THE BUSINESS IMPROVEMENT DISTRICT COMES OF AGE

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It is difficult to say precisely when the business improvement district (BID) was born. BIDs emerged out of legal structures and concepts that date back many decades, but the specific BID form is a relatively recent development. By some accounts, the first BID in the United States was the Downtown Development District of New Orleans, which was established in 1975.[1] Few BIDs were created before 1980, and in most places the surge in BID formation did not really get going until around 1990[2]—the year that Philadelphia's Center City District was first established.[3] Although new BIDs were created on a regular basis around the country throughout the 1990s and 2000s, it is fair to say that 2010 marks the completion of two decades of what I will call the BID movement—that is, the development and spread of, and the academic and public debate about, this new structure of urban governance. The BID combines public and private, as well as city and neighborhood features, in novel and interesting ways, and it provides a useful means of maintaining and supporting the urban environment. Yet, as many critics have pointed out, the BID also raises troubling issues of urban service inequality, accountability, and the focus of urban governance.[4] It is hard to imagine a better way to analyze the coming of age of the business improvement district than through the extraordinary collection of studies of Philadelphia's BIDs in this issue of the *Drexel Law Review*.

These studies nicely demonstrate the success of the BID as an institutional innovation. From a tentative beginning, with one district two decades ago, Philadelphia now has fourteen BIDs in a wide variety of neighborhoods. Many of the BIDs have been renewed one or

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1. *See* Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365, 367 (1999).

2. *Id.*

3. The Center City District was initially incorporated as the Special Services District of Central Philadelphia in 1990. It was renamed Center City District in 1992. *See* Göktuğ Morçöl, *Center City District: A Case of Comprehensive Downtown BIDs*, 3 DREXEL L. REV. 271, 274 (2010).

4. *See* Briffault, *supra* note 1, at 371–73, 455–69.

more times.[5] In Philadelphia, as in much of the country, the BID is now a well-established and widespread phenomenon.

Yet these studies also indicate that the scope of BID activities has changed little in two decades and continues to be limited largely to the basics of "clean and safe," street maintenance and some streetscape improvements, district branding, and the marketing of district businesses.[6] In other words, even as the number of BIDs has increased significantly, what they do remains relatively constrained. Although some observers in the early years of the development of BIDs expressed the fear that BIDs were the harbinger of a broader privatization and balkanization of urban governments,[7] these studies suggest that those fears were significantly overblown. BIDs are interesting, but with the exception of the Center City BID, they play a relatively small role in urban governance.

These studies also examine the complex relationship between BIDs and other institutions, including businesses, local government, and most importantly, community-based nonprofit organizations like community development corporations (CDCs) and neighborhood associations. They demonstrate that the BID needs to be seen as part of a broader ecology of urban governance structures. Not only do BIDs play a more limited role than might have been predicted a decade ago, but when seen in the context of other community-based organizations, they seem a little less distinctive as well.

Finally, these studies have important implications for consideration of the future of decentralization within large urban centers. They underscore the benefits of having community-based organizations for the articulation of neighborhood concerns, the delivery of basic services, and the protection of the urban environment. But, they also show that further decentralization will require much greater attention to inter-neighborhood resource inequalities and governance and accountability issues.

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5. The Old City District was created in 1997 and reauthorized in 2002, through 2022. Dorothy Ives-Dewey, *Clean, Safe, and Pretty: The Emerging Planning Role of the Old City District*, 3 DREXEL L. REV. 209, 217 n.71, 218 (2010). The East Passyunk BID was authorized in 2002 and reauthorized in 2009. Jonathan B. Justice, *Moving On: The East Passyunk Avenue Business Improvement District*, 3 DREXEL L. REV. 227, 227 (2010). The Center City District was initially created as Special Services District of Central Philadelphia in 1990. Its name changed to Center City District in 1991, it was authorized in 1994 for twenty years, and it was reauthorized in 2004, through 2025. Morçöl, *supra* note 3, at 279. The City Avenue Services District was authorized in 1998 and reauthorized in 2002, for twenty years. Christine Kelleher Palus, *There Is No Line: The City Avenue Special Services District*, 3 DREXEL L. REV. 287, 294–95 (2010).

