

Business Improvement Districts in the United States

Private Government and
Public Consequences

Abraham
Unger



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Private Government and Public Consequences

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I dedicate this book to
Myra and Sherwood Unger
Parents whose faith in me has been felt every day of my life
Rafi and Ari Unger
Sons who inspire me every day with their talents and kindness
Deborah Lupkin Gross
My muse

PREFACE

This book began out of a fascination with trying to understand just how and why cities like my own native New York have radically transformed during my lifetime. The economically precarious and dangerous New York City of my boyhood has become a lifestyle capital. I am not unaware, nor was I when this urban rebirth began, of globalization and its literature. But, on the day-to-day level of riding subways and grabbing a bite to eat, that sweeping, often ideologically infused theoretical discussion seemed to miss processes that were more incremental. It was not only that the world suddenly became more consumerist after the end of the Cold War, nor was it that global cities were solely emerging as puppets on the strings of financial service behemoths. These factors have their place, but life can also be a little less grandiose in the real life of urban governance. Something on the ground was happening too, block by block, neighborhood by neighborhood. And so, I began to try to understand why the drug-infested parks of 1980s Manhattan now hosted farmers' markets and fashion expos. I wanted to let the data shape theory, rather than the other way around.

What I found was that in cities around the world, an economic revitalization tool called a "Business Improvement District" (BID) was the instrument most widely utilized to revitalize commercial strips and recreate downtowns into cleaner, safer consumer zones prepared to absorb reinvestment and, over time, obtain the ability to raise neighborhood real estate values. Superficially, the formula BIDs used seemed magically unable to fail. Municipalities and local commercial real estate interests would sign a contract enabling local government to collect additional property taxes called assessments, and then let a district board of elected commercial

property owners spend this money on supplemental services that may be needed in a particular community, such as additional sanitation.

This seemed fair enough, and even quite democratic. But then, all one had to do was scratch the surface, and see that this form of public-private partnership raised substantial questions about the kind of democracy one might think it represents at first glance. For example, the board of a BID must, by most municipal legislative arrangements, contain a weighted majority of commercial property owners on the board that votes on how to allocate a BID's funds. The funds themselves are publicly collected, but then managed by a private organization, the non-profit District Management Association, or board, of the BID. BIDs are therefore private corporations with the public power to tax and spend, and they overtly favor one particular local property interest in their governance structure.

Clearly, the lines between public and private had become murkier in urban economic development. The literature took note. But, no literature had, or has yet, to actually parse out just what may make a BID more or less public. That is the work I have set out to accomplish here.

More broadly, this book offers a delineated continuum of just what, in real, practical terms, constitutes democratic behaviors in the ever expanding universe of public-private partnerships (PPPs) in a world of increasingly muddled lines between the public and private spheres of global citizens' political and economic lives. Academics and policy-makers have a shared interest in better understanding the behavioral patterns of PPPs. The ubiquitous use of BIDs in urban areas provides a tangible, widespread case study within this arena.

Since New York has the most BIDs of any American city, and New York may certainly be called a major global city at the least, it was hard to resist the lure of focusing most intensively on the BIDs of New York. New York's neighborhoods vary widely in socio-economic scale, so a careful selection and rendering of a detailed organizational analysis of some of New York's BIDs, on a stage that includes other cities when meaningful as a backdrop, has been the preferred means of unpacking with specificity how BIDs behave.

The distribution of power, which is the foundation of all politics, is in the details. BIDs raise substantial questions about how power gets allocated and used on the most local level. Ultimately, on that level of the street, is where any discussion of democracy must begin. In this study, that conversation begins with a look at how a group of shadow urban private governments have wielded their public authority.

The work of this book took many years to compile. BIDs' organizational lives were traced for over a decade. I thank my dissertation advisor, Dr. Paul Kantor, for ongoing faith and support of my work. His gentle but firm hand ensured that my research would be presented with what I hope is great clarity in making a genuine contribution to the field. Thanks go to my editors at Palgrave Macmillan for always prompting my work forward. I thank my home institution Wagner College in Staten Island, New York. College president Dr. Richard Guarasci and Provost Dr. Lily McNair have been unswervingly supportive of my research. I thank former provost, Dr. Devorah Lieberman, who first brought me to Wagner College. The members of my department, namely, Dr. Steve Snow, Dr. Shaohua Hu, Dr. Patricia Moynagh, Dr. Cyril Ghosh, Dr. Jeffrey Kraus, and Dr. John Esser of the Wagner College sociology department, have been friends and colleagues in the truest sense.

