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THE ARTIFICE OF LOCAL GROWTH POLITICS: AT-LARGE ELECTIONS, BALLOT-BOX ZONING, AND JUDICIAL REVIEW

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Municipalities throughout the nation are plagued by a seemingly unresolvable conflict between pro-growth development interests and skeptical homeowners' groups who oppose growth near their neighborhoods. This paper uses southern California as a case study to examine the ways in which local political structural arrangements have contributed to this conflict, and the reasons why judicial challenges to these structural arrangements have had so little success. As I argue, local politics in southern California are structured in a way that fosters an artificial dichotomy between pro-growth and anti-growth positions, subverting the possibility of compromise and suppressing a wide range of views about growth and other issues. On one hand, the prevalence of at-large voting systems in southern California municipalities favors growth interests by facilitating citywide growth while muting neighborhood opposition. On the other hand, neighborhood groups liberally rely on the initiative and referendum to halt unwanted growth. Ironically, the apparent conflict between pro-growth and anti-growth agendas generated by this political structuring conceals a fundamental continuity. Both at-

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large voting and the initiative process function to dilute the influence of minorities and other geographically concentrated groups, entrench the political power of the professional middle classes, mute constructive dialogue about the merits of development, and cloak this ideologically loaded process in the rhetoric of a unitary public interest.

This distorted political system has been the subject of many judicial challenges, most of which have focused on the local initiative process. The courts, however, have taken pains to uphold the right of the people to enact land use laws by initiative or referendum. Rejecting arguments that the local initiative entails an excess of politics without necessary apolitical counterweights, the courts have expressed confidence in the judiciary's own ability to temper the evils of unchecked politics through judicial review. I assert, however, that this faith in judicial review is misplaced, as the judiciary has proven incapable of balancing the complex array of competing interests involved in land-use regulation. Thus, I argue that the judiciary should instead focus on correcting defects in the political process so that the balancing of competing interests can occur, as it should, in the legislative arena.

I. INTRODUCTION

An intractable problem in local politics today is the difficulty of bridging the divide between developers, who press local governments to approve new growth, and neighborhood groups, who are skeptical of the costs such growth may visit upon their quality of life. Each side eyes the other as an implacably hostile adversary with whom compromise is impossible, a view that emboldens both sides to harden their positions in anticipation of conflict.[1] Making matters worse, each group is firmly convinced that it cannot receive a fair shake in dealing with local officials because those officials are captive to the demands of the opposing group.[2] Both sides, it turns out, have a point. Municipalities throughout the nation are in a desperate scramble for tax revenue, which predisposes them to approve new development that promises to enhance the tax base.[3] At the same time, municipal officials must answer to their existing voters, who are often bitterly opposed to new growth.[4] The result is a local political process that both developers and neighborhood groups perceive as illegitimate and a highly polarized political culture in which an honest debate about the merits of growth is

1. *Compare* Lawrence D. Mann, *When NIMBYs Are Really About "Different" People* 1 (1989) (Lincoln Inst. Land Pol'y, Working Paper, 1989) ("[W]e are dealing here with deep psychological and social attitudes that may well prove impervious to negotiation, mediation, and incentive strategies."), *and* Don Munton, *Introduction: The NIMBY Phenomenon and Approaches to Facility Siting*, *in* HAZARDOUS WASTE SITING AND DEMOCRATIC CHOICE 1, 16 (Don Munton ed., 1996) ("Siting proponents clearly want a particular solution and are usually willing to compromise on compensation packages, benefits, and the like. The opponents' ultimate objective, on the other hand, is usually to prevent the siting. Often that objective is one on which compromise is unthinkable."), *with* MICHAEL O'HARE ET AL., FACILITY SITING AND PUBLIC OPPOSITION 7 (1983) ("[The developer] appears to approach the public with a single firm decision camouflaged behind impossible alternatives. His strong position sets the stage for conflict.").

2. *Compare* Michael Wheeler, *Negotiating NIMBYs: Learning from the Failure of the Massachusetts Siting Law*, 11 YALE J. ON REG. 241, 246 (1994) (noting that opponents of land-use changes are "suspicious of the procedures by which siting decisions are made" and perceive that the rules "are stacked against them"), *with* WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS 15–16 (2001) (arguing that homeowners are the dominant faction in local politics and developers are mere "supplicants").

3. *See, e.g.*, JOHN R. LOGAN & HARVEY L. MOLOTCH, URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE 50–98, 154–62 (1987).