6. *See* Briffault, *supra* note 1, at 394–401, 404–09.

7. *See id.* at 373–74.

In this Article, I will first examine both the diverse use of the BID form in Philadelphia and the similarity and limited nature of the services most Philadelphia BIDs provide. I will then turn to what these studies tell us about the relationship between BIDs and the surrounding urban institutional environment. I will conclude with some reflections on the implications of the Philadelphia BID experience for the decentralization of governance within big cities.

I. THE DIVERSITY AND SIMILARITY OF PHILADELPHIA'S BIDS

If the success of a new institutional form, like a plant or animal species, can be measured by the extent of its spread and its adaptation to a variety of settings, then the Philadelphia experience tells us that the BID is surely a great success. One of the most striking features of these studies is the incredible diversity of the neighborhoods in which Philadelphia's BIDs are to be found. Although the BID is most commonly associated with downtown office and retail districts like Center City, Philadelphia has also created BIDs in virtually every type of neighborhood—commercial,[8] industrial,[9] academic,[10] sports,[11] and residential.[12] Some of these districts are affluent,[13] but although BIDs were once criticized as part of the "secession of the successful,"[14] a significant fraction of Philadelphia's BIDs are located in relatively poor neighborhoods.[15] Similarly, although

8. *See* Jill Simone Gross, *The Aramingo Avenue Shopping District: Stakeholder's Bridge or Border Divide?*, 3 DREXEL L. REV. 171, 173 (2010); Justice, *supra* note 5, at 228; Craig M. Wheeland, *The Greater Cheltenham Avenue Business Improvement District: Fostering Business and Creating Community Across City and Suburb*, 3 DREXEL L. REV. 357, 358 (2010).

9. *See* Aman McLeod, *The Port Richmond Industrial Development Enterprise: A Successful Model for Preserving Urban Industry*, 3 DREXEL L. REV. 253, 253 (2010).

10. *See* Thomas J. Vicino, *New Boundaries of Urban Governance: An Analysis of Philadelphia's University City Improvement District*, 3 DREXEL L. REV. 339, 339 (2010).

11. *See* Juliet F. Gainsborough, *The Sports Complex Special Services District: Thirty Million Dollars for Your Trouble*, 3 DREXEL L. REV. 155, 155 (2010).

12. *See* Thomas J.B. Cole & Seth R. Grossman, *The Chestnut Hill Business Improvement District: Learning from Other BIDs*, 3 DREXEL L. REV. 125, 127–29 (2010), Fayth Ruffin, *Roxborough on the Rise: A Case of Generating Sustainable Buy-In*, 3 DREXEL L. REV. 309, 310–11 (2010).

13. *See* Wayne Batchis, *Privatized Government in a Diverse Urban Neighborhood: Mt. Airy Business Improvement District*, 3 DREXEL L. REV. 109, 112 (2010); Richard M. Flanagan, *Manayunk Development Corporation: The Search for Sustainable Gentrification and a Parking Spot*, 3 DREXEL L. REV. 139, 142 (2010); Ives-Dewey, *supra* note 5, at 211.

14. *See* Briffault, *supra* note 1, at 373 (citing Robert B. Reich, *The Secession of the Successful*, N.Y. TIMES, Jan. 20, 1991, at 16).