In closing, I thank my parents, Myra and Sherwood Unger, my sons Rafi and Ari Unger, and Deborah Lupkin Gross. These individuals have reminded me, day in and day out, that, as we say in our family, each of us "can do anything." This work owes much to these loved ones' faith in it. The phrase "thank you" is not enough, but it gives voice, in the humblest of terms, to my unending gratitude.

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New York City

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Privatization in the Neighborhood

PUBLIC–PRIVATE PARTNERSHIPS: THE CASE OF BUSINESS IMPROVEMENT DISTRICTS

Privatization has become one of the most powerful currents in global policy debates.¹ It has become a widely advocated policy in urban redevelopment.² Henig wrote that “Notions that seemed provocative but quaint when first introduced by Milton Friedman four decades ago now occupy center stage”.³ In the USA, privatization commonly refers to government contracting out service delivery to private providers.⁴

By the early 1980s, it was apparent that cities’ tax bases had eroded due to suburbanization and the demise of manufacturing.⁵ During that same period extending into the 1990s, both Republican and Democratic presidential administrations ended the flow of any remaining federal Great Society dollars to support urban programs.⁶ In this environment of urban freefall, city governments grabbed onto whatever economic lifeline they could. Municipalities discovered that partnering with neighborhood business interests, especially in the real estate sector, could supplement diminished city services and provide new sources of revenue to revitalize downtowns.

Business Improvement Districts (BIDs) evolved out of this policy environment advocating for public–private partnerships (PPPs) in urban redevelopment. BIDs are private non-profit corporations legislatively created

by local government in depressed urban areas.⁷ BIDs are doubly charged to increase district property values and to improve the general quality of life in their neighborhoods.⁸ Once brought to life by a municipality through a ballot majority of 51% of local commercial property owners, a BID contracts with local government to provide supplemental services such as privately delivered sanitation and security to its contractually designated district.

BIDs fund their provision of services by assessing neighborhood commercial property owners an extra fee beyond their annual real estate tax. That assessment is coercive. If a local commercial property owner was one of the hypothetical 49% of those balloted that did not vote for the BID to be enabled, that owner must still pay the assessment as a tax. If he does not, a lien is put on his property. The assessment is collected by the municipality and then returned in full to a local, private non-profit board called a District Management Association (DMA). The DMA is the same as any voluntary board. It has the ability to draft and pass its own bylaws. Though the DMA holds elections for board members from the membership of the organization, which are commercial property owners, it does not allow elections of its board members by voters from the broader district community of residential property owners and commercial and residential tenants.

The majority of a DMA board are typically mandated by municipal and state legislation to be commercial property owners. Therefore a DMA board, comprised by a majority of one interest group, namely, local commercial property owners voted into office only by members of the very same interest group, decides how to distribute the district's municipally collected assessment for services across a neighborhood.

BIDs assess and spend taxes while operating as private corporations. BIDs with larger budgets often engage in district capital improvements and contain strong political leverage, since their boards are stacked with powerful urban commercial real estate owners.⁹ Some BIDs, such as New York City's Grand Central Partnership (GCP) in the wealthy midtown Manhattan business district, hold leases on linchpin district properties.¹⁰ In short, BIDs can be viewed as private governments shaping swaths of urban territory through the choices they make on supplemental service delivery, and, in the case of BIDs with large budgets and powerful board members, acting as centers of leverage on the futures of commercial property development in their districts.¹¹

Ultimately, BIDs represent a “shift to the use of public-private partnerships for urban revitalization”.¹² They have developed quickly since the early 1980s as privatization in the form of public-private sector partnering has gained force as a leading policy option in urban redevelopment strategies.¹³ BIDs’ growth as a means of urban redevelopment has been rapid. While they are expanding in number across the globe, BIDs are most prevalent in the USA, where there are over 1000.¹⁴ BIDs clearly exemplify a spreading trend by municipal government to contract out to non-profit service providers for the redevelopment of declining local communities.¹⁵