4. *See generally* FISCHEL, *supra* note 2 (arguing that homeowners exercise outsize influence in local politics and use their influence to resist unwanted land use changes).

submerged beneath a deluge of pro-growth and anti-growth slogans.[5] This pattern shows little sign of abating even after the recent real estate crisis.[6]

In this article, I use southern California as a case study to examine the ways in which local political structuring has affected the character of political debate over urban development, and the desultory judicial effort to confront the role of political structures in local growth conflicts. Southern California has been a peculiarly intense breeding ground for conflict between developers and neighborhood groups; it has at once been cited as a prime exemplar of the "growth machine" theory, which postulates that development interests are the prime movers in municipal politics,[7] and been branded as a hostage to the "NIMBYs,"[8] mythically powerful homeowners who can apparently stop growth in its tracks. While these two theses may seem contradictory, in truth, southern

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5. *See* Daniel A. Mazmanian & Michael Stanley-Jones, *Reconceiving LULUs: Changing the Nature and Scope of Locally Unwanted Land Uses*, *in* CONFRONTING REGIONAL CHALLENGES 55, 62 (Joseph F. DiMento & LeRoy Graymer eds., 1991) (arguing that conflicts over land-use changes reflect "a profound crisis of political legitimacy").

6. Anecdotal evidence abounds of growth-related discontent after the real estate downturn, even in those areas most affected by it. For example, in Florida, a grassroots movement called "Florida Hometown Democracy" is pushing a ballot measure for November 2010 that would require voter referenda on all amendments to a general plan. In its campaign literature, Hometown Democracy argues that land-use control needs to be taken out of the hands of local officials, whose habit of "rubberstamping speculative plan changes" caused Florida's "destructive boom-bust cycle." City of Fort Walton Beach Council Meeting Agenda, Resolution 2010-05 (Feb. 23, 2010), at 83, http://www.fwb.org/images/fwb/Agendas_and_Minutes/City_Council/2010/agendas/February/ai5.120100223.pdf; *see also* FloridaHometownDemocracy.com, About Florida Hometown Democracy, http://www.floridahometowndemocracy.com/about-florida-hometown-democracy.htm (last visited Dec. 16, 2010). Slow-growth groups in California have recently expressed opposition to high-density, transit-oriented developments that have become increasingly popular since the downturn. *See* Haya El Nasser, *Housing Bust Halts Growing Suburbs*, USA TODAY, Nov. 20, 2009 (noting that some formerly booming suburbs are focusing more on high-density, transit-oriented developments); Mark Prado, *Not All On Board for High-Density Housing Near Rail Stations*, MARIN INDEP. J., Dec. 19, 2009 (reporting opposition to high-density, transit-oriented development by slow-growth groups).

7. On the concept of the "growth machine," see LOGAN & MOLOTCH, *supra* note 3, at 50–98. In a later book, Molotch and co-author Kee Warner used southern California as a case study of the growth machine thesis in action. *See generally* KEE WARNER & HARVEY MOLOTCH, BUILDING RULES: HOW LOCAL CONTROLS SHAPE COMMUNITY ENVIRONMENTS AND ECONOMIES (2000). According to Warner and Molotch, southern California is a particularly appropriate case study because of its status as a bellwether of national land-use patterns. *See id.* at 24.

8. NIMBY stands for "Not In My Backyard." For a classic discussion of southern California NIMBYism, see MIKE DAVIS, CITY OF QUARTZ: EXCAVATING THE FUTURE IN LOS ANGELES 153–219 (1990). *See also* WILLIAM FULTON, THE RELUCTANT METROPOLIS: THE POLITICS OF URBAN GROWTH IN LOS ANGELES 21–97 (2001) (chronicling increasing neighborhood resistance to the growth agenda in southern California).

California's political system comfortably accommodates both a voracious pro-growth agenda and rabid anti-growth sentiment. In fact, I argue that local political institutions in southern California have been structured in a way that heightens, rather than alleviates, the inherent tension between pro-growth development interests and anti-growth neighborhood interests. For instance, virtually all southern California municipalities feature at-large voting schemes, in which a single, citywide constituency elects all of the city's representatives.[9] At-large systems intrinsically favor growth interests by muting neighborhood influence.[10] At the same time, all California localities have the power to adopt legislation via the initiative process, in which local voters directly enact desired legislation at the ballot box.[11] In recent decades, neighborhood groups have used the local initiative with great effectiveness to counteract the pro-growth bias of the at-large system through so-called "ballot-box zoning," or slow-growth initiatives.[12]

