

# America, The Gated?

The rise of gated communities is only one product of seismic forces that are altering the U.S. political landscape. Americans are redefining the borders between public and private, in the places where they live as well as in Washington policy debates—on the public streets barricaded against criminals, in the downtowns revived by private business improvement districts. These experiments raise vital questions about our common life—and promise to rewrite the rules of American politics.

*by Andrew Stark*

**T**he Los Angeles suburb of Hidden Hills, a handful of Mediterranean and ranch-style mansions scattered amid rolling, lightly wooded hills 15 miles inland from Malibu, boasts the highest per capita income of any community in California. It is the kind of place where live-in gardeners and six-car garages are taken for granted, and where bridle paths outnumber streets. The community is home to fabulously successful business executives and professionals as well as a few contemporary entertainers such as Sinbad and a curious collection of aging pop stars: Frankie Avalon, Neil Diamond, Tony Orlando, and John Davidson. It is also one of the nation's oldest gated communities, part of the vanguard of what has become a controversial national trend.

In 1961, however, 10 years into its existence as a private enclave, Hidden Hills took a step that moved it well in front of the vanguard. Even though, like other gated communities, it had a thriving, well-managed private homeowners' association that oversaw many of its affairs, Hidden Hills incorporated itself as a full-fledged city but left its gates and private homeowners' association in place. Ever since, Hidden Hills



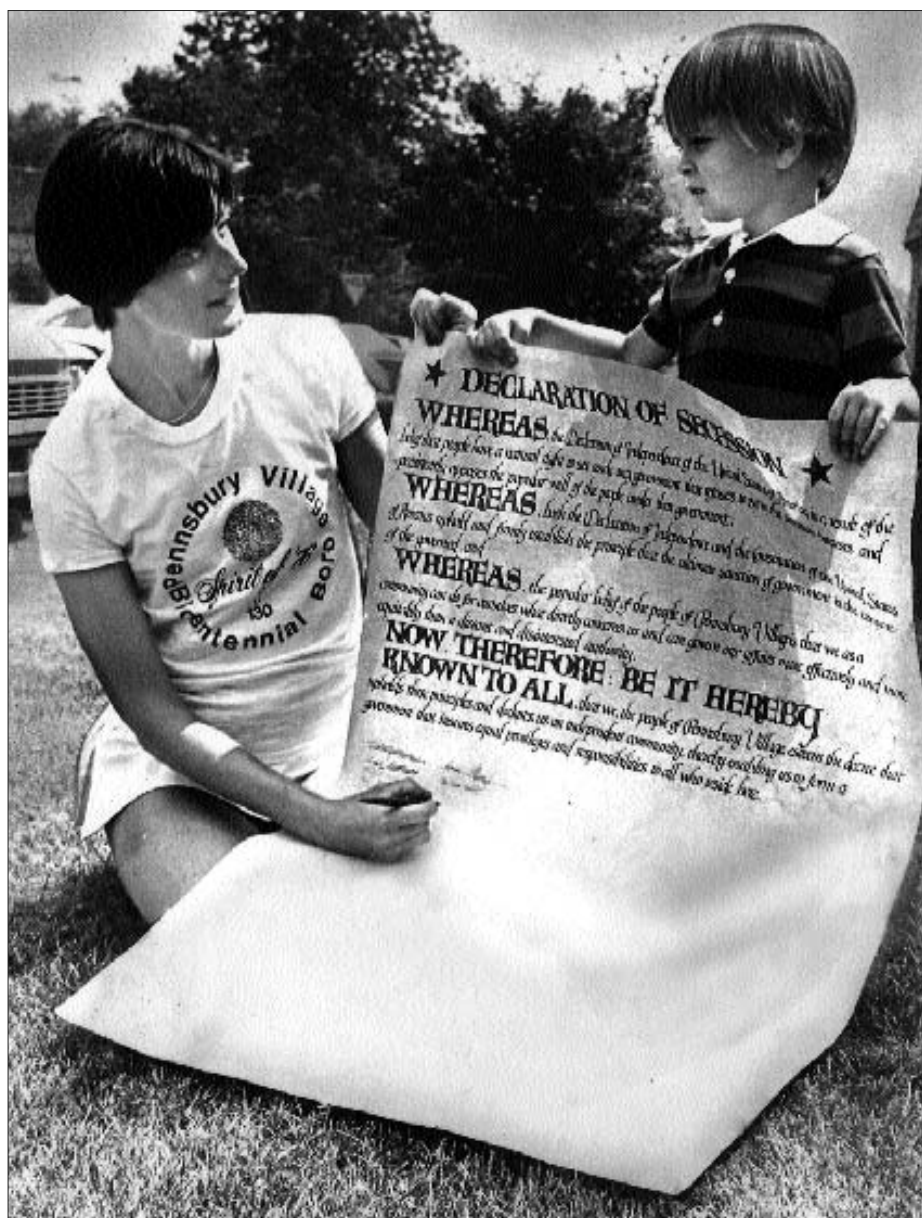
*Welcome to Hidden Hills*

has been a city with *two* governments, one private, one public. “It is odd,” says Fred Gaines, a lawyer from nearby Woodland Hills, “to have an entire city that’s gated.”

Odder still is the way in which the two governments have divided their powers. In Hidden Hills, the city government, the *public* entity, carries out building inspections, provides security, issues licenses, and sponsors some adult education programs; it also manages the local trash collection franchise. These are precisely the kinds of services that governments around the country, after decades of nagging by economists, are now rushing to fund through user fees or privatize entirely. But the Hidden Hills homeowners’ association is very busy with other matters. In Hidden Hills, the private government controls the community’s quintessentially public spaces and events—its parks, its roads and horse trails, even its annual Fourth of July parade.