15. *See* Gross, *supra* note 8, at 178–81; Whitney Kummerow, *Finding Opportunity While Meeting Needs: The Frankford Special Services District*, 3 DREXEL L. REV. 243, 245 (2010); Robert Stokes, *The Challenges of Using BIDs in Lower Income Areas: The Case of Germantown, Philadelphia*, 3 DREXEL L. REV. 325, 326 (2010); Wheeland, *supra* note 8, at 369.

some of Philadelphia's BIDs have been established in predominantly white areas,[16] some are in neighborhoods that are largely African American[17] or that mirror the racially diverse demographic make-up of the city as a whole.[18] And while some districts are prosperous and gentrifying with low crime rates,[19] others are blighted, declining, and crime-ridden.[20] Some of Philadelphia's BIDs are downtown,[21] some are in outlying areas,[22] and two actually straddle Philadelphia's border and combine parts of the city with other communities.[23] Philadelphia's BIDs also take different legal forms—including the special services district (SSD) and the neighborhood improvement district—and are authorized under a variety of statutes, including some that long predate the modern BID and others that were enacted expressly to facilitate BID formation.[24]

The spread of BIDs suggests that there is great value in an institutional form that allows neighborhoods to raise additional revenue from property owners or businesses within the community to be used to finance programs for and activities within the community, rather than to depend entirely on city hall for public services. BIDs enable communities to address neighborhood needs and to provide themselves with additional services. More importantly, BIDs enable community-based decisionmakers to determine exactly which supplemental services will be provided and what activities undertaken. In a large metropolis, with most service decisions typically made by an often distant, difficult-to-reach city government, the opportunity for a neighborhood-based determination of preferences and priorities is likely to be particularly appealing.

Although the diversity of BID locations in Philadelphia is impressive, equally noteworthy is the similarity of what most of these BIDs do: street cleaning; graffiti removal and related supplemental sanitation services;[25] supplemental security;[26] streetscape improvements;[27]

16. *See* Flanagan, *supra* note 13, at 142; Ives-Dewey, *supra* note 5, at 211; Ruffin, *supra* note 12, at 311.

17. *See* Batchis, *supra* note 13, at 112.

18. Palus, *supra* note 5, at 288–89.

19. *See, e.g.*, Ruffin, *supra* note 12, at 312.

20. *See, e.g.*, Kummerow, *supra* note 15, at 244.

21. *See, e.g.*, Ives-Dewey, *supra* note 5, at 209 (explaining the Old City District's location within the historic district).

22. *See, e.g.*, Cole & Grossman, *supra* note 12, at 125.

23. Palus, *supra* note 5, at 288; Wheeland, *supra* note 8, at 358–59.

24. *See* Ruffin, *supra* note 12, at 312–13 (discussing the four forms of BID creation and the statutes authorizing the establishment of BIDs).

25. *See, e.g.*, Kummerow, *supra* note 15, at 248–49.

holiday lights and events;[28] promotion of uniform signage for district businesses;[29] marketing of district businesses and branding of the district;[30] and modest capital programs.[31] The more ambitious BIDs have sought to address parking, traffic, and zoning issues,[32] while the Center City BID has taken on issues of land-use planning, transportation, social services for the homeless, and the operation of a community court for quality of life crimes.[33]

The overarching focus of the Philadelphia BIDs, like BIDs elsewhere, is on maintaining and improving the urban public environment.[34] By devoting resources and attention to such mundane matters as security, trash collection, street cleaning, graffiti removal, banners, lights, street signs, fountains, trees, flowers, and street furniture, BIDs help to make urban public spaces more open, appealing, and accessible. They are a reminder of the importance of attractive public spaces to urban life and of the need for ongoing, community-based attention to protect and promote those spaces.

The services provided by Philadelphia's BIDs are largely the same as those undertaken by BIDs in Philadelphia and elsewhere a decade or more ago. The rapid proliferation of BIDs in the 1990s raised concerns that BIDs would usher in a broader privatization of urban governance and a greater fragmentation of urban service delivery. Critics feared that more and more resources and services would be devolved to these organizations, with city governments thereby weakened and services for poor areas, in particular, undermined.[35] The Philadelphia studies indicate that these fears were groundless. With a handful of exceptions, the activities of the BIDs largely continue to be the basics of "clean and safe," street maintenance and improvements, and modest forms of business promotion. BIDs may have had a real effect on the safety and physical appearance of certain areas like Center City and University City,[36] but they have not changed local governance in any significant way. Although BIDs