The apparent conflict between pro-growth and anti-growth interests built into southern California's local political system, however, masks a fundamental continuity. In fact, at-large elections and the initiative process are both products of the turn-of-the-century Progressive movement's campaign to reform city government by eliminating unsavory interest-group bargaining and replacing immigrant-fueled machine politics with rule by an enlightened middle-class elite. While modern growth disputes are undoubtedly inconsistent with the Progressives' ambitions to wholly suppress all political conflict, the manner in which the Progressive reforms have been utilized in present-day growth politics shows the enduring influence of Progressive ideology. As I argue, the juxtaposition of at-large voting and the initiative process produces an artificial dichotomy between pro-growth and anti-growth forces that subverts the possibility of bargaining or compromise about growth and truncates the municipal political agenda to a narrow competition between professional elites over whether growth is an unmitigated "good" or irredeemably "bad." Furthermore, this polarized political structure systematically disadvantages ethnic minorities and other groups who may have diverse views about growth, and induces widespread apathy about local politics among the public at large. In all these respects, I argue, the existing structure of local growth politics is consistent with the vision of the Progressive reformers. A

9. *See infra* note 22 and accompanying text.
10. *See infra* notes 23–24 and accompanying text.
11. *See infra* note 27 and accompanying text.
12. *See infra* note 28 and accompanying text.

political system with such troubling consequences would seemingly be of concern to the judiciary; however, as explained herein, the courts have taken only sporadic and ineffectual steps to address the flaws in the extant system.

Although this paper focuses on southern California, it has implications that extend well beyond that region. Southern California's growth politics have served as both an archetype and an exaggeration of the polarized growth politics experienced elsewhere in the nation, inviting fruitful comparisons with other jurisdictions while also exposing some of the tensions in growth politics that remain latent in other communities. Many suburban cities in the Sunbelt, like those in southern California, use at-large voting systems to advance a pro-growth agenda.[13] In several of these Sunbelt cities, moreover, neighborhood groups have become increasingly assertive in using the initiative process to discipline pro-growth local legislatures.[14] Elsewhere, the dynamics of southern California's pro-growth/slow-growth dichotomy have been replicated as tax-starved municipalities use mechanisms such as zoning, eminent domain, planning boards, development agreements, and special-purpose authorities to ram through pro-growth agendas,[15] while slow-growth groups rely upon a variety of tactics such as litigation, civil disobedience, and media campaigns to fend off the growth machine.[16] Southern California's experience, however, has been somewhat

13. *See* ROBERT E. LANG & JENNIFER B. LEFURGY, BOOMBURBS: THE RISE OF AMERICA'S ACCIDENTAL CITIES 123–24 (2007) (reporting that virtually all of the large and increasingly diverse suburban cities in the Sunbelt, dubbed "boomburbs" by the authors, use at-large voting systems, and observing that such systems may under-represent minority or lower income areas of these communities). *See generally id.* at 121–44 (arguing that the "growth machine" is dominant in boomburb municipalities).

14. *See* City of Fort Walton Beach Council Meeting Agenda, Resolution 2010-5 (Feb. 23, 2010), at 84, http://www.fwb.org/images/fwb/Agendas_and_Minutes/City_Council/2010/agendas/February/ai5.120100223.pdf (discussing Florida's "Hometown Democracy" initiative that would give voters power of referendum on any proposed zoning changes).

15. *See, e.g.*, LOGAN & MOLOTCH, *supra* note 3, at 50–98, 147–99 (describing various mechanisms used by growth interests to effect development agenda, such as zoning, eminent domain, tax-increment financing, and planning); *see also* DENNIS R. JUDD & TODD SWANSTROM, CITY POLITICS: PRIVATE POWER AND PUBLIC POLICY 337–40 (4th ed. 2004) (discussing role of special-purpose authorities); Daniel P. Selmi, *Land Use Regulation By Contract*, 3–4 (Loyola Law School Los Angeles, Legal Studies Paper No. 2009–51, 2009), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1523427 (last visited Dec. 14, 2010) (describing increased use of "development agreements").