There is one more oddity, perhaps the crowning one. After 34 years of sharing a sleek wood-and-glass low-rise on Long Valley Road in the center of town, the two governments have split up. In 1995, Hidden Hills’ public government moved to a renovated slate-roofed garage on Spring Valley Road, just 25 feet inside one of the community’s three gates. Then the homeowners’ association moved the gate. Today, the city hall of Hidden Hills stands 75 feet outside the town’s own gates.

There is method to Hidden Hills’ various madnesses. Consider, first, the advantage the town derives by publicly providing an array of easily privatized services. Residents can claim their property tax payments as deductions on their federal and state income tax returns. If these services were funded out of private homeowner dues, however, they would



*Celebrating secession at Pennsbury Village*

not get the same deductions. It is not only the rich who have discovered the benefits of this arrangement. The few private communities that have managed to replicate Hidden Hills' twin-governments trick have embraced the same financial logic. In suburban Pittsburgh, a 500-unit middle-class townhouse community called Pennsbury Village became, in 1977, the only private condominium complex in the United States ever to form its own municipality. After the bitterly litigated separation agreement with the local township was signed, borough manager Irv

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Foreman recalls, “We sat down, the condo association and the municipality, to divvy up powers, and for tax reasons we gave everything we might otherwise have purchased privately, such as trash-collection, sewer, water, and animal control, to the municipality, to the public government.”

All this seems clear enough. But why, we might ask, has Hidden Hills placed its most public functions, including the Fourth of July parade, in the hands of its private government? Because if these things were furnished by the public government, paid for out of tax-deductible property taxes, they would have to remain open to all—they would have to be *public*. That would be anathema to the residents of this very exclusive private community.

**T**here is only one public space that Hidden Hills cannot privatize, cannot fund and operate through its private government: city hall, the seat of its public government, an ineradicably public place where anyone from anywhere can legally demand to go. That is why it had to be moved outside the city’s gates. “If people could get into town just by saying ‘we’re going to city hall,’” explains city attorney Amanda Susskind, “then the residents of Hidden Hills could have no security.”

Hidden Hills’ municipal building stands as an ironic counterpoint to a much better known town hall on the other side of the continent. There, in its model new town of Celebration, Florida, the Disney Corporation has erected a splendid Philip Johnson-designed town hall smack in the middle of the community. But Celebration is a private community, with no intention of incorporating as a municipality. Its impressive town hall, as critics have pointed out, is nothing more than an architectural bauble, totally without political function. Both cases suggest that public buildings will find a place in private communities only if no public business is conducted in them.

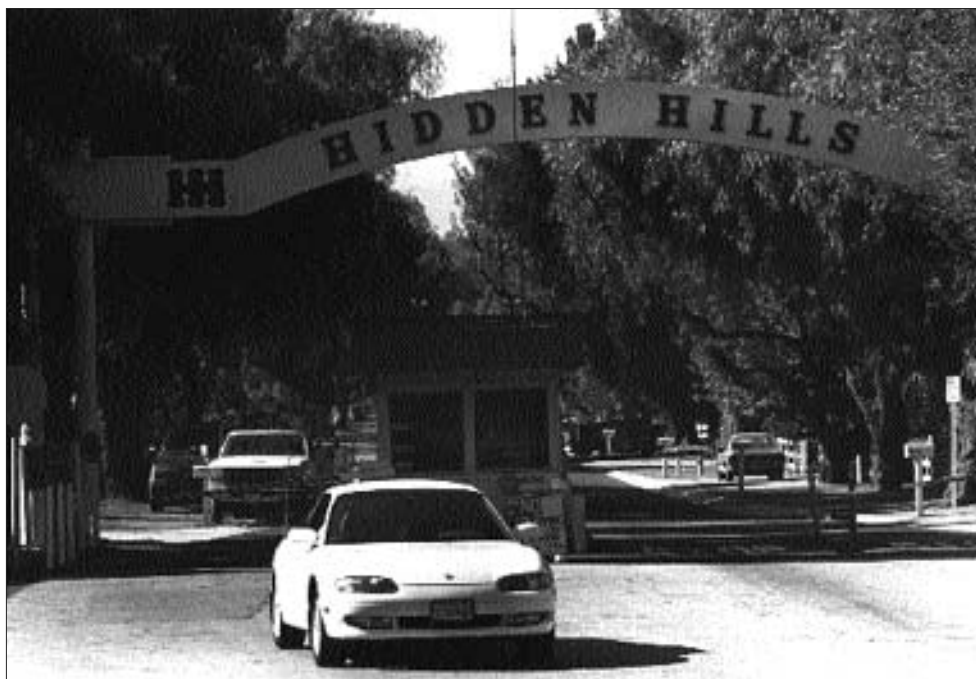
Curious as it is, Hidden Hills may be pointing the way to some of the more

fundamental dilemmas and conflicts of the American future.

