with Governor Ron DeSantis. Days before Florida took over administration of the company's self-governed special district, Disney entered into a contractual agreement with the district board (still under its control) that indefinitely protected its control over land use and other regulatory matters through restrictive covenants and an expansive development agreement.[440]

As Nadav Shoked has observed, contemporary forms of shadow governance that displace public law and mechanisms for self-governance "can lead, and indeed have led, to the establishment of quasi-cities that, at least for a period of time, are little more than company towns."[441] More broadly, scholars of urban governance in the United States have documented an "institutional convergence" that is still underway: where the institutional vehicles facilitating private governance-by-contract "are becoming more governmental, and local governments are increasingly taking on the attributes of private corporations."[442] This effective privatization of public authority has, in many cases, provided capital with the ability to strategically toggle between the public and private forms—enjoying the legal authority of both without the obligations of either.[443]

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private firms, these independent authorities see little point in public discussion."). Briffault has observed that business improvement districts are, similarly, defended by champions who believe "the districts' private nature is the source of their success." Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365, 372 (1999).

440. *See* Brooks Barnes, *DeSantis's Allies Discover Disney Evaded Florida's Move to Rein It In*, N.Y. TIMES (Mar. 30, 2023), https://perma.cc/AZ9U-5W2F ("'The [new] board loses, for practical purposes, the majority of its ability to do anything beyond maintain the roads and maintain basic infrastructure,' Ron Peri, a member of the new board, said at the meeting.").

441. Shoked, *supra* note 433, at 2007 (footnote omitted).

442. MCKENZIE, *supra* note 427, at xiii.

443. *See* McKenzie, *supra* note 425, at 48 ("Florida law has . . . given developers the power to act through the special district government when it suits them, while on other occasions they can conduct their affairs directly through the private corporation when that is more advantageous."); GARREAU, *supra* note 427, at 194-95 (describing how one quasi-public government "presents itself to the public in [various] guises, depending on

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B. Territorial Fragmentation and the Captured State

The critical early twentieth-century transformation in the governance of the (democratically conceptualized) company town—from rulemaking through private law, to the commandeering of the municipal form—was prompted by legal changes that directly enabled the establishment of corporate enclaves wielding public powers. State-level jurisdictional-formation laws today broadly defer to incorporation efforts by spatially concentrated residential communities with aligned governing interests—without any close examination of the nature of those interests, or consequences for residents outside the proposed boundaries.

To the extent that courts have recognized the dangers of faction domination within the incorporated municipality, the problem is typically understood as a violation of federal constitutional prohibitions against the establishment of religion[444] and protected-class discrimination,[445] or as an issue of free assembly.[446] These violations are best understood as one of the consequences of unchecked faction rule, analogous to the particular employment practices now policed under labor law. But this underlying faction fear has not been generalized: Only rarely has our public law—and in particular, the state laws that govern municipal incorporation and contestation over jurisdictional boundaries—recognized the danger of corporate domination through the municipal form.[447]

As a general matter, current law makes no distinctions that might allow for express consideration of such concerns: homogenous (or, per Madison,

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which purpose suits the board of directors"—"mix[ing], match[ing], and retain[ing] all these identities to its own ends").

444. *See, e.g.*, Oregon v. City of Rajneeshpuram, 598 F. Supp. 1208, 1211 (D. Or. 1984) ("Because of the interrelationship of the religious and for profit corporations that own and control all of the real property within the City of Rajneeshpuram, the sovereign power exercised by the City is subject to the actual, direct control of an organized religion and its leaders.").

445. *See, e.g.*, Gomillion v. Lightfoot, 364 U.S. 339, 341 (1960) ("The essential inevitable effect of this redefinition of Tuskegee's boundaries is to remove from the city all save four or five of its 400 Negro voters while not removing a single white voter or resident. The result of the Act is to deprive the Negro petitioners discriminatorily of the benefits of residence in Tuskegee, including, inter alia, the right to vote in municipal elections.").

446. *See, e.g.*, Marsh v. Alabama, 326 U.S. 501, 507 (1946) ("Whether a corporation or a municipality owns or possesses the town[,] the public in either case has an identical interest in the functioning of the community in such manner that the channels of communication remain free.").