16. *See* RICHARD SENNETT, THE FALL OF PUBLIC MAN 301–08 (1977) (discussing variety of tactics used by neighborhood of Forest Hills, Queens, to prevent siting of low income housing project); Michael Dear, *Understanding and Overcoming the NIMBY Syndrome*, 58 J. AM. PLAN. ASS'N 288, 290–91 (1992) (describing tactics used by development opponents to prevent unwanted growth).

remarkable in that its unique history and political culture have made its growth conflicts more openly divisive than elsewhere. This paper's thesis, then, is not that California's unusual political structuring represents the underlying cause of modern growth conflicts, but rather that such structuring exacerbates in interesting and important ways a conflict that afflicts local governments nationwide. Thus, a close examination of southern California will yield important lessons for all who seek to understand the dynamics of local growth politics across the country.

This paper's thesis challenges several scholarly conventions. First, many scholars have assailed ballot-box zoning for fostering a piecemeal, non-deliberative, overly politicized, and often discriminatory approach to land-use controls.[17] Few of these scholars, however, have recognized that the at-large electoral system shares these very same defects; in many ways, indeed, ballot-box zoning is merely a corrective to the unresponsiveness of the at-large legislative process.[18] As such, existing scholarship takes far too narrow a view of the structural problem with local growth politics. Second, scholars debate whether local politics is controlled by the "growth machine" (developers and their pro-growth cohorts)[19] or the "homevoter" (slow-growth, NIMBY homeowners).[20] As this paper shows, the debate is based on a false dichotomy. In fact, the tension between the growth machine and the homevoter conceals that these two groups silently and perhaps unwittingly conspire to

17. *See, e.g.*, Derrick A. Bell, Jr., *The Referendum: Democracy's Barrier to Racial Equality*, 54 WASH. L. REV. 1, 2 (1978); Marcilynn A. Burke, *The Emperor's New Clothes: Exposing the Failures of Regulating Land Use Through the Ballot Box*, 84 NOTRE DAME L. REV. 1453, 1460–61 (2009); David L. Callies et al., *Ballot Box Zoning: Initiative, Referendum and the Law*, 39 WASH. U. J. URB. & CONTEMP. L. 53, 55 (1991); Lawrence Gene Sager, *Insular Majorities Unabated:* Warth v. Seldin *and* City of Eastlake v. Forest City Enterprises, Inc., 91 HARV. L. REV. 1373, 1420–23 (1978); Nicolas M. Kublicki, Comment, *Land Use By, For, and Of the People: Problems with the Application of Initiatives and Referenda to the Zoning Process*, 19 PEPP. L. REV. 99, 101–03 (1991).

18. A notable exception is Daniel P. Selmi, *Reconsidering the Use of Direct Democracy in Making Land Use Decisions*, 19 UCLA J. ENVTL. L. & POL'Y 293, 332, 336 (2001/2002) (describing "growth machine" theory that political structures are deployed to create a consensus in favor of growth and arguing that "initiatives and referenda may act as a political counter-weight to the tendency of local politicians to act favorably toward development proposals"). Professor Selmi's outstanding article touches on a number of objections to ballot-box zoning and is not a sustained treatment of local growth politics or the problems of political structuring addressed herein.

19. *See* WARNER & MOLOTCH, *supra* note 7, at 11 (describing local politics driven by the "growth machine"). *See generally* LOGAN & MOLOTCH, *supra* note 3, at 50–98 (explaining that local politics are driven by the "growth machine").

20. *See* FISCHEL, *supra* note 2, at 15–16 (arguing that homeowners are the dominant faction in local politics and developers are mere "supplicants").

reduce the municipal political agenda to a simplistic pro-growth/no-growth dichotomy and to appropriate for themselves the exclusive right to dictate land-use policy.[21]

Part I explains the historical origins of southern California's bifurcated political system. It details the emergence of at-large voting and direct democracy as major components of Progressive reform ideology. This Part also chronicles the origins of southern California's heated growth politics and demonstrates how at-large voting and the initiative process have become embroiled in the ongoing conflict over growth. Part II describes how the mechanics of growth politics in southern California work today, showing the continuing influence of Progressive ideology on modern growth conflicts.

Part III turns to the role of the courts in policing this political process. Most judicial challenges to the local political system have trained their focus on the initiative, a focus that, I argue, wrongly ignores the role of at-large voting and other political institutions in perpetuating the polarized local growth discourse. In assailing ballot-box zoning, critics have lionized the legislative process and the procedural protections it affords. The courts easily have turned aside challenges to ballot-box zoning by correctly observing that it is no more flawed than the political system it is designed to counteract. Curiously, however, the courts have taken no action to correct the defects in the political process, instead placing their confidence in a vigorous application of judicial review to ensure that land-use legislation accommodates all the competing interests. As Part III shows, this confidence has proven misplaced because the hyperbolic rhetoric of growth politics has made it impossible for courts to scrutinize the motivations underlying land-use regulations and determine whether the competing interests actually have been balanced appropriately.