Americans today are in the midst of a vast and largely unrecognized transformation: the radical redefinition at the grassroots level of the boundary between the public and the private realms. Gated communities are only the most obvious (and easily attacked) example of this change. Public-private boundaries are also being redrawn in tens of thousands of *ungated* communities—planned developments, condominiums, cooperatives—managed by various kinds of private govern-



*The empty public square: Celebration's town hall*



*A day in the life of Hidden Hills: the main gate (above), a glimpse of the manor (upper right), tearing down the old guardhouse (below), and the new town hall (lower right), outside the town gates*

ments grouped under the rubric “homeowners’ associations.” Ill-equipped to form their own public governments Hidden Hills-style, many of these communities have begun demanding tax-deductible status for their private homeowner dues. They argue that they are privately shouldering an array of traditionally public sanitation, security, transportation, and recreation responsibilities—assuming burdens that municipal governments bore before the age of retrenchment.

Public-private borders are also being shifted in hundreds of poor and middle-class city neighborhoods, where aroused residents fighting crime, traffic, and blight are demanding to have the public streets barricaded or gated against drug dealers and other outsiders. Unable to totally privatize their streets, as Hidden Hills has done, they seek barriers that would impede public access without wholly prohibiting it. These



efforts have provoked bitter debates. “Whose streets are these, anyway?” critics ask. And in more than a thousand American towns and cities, private downtown property owners have banded together to form business improvement districts (BIDs), providing street cleaning, landscaping, security, and other services that were once the exclusive province of municipal governments.

Each of these trends grows out of eminently defensible political concerns. But each also raises difficult practical and philosophical questions about the public-private border. BIDs, for example, are in many ways an impressive response to the failings and financial straits of municipal governments. Many BIDs have worked wonders, rescuing entire urban cores from decay and bringing public streets back to life. Unlike the residential neighborhoods that seek gates and barricades on public streets, BIDs welcome the public—paying customers—to their domain. And unlike private residential communities, from which they have learned a lesson, BIDs insist that municipalities continue to provide a full complement of services, supplementing them with their own efforts

rather than replacing them. But in preventing city governments from shifting scarce resources to needier neighborhoods, BIDs combine private advantage with their share of the public weal to make themselves privileged zones. Whether that status is justified is one of the



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many practical issues that raise larger questions about the meaning of community and the public realm in contemporary America.

**T**he resurgence of the private in the 1990s reverses a trend that began more than a hundred years ago. Starting in the middle of the 19th century, Americans witnessed a steady incursion of the public into realms previously private, nowhere more than at the local level. In U.S. cities, water, sewerage, street cleaning, policing, and fire protection were all provided privately, if at all. Boston's city government hired the city's first paid public police officers in 1838; New York followed in 1844, Philadelphia in 1850, and Baltimore in 1857. After the Civil War, local governments assumed responsibility for street cleaning; New York employed 5,000 street sweepers by 1900. These years also saw the rise of public schools and parks.

The pace of change varied, but the result was clear. By the end of the 19th century, the public realm had vastly expanded and the private had dramatically shrunk. Today, however, the borderlines are not so clearly marked. The private realm is not so much pushing back the public as overlaying it. Once something has existed in the public sphere for a hundred years—whether it is a service such as policing or snow plowing, or a space such as a street or a park—it acquires certain civic connotations and meanings that cannot easily be shaken off.

**T**oday's border wars are thus confounding traditional political ideologies and coalitions. Among those leading the charge to allow private-community residents to write off their homeowners' association dues as income tax deductions, for example, are liberal Democrats, who see granting such tax breaks as a way of emphasizing that building parks and maintaining roads, two functions of the associations, are really public responsibilities. Among those most fiercely opposed to gating public streets are staunch libertarians, many of them local Republican politicians. They view public-street barriers as infringements on their personal freedom.

Until now, most media and scholarly attention has focused on the rise of gated communities, "privatopias" that are said to herald a future "fortress America" in which the private simply secedes from the public. But the reality being forged by ungated private communities seeking quasi-public status for their expenditures, by public neighborhoods seeking quasi-private status for their spaces, and by business improvement districts is far more complex. The people in these places do not wish to withdraw completely from the public sphere, yet they lack the where-

withal to follow in the footsteps of Hidden Hills and form their own public governments. Instead, they are opening a vast new territory between the two realms, where fragments of the private mix with shards of the public in novel configurations.

America's border wars are not sharpening the lines between public and private. They are blurring them, as Americans once again renegotiate the character of the lives they live together.

## II

One of the bigger fields of conflict today is the seemingly mundane question of whether residents of private communities should be allowed to deduct their homeowners' association dues from their federal and state income taxes. More than 30 million Americans live in such communities, and their numbers are rapidly growing. (At least four million of these people live in gated communities.) Currently, residents are barred from deducting their association dues, as Yale University law professor Robert Ellickson explains, "because it is assumed that the value of the association services they receive equals the value of the assessments they pay." Tax deductions are usually available only in situations in which there is no necessary equality between what one pays and the benefit one personally receives. Deductible expenditures have a public purpose or a redistributionist or altruistic cast. And until recently, it has generally been assumed that there is nothing altruistic or public-spirited about paying for your own amenities through a private homeowners' association.

But private communities are challenging that view. Robert Figeira, executive director of Woodbridge Village, in Irvine, California, with 9,300 households the nation's second-largest private community, made the case for deductions in his testimony before a California State Assembly committee in 1990: "We have open space areas . . . parks, roads, bicycle trails, [and] recreation programs," Figeira told the committee. "We believe half of the people that enjoy [them] are from outside. . . . We maintain the lake and yet the people that live there get no credit for it. It's just, again, part of their association dues, yet it's all open to the public."

Assemblyman Gil Ferguson, a southern California Republican, drove home the point. "And you might explain to the committee that not one penny of that is deductible," he said.

"Not one penny, not one," Figeira agreed.