26. *See, e.g.*, Batchis, *supra* note 13, at 119.
27. *See, e.g.*, Ruffin, *supra* note 12, at 318–20.
28. *See, e.g.*, Batchis, *supra* note 13, at 113.
29. *See, e.g.*, Gross, *supra* note 8, at 189, 191.
30. *See, e.g.*, Palus, *supra* note 5, at 296.
31. *See, e.g.*, Vicino, *supra* note 10, at 351.
32. *See, e.g.*, Palus, *supra* note 5, at 297–98.
33. *See, e.g.*, Morçöl, *supra* note 3, at 279.
34. *See* Briffault, *supra* note 1, at 394–409 (discussing services provided by, inter alia, BIDs in New York, Baltimore, Dallas, Los Angeles, and New Jersey).
35. *See id.* at 455–69.
36. *See* Morçöl, *supra* note 3, at 280–81; Vicino, *supra* note 10, at 350–51.

have spread widely, the fraction of local public service delivery and government activity that they take up has remained largely constant and relatively small. The BID model is not going to take over local government, significantly erode the power of city hall, or displace the role of the traditional public sector in providing most municipal public services. The Philadelphia studies suggest that even as the number of BIDs has multiplied, the momentum of the BID movement has crested, with BIDs providing a number and level of services that have been relatively constant for about a decade. BIDs have settled down. They are part of the fabric of urban governance, but they are far from transformative.

II. THE COMPLEXITY OF THE INSTITUTIONAL SETTING

A business improvement district is an intriguing blend of public and private, municipal, and neighborhood elements. A BID is created by city government, and it is given the classic public power of compulsory assessment—that is, it can require property owners within the district to make payments to the district whether the property owners want to or not.[37] But the district is typically managed by a private, nonprofit organization that is controlled by an unelected, self-perpetuating board of directors consisting primarily of property owners or businesses within the district, often with ex officio membership for local legislators.[38] The BID, in turn, provides a mix of public and business-oriented services with the goal of improving conditions for business.

These case studies indicate that the institutional environment in which BIDs operate can be as complex as the BID itself. BIDs are imbricated with a host of other organizations—public, private, and nonprofit. Although local business interests are typically critical in forming and guiding the BID, these studies underscore the key roles of governmental and nonprofit groups in the BID world. Again and again these studies show that BID formation, BID management, and BID operations entail the interaction of BIDs with city and state offi-

37. *See, e.g.*, 53 PA. CONS. STAT. ANN. § 18107(b) (West 2010). The University City District is an exception. It relies largely on voluntary contributions from the principal academic institutions within the district and does not impose assessments. *See* Vicino, *supra* note 10, at 352.

38. The Sports Complex Special Services District is very unusual as it provides that four board members be elected by district residents (renters as well as owners), while the remainder of the board consists of three representatives from the three sports facilities funding the district, various city and state legislators from the district, and the city managing director, sitting ex officio. Gainsborough, *supra* note 11, at 160.

cials, with community and civic groups, and especially with CDCs.[39] BIDs are part of a web of neighborhood political, economic, and social organizations, rather than entities operating on their own or simply as arms of neighborhood business interests.

Despite the *business* improvement district name, these studies suggest that in many, if not most of Philadelphia's districts, the impetus for district creation came from locally elected officials or from community organizations.[40] For example, in the East Passyunk BID, the initiative for establishing the district came from a complex formation of local organizations dominated by a state senator and the South Philadelphia political machine.[41] The Sports Complex SSD was created as part of the City of Philadelphia's effort to address neighborhood resistance to the creation of two new stadiums in South Philadelphia.[42] The Port Richmond BID was authorized through the efforts of the Philadelphia Industrial Development Corporation, a private nonprofit established by the city government to support the revitalization of the Port Richmond area, with the support of the Greater Philadelphia Chamber of Commerce.[43] As with the Sports Complex SSD, the Port Richmond BID complemented the city's neighborhood economic development program. In other cases, state and local elected officials appear to have seen the BID as a means of generating additional support for programs that would benefit their constituents.[44]