THE QUESTION OF BIDs AND LOCAL DEMOCRACY

Hoyt and Gopal-Agge write heuristically that “academics and practitioners have raised more questions than answers regarding the effect of BIDs on such issues as democracy” and “accountability”.¹⁶ They tentatively conclude that “BIDs have blurred the line between the traditional notions of public and private”.¹⁷

This study provides a sustained answer to those questions by dissecting the dimensions of organizational public and private behaviors found in BIDs. Once specified, these dimensions can be applied to measure with some degree of precision the extent to which a given BID behaves similar to a public agency.

BIDs contain a tripartite institutional packing of broad public responsibilities. First, BIDs’ primary function is to carry out the traditional public power to tax and spend. Second, they provide a wide array of supplemental services. Third, they seek to implement in their districts the broad public-minded goal of “improving the urban environment generally”.¹⁸ These three sets of responsibilities are carried out by private DMA boards able to write their own organizational bylaws just as board members of any corporation can, and nominated only by members of their own interest group. No private partner of government except BIDs has yet married the ability to behave as a private corporation with a governmental broadness of mission and public power to tax.¹⁹

This characterization begs a thorough investigation into whether BIDs meet public standards of institutional behavior. What is the degree of their accountability to neighborhood stakeholders and municipal partners in local government? Realistically, not all public agencies may regularly meet the most stringent standards of accountability to the citizenry, but

they are at least intended to be fully transparent and accountable. Public agencies are constitutionally mandated to conduct their organizational lives in a transparent manner. As organizations charged with transforming whole communities, are BIDs designed and operated with that same public-minded goal of transparency, or are they closed power centers of the local commercial elite that make decisions on services for their districts without any public input? In short, given their public–private hybrid status as private organizations able to tax property owners, how do BIDs operationalize their public and private institutional features?

My investigation has two tiers. It first compels a structural dissection of BIDs from different normative perspectives, seeking to clearly mark and label institutional features of what I call “publicness” and “privateness” to measure the degree to which a BID is democratic. BIDs’ level of democratic behavior will be assessed against the standards of governmental expectations of transparency and accountability, since BIDs have the fundamental public power of taxation legislatively embedded in their organizational structure. This analysis necessarily entails comparison of BIDs with other PPPs being used as instruments of urban economic development. Once a structural and comparative theoretical unpacking of BIDs is delineated that responds, at least in theory, to Hoyt and Gopal-Agge’s fundamental problem in not knowing where BIDs fall on the continua of organizational democracy, we can move on to a descriptive sampling of diverse case studies that elicit how BIDs in different kinds of socio-economic communities really behave in their home communities.

New York has the most BIDs of any US city.²⁰ Their presence covers practically every few blocks in some boroughs of New York City and provides a richly varied sampling of BIDs in different kinds of communities. At last count, there were 72 BIDs in New York City,²¹ representing multiple neighborhoods exhibiting the wide array of economic and social diversity found throughout New York. Six different BIDs have been selected as case studies based on their budget size and location in differing socio-economic districts. Drawing from Gross, these six New York City BIDs have been ordered into three categories based on annual budget.²² BIDs with annual budgets of over \$1 million are considered wealthy, BIDs with annual budgets of \$300,000 to \$1 million are considered medium, and BIDs with annual budgets less than \$300,000 are considered poor.²³ Two BIDs at each budget level have been selected. Each twinned pair of similarly budgeted BIDs also function in different types of socio-economic communities and contain

commercial property owners from different professional backgrounds comprising their boards.

Ultimately, whether BIDs behave more or less publicly speaks to the level of public accountability at work in this new type of urban economic development instrument. My purpose is to explore how a private partner of government behaves once it takes on governmental ambitions and public power. I want to qualify just how accountable BIDs are to both their communities and to their contracted municipal partners in local government. Findings drawn from this analysis will reveal the degree to which BIDs maintain more or less public standards of democratic governance.