In its report, the committee endorsed the notion that residents of private communities—the majority of them ungated in California—are indeed "privately maintain[ing] a number of essentially public facilities." The legislature never acted. The argument, however, is certainly not implausible. Some observers think it could be a political lightning rod. "The politician who manages to capture this constituency, speak to



its needs, and offer it a voice will be amply rewarded,” says Robyn Boyer Stewart, president of Common Interest Advocates, the California lobbying group for private communities.

A self-described “Zen soldier” who carefully evokes her past association with progressive causes, Stewart offers a liberal-ism-tinged defense of tax-deductible homeowner dues. “By placing severe limits on government’s capacity to raise property taxes,” when it was passed in 1978, she says, California’s Proposition 13 “made it impossible for local governments to continue providing the basic kinds of public services they always had, and so they foisted the responsibility on new developments to privately maintain an array of new roads, parks, streetlights, medians, recreation facilities, all of which [where the community remains ungated] the general public uses.” Many private communities in fact “don’t want to be doing this,” Stewart adds, “but they have had to because government is now so constrained in its capacity to provide services that broadly benefit the public.”

What particularly galls liberals on Stewart’s side of the issue was the sight, all through the 1980s, of California’s municipal governments insisting that their revenue initiatives were less like taxes than private assessments. Proposition 13 contained a loophole (since closed by Proposition 218 in 1996) that allowed cities to raise money more easily if they could show that the levy was not a tax —defined as a revenue initiative devoted to broader public purposes—but a “benefit assessment,” designed specifically to improve the private-property values of those paying. But if California’s public governments are now protesting that their main purpose is to look after private interests, while its private homeowners’ associations are claiming to pursue the public interest, it is easy to see why Stewart and other liberals might find themselves on the private side of the divide.

The drive to make private homeowner dues deductible, though, begins to lose credibility when *gated* private communities try to join in. In a very few gated communities (and Hidden Hills happens to be one), private homeowner dues are apportioned on the basis of property values, much like deductible property taxes. In effect, this means that some kind of redistribution is going on *behind* the gates. Those with \$5 million estates, for example, are subsidizing the capacity of their poorer neighbors, those living in \$2 million homes, to enjoy the private equestrian trail. And this leads some gated-community residents, even in Hidden Hills, to claim that their homeowner dues ought to be deductible.

In the vast majority of gated communities, however, each property owner pays an equal amount to maintain the common spaces, and no internal redistribution takes place. Instead, to justify deductibility, residents of these communities must argue that their private expenditures somehow benefit the public beyond the gates. To see how they might do so, consider the dissenting opinion advanced by Judge Hiram Emery Widener, Jr., a conservative Nixon appointee, in a 1989 tax case involving Flat Top Lake Association, whose members live in a gated, lakeside,

white-collar community near Beckley, West Virginia.

The private dues paid by Flat Top's homeowners "do benefit the public," Judge Widener contended, because they protect "the public purse by performing activities which the taxpayer would otherwise have had to pay for." In other words, a single mother in nearby Beckley benefits from Flat Top's artificial lake, even though she can't swim in it, because had Flat Top not been a private, gated community—had it been a development reliant on public infrastructure—she and other taxpayers would have had to help pay for it! By Judge Widener's logic, the very fact that the park is private is a public benefit. Understandably, the rest of the court found this argument a bit too metaphysical for its taste.

Californians form the cutting edge of the movement to make the dues paid by private homeowners deductible. This is not surprising, since they have the most to gain. Homeowner dues are comparatively high in California, partly because the state is home to America's wealthiest homeowners' associations, but also because its private communities have all had to make up for the effects of Proposition 13. Elsewhere, though, private dues are lower and property taxes higher. In states such as New Jersey, Maryland, and Connecticut, private-community residents, instead of seeking deductions on their state and federal income taxes, are trying to win rebates of city or county property taxes.

Like the western case for tax deductions, the eastern brief for tax rebates displays a certain cogency within bounds—especially when the community seeking them is not gated. Consider the argument for rebates advanced by Benjamin Lambert, an attorney whose firm represents about 40 New Jersey private homeowners' associations: "Almost all municipal governments still tax local private-community residents for whatever public services the municipality provides, whether it be trash collection, snow removal, hydrant repair, sewer maintenance or street lighting. But many municipalities don't supply those services *to* private communities, because private communities, through their homeowner dues, already provide them for themselves." Hence, Lambert concludes, "private-community residents have been paying twice—through their dues and through their taxes—for services they get only once."

According to Doug Kleine, former head of the research arm of the Community Associations Institute (CAI), the national umbrella organization for private homeowners' associations, rebaters believe that "the purpose of government is to give you back everything in services that you give it in payments, not to take your money and use it for the benefit of others."

In the mid-1980s, Lambert and others began asking New Jersey municipalities to rebate some fraction of property taxes to dues-paying private-community homeowners. Things did not go well at first. The effort stirred opposition in a surprising quarter. Just as the cause of private communities found unexpected liberal support in California, so in New Jersey it stirred the opposition of conservatives. The voters of Mount Laurel, the town made famous by its 20-year fight against court orders requiring it to support low-income housing, rejected a mid-1980s referendum proposing rebates for the area's private communities. The

United Taxpayers of New Jersey, a leading organization in the tax revolt that eventually brought Governor Christie Whitman to power, also opposed rebates, which it saw as giveaways for the few instead of tax relief for the many.