447. *But see In re* Incorporation of Borough of Glen Mills, 558 A.2d 592, 595 (Pa. Commw. Ct. 1989) ("Here we have one land owner who now says I want to separate and govern myself. If this were allowed, how far would it go: colleges, universities, sundry institutions, corporations, larger land owners, perhaps smaller too, would break-off at will from Townships and into multi-separate boroughs.").

faction-dominated) territorially proximate communities can organize themselves into local governments relatively free from legal constraint. Indeed, to the extent that public law regulates the process of jurisdiction formation, the demonstrated homogeneity of interests may often be more likely to justify the creation of a separate jurisdiction (with forms of collective public power over its own domain) than it is to be a legal obstacle. As Richard Briffault has noted, in most states, "[t]he principal criterion for deciding whether a municipality will be incorporated is whether the local people want it"—the upshot being that "[t]here are few limits on local discretion."[448] Where corporate faction aims to create its own proprietary dominion from a rotten borough—populated only by its loyal subjects—this criterion will always and easily be met.

Richard Thompson Ford summarizes the broader rule: "Local government formation . . . is considered a process in which the government merely recognizes or facilitates the desires of a preexisting, organic social group."[449] The consequence is that strategically manipulated local governments, the homogeneity of which would evoke strict scrutiny in the context of districted boundaries for electoral representation, are left "immune from constitutional attack" and "free from scrutiny in all but the most obvious cases of illegitimate state motivation."[450] This legal deference has in some cases facilitated the creation of company-dominated municipalities, whose official functions are dedicated towards the interests of a single firm: the complete merger between corporate and public governance, achieved through ostensibly democratic process rather than as returns to property ownership.

Such outcomes are at the periphery of current scholarship, which has tended to focus on other democratic considerations that are implicated in the institutional design of local governance. The contemporary literature on local government law, in contrast to fields like labor history and urban planning, has devoted surprisingly little attention to the company town. Some portion of this research gap can be explained by the general tendency to define the "company town" in reference to historically bounded aspects of the employment relationship—rather than as an enduring democratic concern that can manifest in different institutional forms. It may be related also to the institutional consistency that virtually all of the communities conventionally recognized as belonging to the category were not, in the formal legal sense, local governments.[451] But the absence is nevertheless striking, particularly

448. Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 74 (1990).

449. Richard Thompson Ford, *Geography and Sovereignty: Jurisdictional Formation and Racial Segregation*, 49 STAN. L. REV. 1365, 1370 (1997).

450. *Id.* at 1370-71.

451. *See supra* Part II.A.

given the attention that has been given to the democratic virtues and costs of jurisdictional fragmentation and programmatic decentralization.

Classic arguments in favor of decentralization—supporting the combination of jurisdictional fragmentation and devolution of governing authority to those smaller units—have tended to emphasize the democratic benefits of community self-governance, including democratic citizenship,[452] policy experimentation,[453] and the matching of local policy to local preferences, as sorted across local boundaries. The public-choice literature that followed the influential account of Charles Tiebout,[454] for example, has generally supported jurisdictional fragmentation for these reasons.[455] Indeed, a number of scholarly defenses of fragmentation have suggested that empowering the local might provide a bulwark against corporate power or elite rule more broadly.[456]

Skeptics of local control, meanwhile, have tended to emphasize that jurisdictional fragmentation creates opportunities for wealth hoarding, entrenches racial segregation, and makes it more difficult to administer public

452. *See* Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057, 1068 (1980).

453. *See* New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.").

454. Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

455. *See* Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1120 (1996) ("[T]he public choice school celebrates this [decentralized] governance structure, claiming it creates a metropolitan 'market place' that expands the range of public policy choices available to residents, increases their satisfaction with local government services and decisions, and improves the responsiveness of local government to citizen preferences."); *see also* David Schleicher, *The City as a Law and Economic Subject*, 2010 U. ILL. L. REV. 1507, 1508-09 ("The normative takeaway from the Tiebout model literature is clear: metropolitan regions should be divided into many local governments that are free to provide local public services in an unrestricted way, as this will ensure that mobile citizens receive their desired package of public services.").