BIDs also often work closely with government agencies, as well as business organizations, in developing programs and providing services. The Center City District, for example, has collaborated with the Southeastern Pennsylvania Transportation Authority (SEPTA) to install a sign system for the entrances to SEPTA train stations, as well as new route maps and information panels at bus stops.[45] Similarly, although the Old City District study reports that it has only a mixed relationship with the City of Philadelphia, it also notes that the Old City District "communicates on a regular basis with the Police Department, with whom it contracts to provide extra patrols on

39. *See, e.g.*, McLeod, *supra* note 9, at 256, 260–61.
40. *See, e.g.*, Kummerow, *supra* note 15, at 246.
41. Justice, *supra* note 5, at 230.
42. Gainsborough, *supra* note 11, at 156–57, 165–66.
43. McLeod, *supra* note 9, at 254.
44. *See, e.g.*, Wheeland, *supra* note 8, at 363–64.
45. Morçöl, *supra* note 3, at 279–80.

weekends," and also has "regular contact with the Streets Department and [the] Licenses and Inspection Department."[46]

In addition to elected officials and the public sector, civic associations and CDCs have played a major role in forming or supporting the formation of BIDs. These community organizations have recognized that the establishment of a BID would also create a local authority with the power to assess property owners, thereby providing a more stable financial basis for community projects than the voluntary donations on which organizations without the assessment power are required to rely. As the Mt. Airy Case Study explains, a Mt. Airy CDC began a street cleaning program supported by government grants and voluntary contributions by area property owners, but the program collapsed when governmental and voluntary support declined.[47] The Mt. Airy BID gained support when local leaders recognized that a "mandatory program with dedicated funding such as a BID" was necessary to finance the street maintenance plan.[48] Similarly, in Frankford, "the Frankford Group Ministries Community Development Corporation (FGM CDC) accessed city funds for contracted street sweeping of Frankford Avenue. The FGM CDC and [City Councilman] Mariano convinced the Philadelphia City Council to pass a bill giving municipal assessment collection authority to a newly created entity, the FSSD [Frankford Special Services District]."[49]

Once formed, BIDs continue to interact with local politicians, civic leaders, and community organizations. Some BIDs are managed by the CDCs that pushed for their formation.[50] For example, the Manayunk Special Services District was sponsored by the Manayunk Development Corporation, which continues to be "responsible for its governance and administration."[51] Similarly, the Roxborough Development Corporation was the driving force behind the creation of

46. Ives-Dewey, *supra* note 5, at 214.

47. Batchis, *supra* note 13, at 114.

48. *Id.* (citing *Hearing on Bill No. 060957, Bill No. 070006, Bill No. 070008, Bill No. 070009, Bill No. 070010, Bill No. 070011, Bill No. 070012, and Bill No. 070013 Before the Comm. on Rules* 12 (Phila, Pa. Mar. 14, 2007) (statement of Ken Weinstein, Co-chair, Mt. Airy BID Steering Comm.)).

49. Kummerow, *supra* note 15, at 246.

50. *See, e.g.*, *id.* at 248–49 (explaining that the Frankford Group Ministries CDC, which was instrumental in the creation of the Frankford Special Services District, also managed it for some time).