Nevertheless, New Jersey's private homeowners' associations pressed on and in 1990 pushed the Municipal Services Act through the state legislature. Under its provisions, those who pay homeowners' association dues now get rebates on the property taxes they pay to support municipal trash collection, snow removal, and street lighting. In its first year, the act cost New Jersey's municipalities some \$62 million.

**T**he rebate movement isn't stopping there. The next step, says David Ramsey, president of the New Jersey chapter of CAI, is for private communities to obtain rebates for the taxes they pay to maintain public roads, on the analogous grounds that they are already maintaining their own private roads. I asked Ramsey if there wasn't an important difference. After all, those who pay for their own trash removal don't use the public system, and so arguably should not have to pay for it. But those who pay for their own private residential roads still have to drive on public roads. Shouldn't they have to pay at least some property taxes for road maintenance?

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"No," Ramsey said. "Private-community residents may use public roads, but remember too that the general public can use most private roads, any that remain ungated. And since the general public doesn't pay even a cent toward the maintenance of any of the private roads they are able to use, there's no reason why private-community residents should pay for the maintenance of the public roads they use." Rebates, Ramsey says, would simply "even the score."

Whether that is true depends on whether the public actually uses private-community roads as much as community residents use public roads. In some New Jersey locales where private-community residents make up close to half the population, Ramsey's argument begins to acquire a certain plausibility. Where the demand for rebates becomes distinctly less plausible, however, is precisely where the quest for tax deductions gets shaky: where gated private communities try to get in on the act.

Consider, for example, the argument Maryland attorney Steve Silverman advances in favor of granting residents of gated communities rebates on the taxes they pay to maintain public roads. True, acknowledges Silverman, who represents 170 homeowners' associations in the Washington, D.C., area, the general public cannot use gated private roads. But then again, residents of private communities actually never use most public roads, he claims, because the majority of these roads are not

major thoroughfares but neighborhood crescents and cul-de-sacs.

“Most people tend to use the neighborhood streets where they live,” Silverman continues. “You’re not going to drive on someone else’s public street unless you’re going to visit them. In which case they’ve invited you, so they should pay for your use of the public road in front of their place, just as, when you invite someone to visit you in your gated community, you pay for whatever wear and tear they inflict on your road.”

Here is a truly intriguing suggestion. Though the gated-community resident may actually be the one driving along those public roads, Silverman in effect claims, it is really others—those whom that resident visits, buys from, works for—who are the beneficiaries, and they are the ones who should pay the freight. On this argument, a nation of citizens and publics becomes a nation of hosts and guests.

There is a striking resemblance between Silverman’s argument for rebates and Judge Widener’s case for deductions. In Silverman’s argument, a gated-community resident may not benefit from a public road even though he drives on it; in Widener’s argument, a member of the outside public somehow benefits from a gated private lake even though she cannot swim in it. Because each case for tax breaks so radically severs the notion of personal use from personal benefit, neither is likely to get very far. The arguments *ungated* private communities mount for deductions and rebates, however, are each at least plausible when taken separately. The problem with them is that each argument undermines the other.

In essence, the Californians are saying that their homeowner dues underwrite services that benefit many others beyond themselves. Hence the altruistic tenor of deduction talk: we are providing public services well in excess of our own personal benefit and thus deserve tax deductions. What the eastern-based rebate advocates find outrageous, by contrast, is precisely that their property taxes do underwrite services that benefit others. Rebate talk has a distinctly self-interested twang: residents should get back any amount that goes beyond what they receive.

The private-community movement is, to borrow Justice Sandra Day O’Connor’s famous description of *Roe v. Wade*, “on a collision course with itself.” Robyn Boyer Stewart views the eastern rebaters as dangerously “secessionist”; Jeff Olson, a California private-community manager and supporter of tax deductions, told me he doubts that the rebate drive can get off the ground. New Jersey rebater Ramsey takes the same view of the West Coast deduction forces. As they assemble their debating points, private-community leaders have yet to make up their minds about some of the most basic questions a community can ask itself: are the vital, commonplace acts of purchasing trash collection, parks, roads, and sewage services ones we undertake in our public or in our private roles? Do we perform them as citizens who have shouldered the broader public purposes of government, or as consumers who need look out only for ourselves? These are questions that people in private communities are raising, and that Americans everywhere will need to answer.

### III

Gates are seen not only on the streets of exclusive private enclaves such as Hidden Hills. All over the country, local residents are seeking to gate the *public* streets they live on, hoping to keep out gangs, drug dealers, prostitutes, traffic, and litter. Nobody knows how many public streets have been restricted, but every year, residents on thousands of public streets reportedly seek restrictions.

There are important differences between barriers on public streets and those on private streets. Private gates enforce both inequality and exclusivity. They not only distinguish between insiders and outsiders but completely bar the outsiders. Barriers on public roads, by contrast, perform only one or the other function.

In one common model, a gate or guardhouse allows local residents to pass through unimpeded while requiring nonresidents to explain themselves to a guard, or else be photographed by a camera mounted on the gate. There is unequal treatment but no exclusivity. "In the final analysis," says Tom Benton, manager of Miami Shores Village, a mostly Anglo upper-middle-class community of 2,500 households on the northern edge of Miami, "gates and guards will slow you up, but if you want to proceed, no one can stop you from going on a public street."