456. *See, e.g.*, Heather K. Gerken, *The Supreme Court, 2009 Term—Foreword: Federalism All the Way Down*, 124 HARV. L. REV. 4, 7-8 (2010) (arguing that local institutions uniquely allow minority groups to exercise a "muscular form of voice" in policymaking); Richard C. Schragger, *The Political Economy of City Power*, 44 FORDHAM URB. L.J. 91, 131-32 (2017) (suggesting that "city power" holds promise for countering economic inequality caused by market capitalism); *cf.* K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679, 682 (2020) (observing that a growing set of social movement actors has in recent years revived interest in "community control" as a means of "accomplish[ing] two transformative goals: first, contesting deep structural inequalities of race and class; and second, building and institutionalizing more direct forms of control over local governance").

services.[457] Echoing Madison's concern, others have written about fragmentation as facilitating the enclaving of unified interests.[458] More broadly, scholars like Briffault have emphasized the consequences of externalities within fragmented and uncoordinated metropolitan areas.[459] These accounts have often sounded concerns about wealth protection, and in some cases even corporate power specifically. But they have not generally centered the democratic concern of corporate capture over fragmented units of local governance—as represented by the company town.[460]

One important lesson from this history, as demonstrated by the rotten boroughs: Questions regarding jurisdictional fragmentation and political centralization cannot be resolved by procedural majoritarianism within political boundaries that, themselves, entrench antidemocratic domination. Democracy theorists have described this dilemma as the "boundary problem."[461] Or, as summarized by Briffault, "[t]he problem of local government boundaries nicely mirrors a central dilemma of local autonomy: the absence of any obvious metric for determining what constitutes a proper

457. *See, e.g.*, Weir & King, *supra* note 57, at 188-89 ("Political fragmentation leaves little room for redistribution across boundaries."); Brian Highsmith, *The Structural Violence of Municipal Hoarding*, AM. PROSPECT (July 6, 2020), https://perma.cc/JPK8-9LAH ("Redistribution stops at the city limit, allowing municipal boundaries to function effectively as tax shelters for white residents of segregated neighborhoods."); Rick Su, *Intrastate Federalism*, 19 U. PA. J. CONST. L. 191, 269 (2016) (observing that "[m]ore than ever, Americans are being sorted into local communities on the basis of personal characteristics and shared interests," and, "[a]s a result, the boundaries between localities increasingly represent the fault lines in American society"); DAVID RUSK, CITIES WITHOUT SUBURBS 34 (1993) ("Smaller jurisdictions are typically organized to promote and protect uniformity rather than diversity.").

458. Writing about St. Louis, for example, Colin Gordon notes that "[p]olitical fragmentation enabled local and parochial interests to tear the city apart and reassemble it as a crazy quilt of fiercely segregated industrial, commercial, residential, and racial enclaves." COLIN GORDON, MAPPING DECLINE: ST. LOUIS AND THE FATE OF THE AMERICAN CITY 10 (2008).

459. Briffault, *supra* note 455, at 1136 ("The fundamental feature of contemporary metropolitan governance is the operation of locally bounded fiscal and regulatory autonomy in regions where economic and social activity transcends local boundaries.").

460. Similarly, while many accounts emphasize the costs of single-industry reliance within metropolitan areas (and benefits of regional economic diversification), these accounts generally emphasize *economic* considerations—neglecting these *democratic* concerns.

461. Sarah Song, *The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State*, 4 INT'L THEORY 39, 39 (2012) ("Democracy is widely understood as rule by the people, but who are the people? How is the demos constituted and by what authority?"); *see also* MARGARET CANOVAN, THE PEOPLE 3 (2005) ("We cannot even take for granted that a state's external borders correspond to the boundaries of a people, and internally the situation is yet more complex.").

unit for the exercise of local autonomy."[462] Implicit in the boundary problem is a deeper implication: that we cannot define democracy by reference only to any particular boundary delineation, but rather need to interrogate those boundaries themselves. If democracy—in the narrow sense of procedural majoritarianism—cannot provide the answer of how jurisdictional boundaries should be drawn, some other value is needed to resolve the question.