Given most of America's population now lives in cities,²⁴ this discussion of democracy relates to the daily lives of most US residents and the urban communities in which they reside. PPPs are increasing rapidly as instruments of urban economic development in the USA and around the world. BIDs are their most prevalent manifestation. They have been called "an example *par excellence* [italics author's own] of the changes in how urban management is practiced in the most-industrialised [hyphen author's own] economies of the world". If we are to better understand the impact of PPPs on urban democracy, it is crucial to begin with a thorough exploration of the lingering question of just how public or private BIDs are in their organizational behaviors. Indeed, if we are talking about whether urban areas are being run by private governments with utter discretion over public monies, nothing less than local democracy is at stake.

Recent studies have attempted to frame BIDs using emergent public administration models, such as new governance framework.²⁵ New governance framework offers a generalized approach to BIDs as PPPs, taking for granted a vague sense of BIDs as combining public and private institutional features, and distilling that assumption down to a suggestion that BIDs may sometimes act more or less collaboratively with local government, which impacts accountability.²⁶ Others have looked more singularly at BID managers' possibilities as entrepreneurs of downtown economic revitalization operating as administrators in an institutional "no-man's-land".²⁷ Combining public and private governance structures and behaviors.

But these lenses, however illuminating, do not do justice to the full extent of the question at hand, which seeks to uncover exactly what makes an organization public or private, and where BIDs, as agents of urban economic development engaged in "place management",²⁸ fall on that public-private spectrum. To answer this question that impacts so many

urban dwellers today, we need to draw upon four essential political science categories that respond with deepened precision to just what characterizes, after all, the publicness and privateness of BIDs.

Literature and Case Studies

Grossman acknowledges that “Efforts to understand the merger of public and private sector management behavior in business and community development appear to be a challenge to both normative public and business administration practices”.²⁹

To get at the heart of this definitional hurdle, I posit at the outset four theoretical perspectives that provide starting touchstones of behavioral difference between public and private organizations. The theoretical backdrops of (1) voluntary associations, (2) private government, (3) privatization, and (4) public administration are amplified here in order to cull a terminology and framework of publicness and privateness that can be applied to an empirical analysis of the degree of BIDs’ public and private behaviors described later in our case studies.

We begin with a basic definition describing the core features of private organizations. These are usually viewed as maintaining (1) narrowly defined missions, (2) more institutional independence, or autonomy, and (3) less accountability in their decision-making processes than public organizations. A private organization will often have, for example, irregularly scheduled board meetings that are not open to the public, while government maintains regularly scheduled public hearings. Unlike private associations, government agencies are viewed as thicker bureaucracies with broad public missions and high degrees of transparency.³⁰ BIDs are a controversial hybrid of both.³¹ We now move on to a fleshing out of the relevant theoretical tools we will use to ultimately clarify the relationship between BIDs and local democracy.

Private Government Theory: Private Organizations Are Governments

In American political science, private government theory provides tools that can be used in organizing comparative frameworks of publicness and privateness. Private government theory evolved as an attempt to frame the organizational nature of the business corporation in political terms. This approach suggests that corporations are exceptionally complex in the layers of their activities and institutional structure. Theorists argue that it

behooves social scientists to view these organizations as potent governments located in the private sector.

Private government theory claims that the private sector sustains organizations that contain all the requisite components of public organization, albeit without the system of checks and balances built into American constitutional governance.³² Rostow goes so far as to unabashedly declare that democracy in a corporation is “a total farce.”³³

Latham contended that the study of government cannot be comprehensive if it does not take into account “political subsystems” such as private organizations. Private government grafts onto business corporations and voluntary associations the structural norms considered characteristic of government. Framing private organizations as governments suggest that all organizations, whether public or private, share certain features such as decision-making mechanisms and a system to enforce institutional rules. Highlighting the component parts of organizational governance helps toward establishing criteria for understanding publicness and privateness. In fact, BIDs are already being called private governments.³⁴ For the purpose of this study, framing BIDs as private governments at the very outset immediately clarifies their essential institutional structure.