The alternative to the gate is the barricade: a string of orange cans, a line of concrete cylinders, or a row of shrubs placed at the mouth of a public street, requiring the general public and residents alike to take a detour. This is the route favored by Miami Shores, where Spanish-style mansions on Biscayne Bay give way by degrees to less exalted dwellings. Feeling threatened by rising crime, the community bankrolled professionally designed landscape plantings to close off several streets connecting it to some poor neighborhoods to the west. Barricades are exclusive; they block entry. But they are also egalitarian, blind to the difference between residents and the public at large. Indeed, they often work their greatest hardship on residents. In Oak Forest, an affluent suburb north of Miami, a barricade separates William Matthews's front door and his garage, requiring the 84-year-old retired restaurateur to drive a half-mile to park his car after dropping off his groceries.

Each of these methods of limiting access to public streets thus manages to avoid one of the two most maligned features of private gates. Each offers a legally acceptable method of taking public streets some distance toward the private. Each has been popular in Dade County, Florida, where many of the 28 municipalities, including Miami, not only continue the upkeep of public streets that have been restricted but have actually helped finance the construction of gates and barricades. In Dade, the most powerful argument in favor of such public-street barriers has been a kind of egalitarian one. "Why should the protection that gates provide from crime and traffic be available only for those who can afford private communities?" asks Silvia Unzueta, a local pro-barrier leader.

Unzueta and others have been seeking barricades on the older, grid-pat-



*A barricaded street in Miami Shores*

terned streets in the poorer north end of Coral Gables, a town of 42,000 immediately west of Miami. They point out that residents in the newer and wealthier south end live largely on cul-de-sacs, which afford much the same kind of security as barricades. “Why should others be denied these basic public goods simply because of an inability to pay?” Unzueta asks. It is a theme that comes up repeatedly in pro-barrier arguments.

The notion that there are certain goods that government ought to provide more or less equally to all—health care, perhaps, or education, or police protection—grows a little forced when the list expands to include street barriers, the ultimate socially divisive mechanism. Many barrier opponents hold that barriers are less like education than they are like Cadillacs and caviar, market commodities that government has no obligation to provide. Monique Taylor, a property owner living just outside Miami Shores, represents a brand-new hybrid in local politics. She has absolutely no problem with private gated communities. “What people do with their own property is their own business,” she says. Yet Taylor is fiercely opposed to the gating and barricading of public streets, and for much the same reason: what people do with their property is their own business, and the public streets belong to everyone. “I have a right to drive my preferred route,” Taylor told me. “Barriers impinge on my freedom of travel, forcing me to go where I don’t want to go.”

Taylor’s argument is echoed by other barrier opponents. Mike van Dyk, a Dade County Republican activist, is head of a private-community homeowners’ rights group and a leading local opponent of public-street barriers. “I pay for those streets,” Van Dyk told me. “I don’t like someone telling me I can’t go on public property.”

Some barrier opponents, in a strange twist on a popular libertarian argument, have even spoken of public-street barricades as a kind of “taking,” in which the state—simply by allowing the barriers—unconstitutionally deprives citizens of their property rights, albeit their rights to public rather than private property.

Barrier advocates scoff at the idea that there are any great principles at stake. “What’s all the fuss? So you can’t always take your chosen route to get somewhere,” says Randall Atlas, a safety and security consultant who has studied the impact of barriers in some Dade municipalities and believes that they reduce crime. “You might, heaven forbid, have to go on a crowded street or around the block. . . . It’s about convenience, not freedom.”

Like many barrier advocates, Atlas depicts his opponents as efficiency-driven neurotics who would be better off if they occasionally stopped and smelled the roses. An interesting critique, since barrier advocates portray their foes in precisely the opposite terms: as aimless wanderers who have nothing better to do than drive through other people’s neigh-



*William Matthews, of Oak Forest, Fla., stands where a new neighborhood security wall is being built between his garage and his house.*

borhoods. “There are always oddball people coming in,” complains Carol Pelly, a barrier advocate in Thousand Oaks, California, “and they don’t have any purpose here.”

Ironically, the debate over public-street barriers inverts the terms of the older controversy over private gated communities. The older controversy typically pits egalitarian gate critics against freedom-loving gaters, who cite their rights to do whatever they want with their own private property. On the public streets, however, the egalitarians favor gates and the more libertarian-minded oppose them.

Indeed, the egalitarian argument used for gating on the most modest of public streets can be turned around and used to attack gates at the ritziest of private enclaves. Several communities in suburban Dallas—Addison, Plano, Richardson, and Southlake—have recently shown how. All four towns decided to ban barriers on public roads, believing that they project the image of a divided city. But the towns have gone fur-

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ther. They have also effectively banned or placed moratoriums on the construction of gated *private* communities. If residents on public roads are going to have to do without barriers, the towns concluded, it would be unfair to allow them in private communities. “I am offended,” Addison city manager Carmen Moran told me, “by the concept that some should take for themselves security that others don’t have.”

As the public-private border shifts, values that once unified people philosophically are now dividing them politically, often in paradoxical ways. To be an egalitarian might dispose you to insist on gates for public streets, as it does Silvia Unzueta. But it can just as easily impel you to attack the gates erected by private communities, as it does Carmen Moran. Libertarians will defend gates in private communities but revile them on public streets. In the fierce debate over gating, the combatants are discovering that their deepest political values can imply very different things on either side of the public-private border.

## IV

**I**n a recent essay on community spirit in America, *Time* editor Richard Stengel claimed that neither “gated suburbs [nor] business improvement districts” could be “considered salutary for the republic.” Both, Stengel noted, “represent the secession of a smaller, more privileged community from the larger one.” Each is “in some respects driven by fear.” Neither, he said, is all that different from the “recently-arrested Viper militia in Arizona.”