51. Flanagan, *supra* note 13, at 140.

the Roxborough Neighborhood Improvement District, which was then chosen to manage the district.[52]

In some cases, BIDs work with a CDC or other community group in the delivery of BID services. For the East Passyunk Avenue BID, this operated as a subsidy to the BID.[53] The East Passyunk Avenue BID worked closely with Senator Vincent J. Fumo's Citizens Alliance, which in turn was the beneficiary of grants from other public and private entities.[54] Citizens Alliance "provided personnel and facilities for street cleaning and hanging holiday lights along the East Passyunk strip," thereby supplementing the BID's assessments with significant in-kind assistance.[55] The flow of benefits may also run in the other direction, as BID assessments are used to purchase services or rent office space from a CDC. This became controversial in Roxborough, where the overlap of the BID's and CDC's boards led to charges of conflict of interest.[56] As the Roxborough Case Study points out, the blurring of BIDs and CDCs is not unusual and raises questions about the transparency of BID finances and the accountability of BIDs to their assessment payers.[57]

The relationship between a BID and a CDC, or other community groups, can be a source of strength by rooting the BID in the community's social or political infrastructure. It can also be a source of tension when the BID's institutional interests come into conflict with those of other groups. The Frankford Case Study, for example, reports on an interesting conflict between the CDC, which played a large part in creating the BID and encouraging the city government to grant the BID municipal authority to collect assessments, and the BID when the BID sought to impose liens on property owners who failed to pay their assessments.[58] Those delinquent assessments eroded the BID's revenues and undermined its ability to deliver services, but the CDC opposed the imposition of liens "because of its need for a broader base of community support in terms of certain housing and social service objectives . . . ."[59] Although they had many shared interests, the two Frankford organizations had different institutional needs and goals. The conflict over the imposition of

52. Ruffin, *supra* note 12, at 313.
53. Justice, *supra* note 5, at 230, 234.
54. *Id.* at 234.
55. *Id.*
56. Ruffin, *supra* note 12, at 317.
57. *Id.* at 317–18, 321–22.
58. Kummerow, *supra* note 15, at 249.
59. *Id.*

liens for unpaid BID assessments led them to redefine their relationship.

BIDs do not function in isolation. Rather, they are part of a dense ecology of public, private, and hybrid organizations that work together, share managements and finances, and support one another, while also competing or conflicting with each other. In a sense, these studies tamp down the sense of BIDs as unique organizations, and instead demonstrate that BIDs operate in a community or neighborhood environment where both hybrid public-private entities and complex inter-organizational relationships are the norm. This does not reduce the importance of the study of BIDs; rather, it highlights the need for examining neighborhood governance structures and the interactions of BIDs and similar organizations, both with each other and with the municipal public sector government more broadly.

III. IMPLICATIONS OF THE PHILADELPHIA BID EXPERIENCE FOR THE DECENTRALIZATION OF URBAN GOVERNANCE

The Philadelphia BID experience demonstrates the possibilities for, the benefits of, and the difficulties besetting the decentralization of governance in major cities. The Philadelphia BIDs show that decentralization can happen. In fifteen neighborhoods, community-based organizations are raising funds; providing street cleaning, sanitation, and public safety services; improving streetscapes; making capital improvements; and, in some cases, addressing such basic issues as traffic flow, urban design, zoning, and land-use planning. These organizations have provided an outlet for local initiatives and have enabled local decision-makers to tailor their programs to local preferences, priorities, and needs. The rapid spread and ongoing creation of BIDs demonstrates a continuing demand for neighborhood-based organizations that can improve and maintain the local urban environment. On the other hand, the BID experience illustrates some of the difficulties with decentralization.

A. Resource Inequality

First, and perhaps most important, is the problem of resource inequality. The essence of the BID model is community self-funding through assessments imposed on property or businesses within the district. The fact that the revenues are raised within the district enables it to act on its own and provides the justification for using

those revenues for district-specific projects. Yet, the studies demonstrate that such district-based self-funding does not work for low-income communities and, ultimately, may not even explain the successes of more affluent districts.