Latham posits five basic characteristics that constitute private government.³⁵ First, an organization must have an “authoritative allocation of principal functions.” Formal documents such as articles of incorporation and bylaws fulfill this requirement. These compare with a state constitution. As do all private corporations, BIDs contain articles of incorporation and bylaws as a prerequisite of their incorporation.

Second, there must be a symbolic system used for the ratification of collective decisions. This system includes elections of board members in private organizations. BIDs hold annual elections of board members who manage the organization.

Third, there must be an operating system of command. The board provides that command structure alongside staff professionals. As do all non-profits, BIDs contain this system of command as well.

Fourth, a system of punishments and rewards are required of private government. For a private organization to be considered governmental in its structure, it must have coercive power over its members such as sanctions that could include financial penalties. BIDs are able to coerce a property owner to pay assessments through the threat of a lien on a non-compliant member’s property.

Finally, there must be institutions within the organization for the enforcement of common rules. A private association must have recourse to enforcement of its rules and sanctions over members through a formal institutional mechanism such as contracts or lay arbitration of disputes within the corporate structure. BIDs provide detailed written assessment formulas to their members and can use local government as a resource in securing compliance and settling disputes with members.

Private organizations clearly share formal attributes of authority with government. Those attributes are the qualities that many scholars contend to be the difficulty in separating out private forms of governance from public ones since they are held in common with public bodies. Indeed, demonstration of the commonality of public and private organizations is the very point private government theorists want to make.

The question surrounding governance asks the degree to which private governments are held accountable when compared with the oversight demands made of public agencies. It is in the area of accountability that private government theorists concede there are degrees of publicness that separate out private from public organizations.³⁶

Private governments maintain government-like coercive structures without public safeguards for democratic governance such as stringent oversight requirements and open hearings.³⁷ Studies of corporate governance conclude that regulatory agencies and corporate obligations to shareholders do not approach governmental standards of transparency in terms of monitoring and disclosure.³⁸ Additionally, regulatory agencies charged with overseeing private industry are often captured by the very industry they are supposed to hold accountable.³⁹ That factor will later become critical for an understanding of municipal governments' relationship with BIDs.

No work in the private government genre has yet sought to delineate variation among degrees of publicness and privateness in understanding organizational life. Neither do these scholars attempt any explanation for change in degrees of publicness or privateness over time. These theorists have not offered a typology of private governments specifying what might characterize an organization as more or less public. Private government ends at plugging in Latham's five criteria to private institutions just to demonstrate that private organizations contain structural features considered characteristic of government. It does not engage in a deeper analysis aimed at developing a fuller model that can account for variation among different types of private organizations. It might be said the field is much

where Latham left it 43 years ago when first presenting his list of criteria for private government.

Voluntary Associations: Private Governments Without Democracy

Voluntary association theorists go one step beyond private government theory in their analyses. They begin with the assumption that voluntary associations are indeed private governments, and go on to ask whether or not these organizations can ever behave democratically.⁴⁰ This theoretical stream looks at how the features of private government are operationalized in voluntary associations.⁴¹ These scholars conclude that voluntary associations are usually not democratic in the way they govern because these organizations are simply not bound by public standards of accountability.

Voluntary association theory does not offer sharply delineated definitions of publicness and privateness. It shares that lack of theoretical definition with the private government approach. Yet the voluntary association literature at least sharpens the focus by making the case that state and private associations are “different.”⁴² While McConnell does concede that public and private institutional differences can be hard to precisely define, he states that private associations usually have more limited goals than state agencies.

Voluntary association theory posits that non-profits contain narrow missions. Just as the corporate sector is devoted to the specific goal of profit, the non-profit sector comprised organizations founded to pursue specific interests on behalf of narrowly defined constituencies. Limited purpose is considered to be a chief qualifying feature of non-profit organizations.⁴³ This theme runs through the whole literature. It inspired the central question of this study.

McConnell and McKenzie argue that private organizations maintain less formal and more “private” forms of management than government such as board meetings not open to organizational membership at which leadership decides policy behind closed doors.⁴⁴ They pursue their singular missions on behalf of a narrow interest without having to worry about operating under the watchful eye of any internal systemic check or a regulatory agency.⁴⁵ McConnell aptly states that “the executive board is only an agent and the president is its continuing chairman. These bodies do not check each other, nor are they intended to.” This diminished transparency allows for unregulated management by volunteer boards.