Three weeks later, *Time* published an angry response from Andrew Heiskell, the magazine’s former editor in chief and a former board member of New York’s Bryant Park Restoration Corporation, a BID. Heiskell did not take the Viper militia comparison particularly well. Noting that Bryant Park itself had been rescued from the reign of drug dealers and vagrants and restored to its long-forgotten status as a lively six-acre oasis in midtown Manhattan, he wrote that the “major BIDs in the New York area have vastly improved the quality of life there.” Indeed, BIDs around the country can boast an impressive record of achievement: crime down 53 percent in the area served by Central Houston, Inc., linear feet of graffiti down 82 percent in Philadelphia’s Center City District.

Some of the districts have been so successful that their managers suspect local politicians of BID envy. At a recent meeting of BID directors, recalls Terry Miller, former chief financial officer for the Association for Portland



Progress, in Oregon, “several of the most well-established and powerful directors acknowledged nascent tensions caused by mayors’ suspicions that they [the BID directors] somehow wanted to be mayor themselves.”

To hear some BID managers talk, Stengel missed the mark as badly in comparing BIDs to gated communities as he did in comparing them to the Viper militia. “I don’t like gated communities,” Philadelphia BID director Paul Levy told me. “Private gated communities want to keep people out; BIDs want to welcome them in,” he says. “Gated communities are devoted to private spaces; BIDs are dedicated to the improvement of public spaces.”

True enough. But there is another and more important difference. The great fear BID founders had, Levy says, is that once their new organizations started to provide their own private security, street cleaning, and trash

removal, municipal governments would begin withdrawing public services from the downtown, much as they have done in private residential communities. So nearly every BID in America negotiates a “baseline service” agreement with its city government, obliging the municipality to maintain the level of services it would have deployed regardless of how much extra the BID is able to provide privately. If the BID is paying for 10 private security agents, this is understood to be in addition to the 40 police officers the city would furnish anyway. Clearly this arrangement serves the interest of property owners, but it is also intended



*Manhattan's revived Bryant Park*

to ensure that they retain a stake in the public system and have no incentive to agitate for tax rebates. After all, as Times Square BID director Gretchen Dykstra says, the districts “continue to get their money’s worth from the city.”

It is possible, BIDs seem to be saying, for a private government to lightly overlay an undiminished public sphere, a sphere of fully accessible public space and full-service public government, enhancing public life at no cost to the community. In this way, BIDs are different from restricted public

streets and private communities that seek tax rebates.

Or at least in theory. In the short life of BIDs, there already have been significant strains. In 1994, for example, John Dyson, then New York's deputy mayor for finance and economic development, called on the City Council to rebate a portion of property taxes to dues-paying BID businesses. Dyson's proposal didn't go anywhere. It would have cost the city \$7.5 million annually, which even Dyson acknowledged it could ill afford. But the very fact that he could have made such a suggestion (and that some BID managers nodded in agreement when he did, as one told me) suggests that the baseline principle might not hold. For if a BID is sweeping its own sidewalks every two hours, what is really left for the city to do? If it fills its own potholes, scrubs its own graffiti, or reduces its own crime, what added value do the city department of public works and other municipal service agencies provide? And after a while, won't hard-pressed cities feel an irresistible urge to reduce services in areas where BIDs are flourishing? "I don't buy the baseline," New York city councilman Andrew Eristoff told me. "BID businesses are going to start asking 'What are we paying our taxes for?'" "The baseline," says Dave Fogarty, coordinator of a proposed BID in Berkeley, California, is a "myth."

But if the baseline is a myth, it is a double-jointed one. While cities might sometimes trim services or fail to provide value for tax dollars within BID perimeters, they can also wind up putting even *more* resources into a BID than the area would have received had the district never been formed. Center City District, Philadelphia's BID, provides any municipal constable patrolling the area with free use of a radio, TV camera, pager, and other amenities. It also built a storefront police substation, on the principle of "If you build it, they will come." And they did: the Philadelphia Police Department now deploys 30 officers over and above what the Center City baseline requires.

**T**here are other examples. Instead of paying for its own private graffiti removal, a prototype BID in San Francisco established a "graffiti hotline," which regularly contacts the public graffiti removal service to get freshly spray-painted scrawls and screeds removed. Public service to the area has "improved immensely," says a pleased Jim Flood, a local property owner and BID activist, because "nobody else is calling" the removal service. BIDs were meant to use their wealth to supplement city services, but many are actually using it to become more adroit consumers of those services.

"In my mind," says Randall Gregson, director of the New Orleans Downtown Development District, "I am always trying to draw the line between what the BID should do and what the city should do."

And understandably so, for if the BID experience offers one clear lesson thus far it is that the notion that these private governments can lightly overlay the city's public government, each abiding peacefully by the baseline, is something of a chimera. Private government has a tendency either to repel or attract public government. It is not neutral. Either the businesspeople who belong to the BID will begin agitating for rebates, because they are getting a lower level of public services than they

should, or critics outside the BID will start attacking it, because it is enjoying a *higher* level of public services than it should.

BIDs also go beyond bringing a measure of instability to the relation-

ship between private government and public government. They might actually lead the two to change places entirely.

For more than a century, judges have prohibited municipal governments from taxing or otherwise assessing federal government properties—such as federal courthouses, post offices, and passport bureaus—on the grounds that federal revenues must not be “siphoned off” to public purposes set by other levels of government. But what if the municipal services are provided by a BID?\*

David Barram, administrator of the U.S. General Services Administration, the agency that manages all federal nonmilitary property, declared in early 1996 that the federal government would not pay anything to BIDs. By September of that year, however, after some vigorous internal debate (which revealed that federal managers in some cities were already contributing to BIDs), Barram reversed himself, announcing that the federal government would begin negotiating payment schedules.