Although poor communities, like affluent ones, form BIDs, the "poor" BIDs raise and spend little money and undertake few activities. The Frankford SSD had an assessment levy of just $80,000, but due to widespread nonpayment of assessments, collected only $52,000 of that.[60] The Germantown BID had an assessment levy of $84,000 but, due to delinquencies, collected only $29,000,[61] and its "current operations are hamstrung due to an insufficient tax base."[62] By contrast, the Center City District's 2009 revenues were $18.8 million,[63] and the University City District's 2009 budget was $9.5 million.[64] Funded by a commitment of $1 million a year for thirty years from the three sports arenas in the district, the Sports Complex SSD, with just 9000 residents, funds a program that goes beyond cleaning to include tree planting, funding for youth athletic activities, support for school projects, and assistance to other community and charitable organizations.[65]

Moreover, in a classic instance of the rich getting richer, some of the most affluent districts are not supported primarily by their assessments at all, but either benefit from other assets—Manayunk receives $281,000 in fees from municipal parking lots that it controls[66]—or are able to use their assessments and the successful programs that those assessments have funded to leverage other funds, including grants from government entities, foundations, and other private, nonprofit organizations. Thus, for the Center City District, outside grants exceed in-district assessments.[67] Due in part to its parking lot revenues, property assessments accounted for only about 20% of Manayunk's budget.[68] Even Mt. Airy obtained 22% of its revenues from grants and institutional contributions.[69] With success breeding success, beginning with a large revenue base can en-

60. *See id.* at 245.
61. Stokes, *supra* note 15, at 332.
62. *Id.* at 335.
63. Morçöl, *supra* note 3, at 271.
64. Vicino, *supra* note 10, at 343.
65. Gainsborough, *supra* note 11, at 164–65.
66. Flanagan, *supra* note 13, at 140, 147–48.
67. Morçöl, *supra* note 3, at 284.
68. Flanagan, *supra* note 13, at 147–48.
69. Batchis, *supra* note 13, at 121.

able a district to obtain considerable outside funding. Poorer districts are unable to comparably leverage their more limited resources.

Decentralization based on self-funding of community services and programs can work for some communities, but not for other, poorer communities. Yet, it is precisely those poorer communities that will have the greatest need for the supplemental services that community organizations can provide. The self-help model of community organization is an attractive one, as it provides an incentive for local participation, a justification for local control over local resources, and a measure of independence from city hall. But it is a model that is useful for only a limited number of communities. As the Philadelphia BID case studies inform us, the BID model of decentralization is dependent on highly variable community resources and, thus, will almost surely produce substantial service inequalities. To be sure, decentralized service-delivery decisions can be accomplished without decentralized funding. But that is more difficult to sustain politically and will be more vulnerable to city government interference. The dilemma of how to provide secure funding for a decentralized decision-maker without contributing to fiscal and service inequality has yet to be resolved.

B. Accountability and Democracy

Second, the Philadelphia BID case studies raise important questions about accountability and representation in decentralized governance structures. A repeated theme in the case studies is the uncertainty concerning who the stakeholders or constituents are within the BID, who selects the BID's management, and to whom the BID is accountable. Although these districts are styled *business improvement* districts, all have substantial numbers of residents, and some are primarily residential.[70] Are the residents the constituents or stakeholders of the districts? With the exception of some of the representatives on the Sports Complex SSD and the state and local government officials who serve ex officio on some BID boards, none of the BID directors is elected by the local community. What about the property owners or businesses that pay the BID assessments? Are they the BID's constituency? Some of the BIDs guarantee representation to their largest landowners or assessment payers,[71] or to certain

70. *See, e.g.*, Ruffin, *supra* note 12, at 311.

71. *See, e.g.*, Gainsborough, *supra* note 11, at 161.

civic, business, or community organizations within the BID[72]—although the boards of those organizations are presumably not popularly elected. But there will be landowners who pay BID assessments who are neither guaranteed seats nor—unlike the shareholders in a corporation—guaranteed a vote in selecting the managing board. The model for BID management is the nonprofit organization with a self-perpetuating board; but unlike other nonprofits, BIDs have compulsory assessment authority. So, too, unlike most nonprofits, BIDs provide public services, and the most successful BIDs are engaged in aspects of the governmental function of land-use planning.