Boards are ultimately self-governing though they manage the whole organization, and no party on the board checks the other. McConnell

shortly thereafter concludes that “There is no *system* (italics author’s own) of checks and balances here.”⁴⁶ Even public partners of non-profit private governments do not seriously monitor voluntary associations.⁴⁷ This issue will be further discussed in Chap. 5. That chapter singly explores BIDs’ relationship with its contracted partner in municipal government.

The voluntary association approach claims that non-profit boards are entrusted by their memberships to manage institutional policy-making without the participation of their constituencies in decision-making processes. Non-profit private governments are often governed by ruling elites who control the policy-making mechanisms of the organization such as board meetings and conventions.⁴⁸ Small cliques, or “oligarchies” can easily take power and sustain their control due to lack of internal checks on their governance.⁴⁹ Wilson suggests also that non-profits’ ongoing need for volunteers offers institutional space for new elites to quickly arise and take the reins of power in a voluntary association.⁵⁰

McConnell and Wilson conclude that boards of voluntary associations may make decisions on behalf of their organizations without disclosing their decisions to their memberships. For example, a board can vote to change an organization’s bylaws without telling its rank and file. Often the only connection a member has with his respective voluntary association is the mailing in of annual dues.⁵¹ Voluntary associations sustain coercive authority over their members through agreements regarding dues collection. Minimally, a member of a voluntary association can be expelled for failing to pay membership fees. However, the member has little possibility, or indeed formal right, to gain any more access to the decision-making process than what the board of his association allows.⁵² A voluntary association may decide to hold board meetings open to its membership, or it can convene its board away from public view. Non-profits have been critiqued by voluntary association theorists for secretive decision-making processes.⁵³

Narrowing the field from voluntary associations in general to non-profits involved with service delivery, McKenzie concludes that non-profit service providers behave as private governments offering little or no accountability to their constituencies. While McKenzie does not specify actual degrees of publicness and privateness, he argues that voluntary associations charged with public responsibilities do not take on governmental standards of transparency over time. This proves true even if they are involved with government through longstanding contracts. McKenzie posits that voluntary associations continue to behave in a private manner

by making organizational decisions without informing their constituencies and holding closed board meetings with little or no constituency participation in decision-making processes. Though McKenzie is concerned with non-profits that seek to achieve limited goals, his finding is certainly relevant when looking at BIDs, which aim to accomplish even broader, more public-style goals.

McKenzie follows those voluntary association theorists who came before by concluding that these organizations usually become even more private with age, even when contracted with a municipal partner. Voluntary associations' roots as structures that lack checks on their governance becomes entrenched over time.⁵⁴

Voluntary association theorists often conclude that non-profits behave with little accountability towards their members and public partners. These theorists posit that non-profits' low level of accountability can be attributed to lack of regularized oversight and the ability to make decisions "secretively."⁵⁵ In raising this issue of accountability the voluntary association approach suggests that there are clear differences between public and private organizations that really matter in terms of democratic governance.

Privatization Theory: The Benchmarks of Privateness

Privatization theorists look more specifically at contracting out which is the foundational feature of BID activity. These scholars take into account publicness and privateness as applied to service delivery. That discussion is relevant to this study of BIDs in their role as private service providers. Recent growth in discussion and implementation of privatization policy has added to the number of studies analyzing how private market-based providers behave economically and politically in PPPs.

Privatization theory normally assumes a dualist perspective. The dualist perspective originally provided theoretical support for contracting out as a vital part of privatization policy. It begins with an economic argument. The dualist approach argues that private providers of services traditionally delivered by the public sector will be more efficient because they operate in the private arena and respond to competitive forces and intra-market discipline.⁵⁶ This results in private organizations behaving less formally and less bureaucratically than government agencies.⁵⁷ Government will necessarily act less efficiently because it works in the public arena and must behave in a highly regulated environment with numerous procedural checks at each step of its operations. This lack of autonomy compared