That decision, despite its virtues, won’t resolve some of the underlying public-private tensions. Bob Jones, a member of the federal Empowerment Zone Task Force involved in helping to launch the District of Columbia’s first BID, expects that some group might well claim that federal payments to BIDs “quack like a local prop-



*In Philadelphia’s much-admired Center City business improvement district, teams of private employees sweep the streets, erase graffiti, and help keep the peace.*



\*BIDs raise similar questions for nonprofit organizations. Though they generally pay no municipal taxes, many hospitals and churches have begun making voluntary contributions to local BIDs. And when they don’t, says BID consultant Larry Houstoun, the BID in certain cases should consider “taking them to court to challenge their nonprofit status.” Thus BIDs, business-controlled enterprises that enjoy nonprofit status, may find themselves in court energetically trying to depict other nonprofits as businesses.

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erty tax" and ought to be prohibited. Jones, though, has a reply. Federal payments to BIDs are less akin to taxes than they are to user fees for services. And, Jones says, government properties "pay private firms to fix our sidewalks or pick up our trash all the time."

But if the BID is a private business taking fees for services rendered, don't federal regulations require the government go through a process of competitive bidding? This problem initially caused concern for federal officials. What resolved it was the recognition that BIDs have no private competitors. Municipal governments, in effect, grant BIDs local monopolies to

provide certain kinds of services. Furthermore, BIDs do not generally charge property owners fee-like amounts commensurate with the services they render. Instead, they assess properties on the basis of their size or value. But doesn't that take us right back to square one, where BIDs once again look more like tax-levying public governments than fee-collecting businesses?

The ambiguities seem endless. Business improvement districts, born with the promise of fostering perhaps the easiest coexistence of

the public and private, in some ways create the most problematic relationship. Government's payments to the BIDs are like a vibrating cord alternating faster than the eye can see between public and private, never firmly fixed in one realm or the other.



## V

**D**ecades ago, Hidden Hills achieved for itself the best of both worlds by securing tax support for whatever it chose to fund through its public government and total exclusivity for whatever it assigned to its private government. That tidy division is impossible for the vast majority of private communities, which provide their own municipal services but cannot form their own public governments. Nor is it a possibility for the vast majority of public neighborhoods that would like to exclude outsiders but cannot completely privatize their streets. And such a tidy division is not even a desire of BIDs, which say they want to carve out a role for private government in the midst of a vibrant public sphere, neither supplanting the existing public government nor excluding the public.

As Americans involved in each of these movements grope toward the promised land represented by Hidden Hills, trying after their own fashion to wring the best from both private and public, they find themselves having to navigate an unprecedented set of private-public contradictions and conundrums. As private homeowners' associations assume more public responsibilities, critics are insisting that they abandon their practice of allowing only property-owners to vote and extend the franchise to all residents. There is also increasing pressure to require majority support from "all those affected," including outsiders, before restricting access to public streets. And BIDs are now under assault by critics who want to subject them to greater internal democracy—allowing renters and street vendors a vote in BID affairs—and to greater control by public authorities. These are issues that will help define local political conflict over the coming decades.

**H**idden Hills was spared such conundrums because its political arrangements, self-serving though they may seem, still respect one of the fundamental traditional distinctions between public and private: if a facility is going to be subsidized through the public tax system, then the public must, at least in some fashion, be able to enjoy its benefits. It must serve some public purpose. Conversely, if something is going to remain wholly private or exclusive, then no public tax support should be available to it, or even be sought. There is no question that some of the more private communities that now pursue tax deductions and rebates, or the public neighborhoods that now seek to shore up their privacy, often test, tweak, or even blur this public-private distinction. But to their credit, none have flouted it utterly.

Yet even this last firewall is showing signs of strain. In 1996, the Panther Valley Property Association, a gated private community near Hackettstown, New Jersey, transferred responsibility for its road maintenance to its own newly created special taxing district. Such districts are not full-fledged municipalities, but they are public entities nonetheless, with the right to tax residential properties for particular services, such as water, sewer, or, in this case, roads. Panther Valley homeowners now

deduct what they spend for local road maintenance from their federal and state income tax returns. But those roads remain wholly closed to the general public. Any outsider seeking to drive on Panther Valley's public roads will be turned away.

Panther Valley, in effect, has moved beyond Hidden Hills. David Ramsey, the attorney who represented the Panther Valley homeowners, describes their agreement with the local township as a "unique settlement, the first of its kind." That's almost exactly the same language that Peter Pimentel, executive director of the Northern Palm Beach County Improvement District, uses to characterize several nearly identical arrangements recently concluded in Florida. "It's pathbreaking," Pimentel says, although he adds that "no one wants to take this to the IRS, because they're afraid of what they might say."

Pimentel defends the practice of using the tax system to support roads that aren't open to all. After all, he says, municipal parking lots and toll highways are public facilities, but you cannot just waltz onto them as you please; you have to pay. The analogy, though, is misconceived. As long as you *are* willing and able to pay, public governments cannot bar you from such facilities just because you are not a local resident. Nor, for that matter, as long as you *are* a local resident, can America's public governments bar you from voting simply because you are unwilling or unable to pay for a home or a piece of property. Private governments are now turning both of these established principles of American public life on their head. Until very recently, in the struggle over the border between public and private, some lines had yet to be crossed. Now they have been.

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