Madison helps us identify the nature of the harm to be avoided in this context. Our current law makes it possible for a concentration of corporate interests, without much difficulty, to access public powers by incorporating into the municipal form. Public law in this area is often satisfied with a showing that the political process within a jurisdiction was inclusive and majoritarian: Did the 100 residents of Vernon (or the 40 residents of Disney's special district, or the 7 burgage holders of Old Sarum) reach majority agreement? But where faction dominates a shrunken sphere, we should understand the boundaries themselves as antidemocratic—not because they were not "democratically" determined in the original instance, but because they facilitate a specific form of subordination that prevents political equality.

Finally, this form of corporate power represents a notable exception to the common belief that government closest to the people is most "democratic" or should be presumed to govern best.[463] To the extent that local government law continues to facilitate unaccountable private governance, democratic accountability necessarily will come from either higher levels of government or, alternatively, wider units of decision-making. This Article thus provides an additional reason—beyond the well-understood problems of opportunity hoarding and coordination problems—against metropolitan fragmentation, and for regional governance. Where fragmentation exists, this account further

462. Briffault, *supra* note 455, at 1121; *see also* Richard C. Schragger, *The Limits of Localism*, 100 MICH. L. REV. 371, 472 (2001) ("[T]he boundary problem of local government law—the problem of pluralism—has no ready answer.").

463. The common aphorism, "the government closest to the people serves the people best," is often attributed to Thomas Jefferson, although there is little evidence that he ever wrote this phrase. *Cf.* Sen. Jason Pizzo (@senpizzo), X (Sept. 10, 2021, 12:09 PM), https://perma.cc/KH5S-FLKL ("'The government closest to the people serves the people best.' —Jefferson, or Thoreau, or Locke . . . or most Floridians."). The website of the Thomas Jefferson Foundation identifies a similar phrase ("that government is best which governs least") as a "spurious quotation." *That Government Is Best Which Governs Least (Spurious Quotation)*, MONTICELLO, https://perma.cc/NG8G-YLBG (archived Apr. 28, 2025). Outside of American federalism, the related principle of "subsidiarity" finds its origin and most significant expression in Catholic social teaching and the European Union's founding treaty, respectively. *See* Robert K. Vischer, *Subsidiarity as a Principle of Governance: Beyond Devolution*, 35 IND. L. REV. 103, 103, 121 (2001); *see also* Pope Pius XI, Encyclical Letter, *Quadragesimo Anno* ¶ 79 (May 15, 1931) ("[I]t is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do.").

emphasizes the importance of distinguishing between types of local governments, based on their democratic features—rather than simply levels of government—in debates about the institutional design of local power.[464] There is an important difference, for self-governance, between devolving power to Orlando and doing the same to Disney's pocket borough.

Conclusion

Writing decades before the Massachusetts legislature chartered the textile town of Lowell, Madison predicted a relationship between the degree of jurisdictional fragmentation within a polity and the danger of tyrannical faction within each. This danger can be mitigated, he suggested, through the strategic adjustment of jurisdictional boundaries to ensure that the electorate is numerous and diverse in its interests. Madison predicted that the tyranny of faction rule would be more likely to emerge in a fragmented polity, where small groups with aligned interests (that are opposed to the public) have the ability to self-govern, without opposition, in private fiefdoms.

His concern has direct implications for the body of public law that directly governs jurisdictional fragmentation and the allocation of governing authority across vertical levels of government of different size. The past century of developments in local government law has helped facilitate the preservation of the historical corporate enclave across new forms. Yesterday's employer-owned communities offer a necessary reference point to understand the public values implicated in the law that governs the boundaries and powers of local governments. History demonstrates that localized corporate domination is contingent on our institutional design—helping to reveal a path not taken. Rather than attending rarely, indirectly, and only belatedly to the downstream consequences of corporate fiefdoms, our public law should directly prevent their emergence.

464. Writing about special districts that assume the role of a local community, while avoiding the municipal form, Shoked has called for a similar distinction—highlighting, in particular, the democratic consequences of corporate domination. Shoked, *supra* note 433, at 2029 ("Accordingly, quasi-cities should lose the law's support when confined to serving a particular powerful local group or benefiting a developer by converting what should be a nimble and transient entity into a perpetual and rigid body.").