Some studies focused on allegations concerning the undue influence of a local political machine[73] or of a BID that contracted to buy services from the very CDC that also manages the BID.[74] But beyond the specific question of the potential conflict of interest in those situations, *virtually all* BIDs present questions of representation and accountability. BIDs have not resolved whether a BID is to serve the community as a whole, the assessment payers, or in the many BIDs where a handful of property owners or businesses provide the lion's share of the revenues, the principal funders. Nor has the mechanism for determining how these interests are to be represented and how board members are to be held accountable to their constituents been determined. Given that board members are not elected, it is tempting to refer to this situation as a democracy deficit, but the dilemma is, if anything, deeper, since it is not clear whether BIDs—with their business improvement focus and their assessment-based financing—are supposed to be democratically based at all.

To be sure, a certain amount of flexibility in BID governance structures may be desirable. As these case studies indicate, the term "BID" covers a lot of institutional ground. The University City District, for example, relies on voluntary contributions from major academic institutions rather than compulsory assessment. Likewise, the Sports Complex Special Services District is funded by commitments from neighborhood sports arenas as part of the process of negotiating public approval of these arenas. These unusual entities can justify idiosyncratic governance structures. For the more typical BID, which relies on a district property assessment to justify district pub-

72. *See, e.g.*, Cole & Grossman, *supra* note 12, at 129.

73. *See generally*, Justice, *supra* note 5, at 234, 238–40 (discussing the East Passyunk BID in the wake of State Senator Fumo's conviction on corruption charges).

74. *See* Ruffin, *supra* note 12, at 313, 321.

lic services, the nature of the relationship among district residents, assessment payers, and managing boards may need a more consistent and principled resolution. That resolution may not have to satisfy the rules of one-person, one-vote democracy,[75] but it will have to provide representation of, and accountability to, a district's constituents—whoever they are determined to be.

As with financing and interdistrict inequality, until these internal district-representation and accountability issues are addressed and resolved, the BID's capacity to be a model for a broader decentralization of urban governance is necessarily limited. And again, as with the financing inequality issue, resolution of these questions of neighborhood- or community-level representation and accountability is likely to be a necessary prerequisite for any significant decentralization of urban governance.

IV. CONCLUSION

I have titled this Article *The Business Improvement District Comes of Age*. While I initially intended to get at the idea that BIDs have now been around for more than two decades, I also hoped to suggest that the novelty of the BID has worn off, that BIDs have settled into a regular pattern of activities, and that they have become an established part of the urban fabric. But now that BIDs have matured from new kids on the block into urban "adults," it is time for lawmakers to seriously address the "adult" issues of interdistrict inequality and internal BID governance.

With respect to inequality, that response could involve either acceptance of the inequalities in neighborhood resources and the attendant recognition that BIDs are really only going to be useful in high-tax-base areas, or the direction of outside funding to a BID, perhaps through some kind of matching system whereby poorer BIDs with low per-capita tax bases get some municipal funds to match the assessments raised without the district. With the latter system, the extent of community support for the BID, taking into account the limited scope of its resources, could be a factor in determining the extent of municipal aid.

The issues of representation and accountability may be even more difficult. BIDs are simultaneously business associations, not-for-profit community organizations, and public institutions wielding public powers. But each of these strands in the BID's DNA is associ-

75. *See, e.g.*, Kessler v. Grand Cent. Dist. Mgmt. Ass'n, Inc., 158 F.3d 92 (2d Cir. 1998).

ated with distinctly different notions of constituency and of accountability to that constituency. Given the reliance on property owners to create and sustain the BID, it is highly unlikely that BIDs will ever be run according to the traditional democratic norm of a board elected by district residents. A greater attention to democratic values and concerns, however, even with respect to providing for representation of property owners within the district, would be desirable to assure the accountability of the BID to its assessment payers and the legitimacy of the BID's decisions in providing public services to, and shaping the urban environment within, its community.