Part IV argues, accordingly, that courts should focus on reinvigorating the political process so that the accommodation of competing interests can take place, as it should, in the legislative arena. An appropriate reform would be to replace at-large voting schemes with ward or district schemes, which are designed to give more weight in the political process to neighborhood interests, and abolish the local initiative. Neighborhood representation is long overdue in southern California's large suburban cities, which feature increasingly diverse neighborhoods that belie the image of suburbia as a bastion of conformity and homogeneity. There is a robust, albeit dormant,

21. DAVIS, *supra* note 8, at 212–13, makes a similar point, but does not place it in the context of political structuring, as I do here.

tradition of judicial review that authorizes just this sort of reform to open the channels of political participation, and this Part advocates for the revival of this tradition.

The proposal for reform sketched here will have resonance in many metropolitan areas, particularly the large and growing suburban cities in the Southwest, which by and large still retain at-large voting systems despite increasing conflict over growth.[22] More work is required to determine what reforms will suit jurisdictions with different demographic compositions or different political structures. Nevertheless, by chronicling the ill effects of a local political system driven by antagonism between developers and homeowners' groups, this account hopefully will provide an impetus to break the deadlock that grips our nation's local politics.

II. ORIGINS OF THE GROWTH ANTIPODES

There is an inherent and seemingly unsustainable contradiction in the political structuring of California localities. On one hand, the great majority of California cities select local government officials through at-large elections, in which a single, citywide constituency elects all of the city's representatives, rather than through a system of ward or district voting, in which the city is subdivided into several geographic districts, each of which then elects a single representative.[23] Local elites in southern California and throughout the Southwest, seeing growth as the key to their prosperity, have relied on the at-large system for generations to aggressively pursue a pro-growth political agenda.[24] By

22. LANG & LEFURGY, *supra* note 13, at 123 (explaining the political and demographic characteristics of boomburbs).

23. In this paper, I use the term "cities" to mean all incorporated general-purpose municipalities. A 2000 survey by the Public Policy Institute of California reports that 93% of California cities use at-large elections, 5% use district elections, and the remaining handful use a "hybrid" system in which candidates are nominated by wards but must then win a citywide election. *See* ZOLTAN L. HAJNAL ET AL., PUB. POL'Y INST. CAL., MUNICIPAL ELECTIONS IN CALIFORNIA: TURNOUT, TIMING, AND COMPETITION 25 tbl 2.2 (2002), *available at* http://www.ppic.org/content/pubs/report/R_302ZHR.pdf (last visited Dec. 14, 2010). The League of California Cities estimates that as of June 2008, 38 of California's 480 cities (approximately 8%) use either pure district elections or "hybrid" elections. *See* CACities.org, Facts At A Glance, http://www.cacities.org/index.jsp?zone=locc&previewStory=53 (last visited Dec. 14, 2010). As of October 2010, California now has 481 cities. *See id.*

Nationwide, 42.6% of cities use at-large elections, 29.1% use district elections, and the remaining 28.2% use mixed systems in which some seats are elected by district and others at-large. *See* JAMES H. SVARA, NAT'L LEAGUE OF CITIES, A SURVEY OF AMERICA'S CITY COUNCILS 25 (1991). No California cities use mixed systems. *See* HAJNAL ET AL., *supra* at 25.

24. *See* CARL ABBOTT, THE METROPOLITAN FRONTIER: CITIES IN THE MODERN

its nature, the at-large system tends to dilute the influence of individual neighborhoods that may be forced to endure the negative effects of citywide growth.[25] At the same time, the at-large system maximizes the influence of pro-growth interests, principally developers, who are much better equipped than neighborhood groups to provide the access to money and publicity that are necessary to win citywide elections.[26]

On the other hand, all California cities provide that legislation may be enacted not only by the elected city council but also directly by the local electorate via the initiative or referendum.[27] Over the past few decades, as neighborhood groups in southern California have become increasingly disenchanted with the pro-growth bias of the at-large electoral system, they have resorted to direct democracy with ever greater frequency to circumvent the legislature and enact stringent anti-growth measures.[28] Although developers commit significant resources to defeating these measures, slow-growth neighborhood groups have nevertheless enjoyed great success with the initiative process due to their ability to gather support inexpensively, their confidence in the efficacy of the initiative, the intensity of their opposition to growth, and the relative ease with which they can organize opposition to growth by

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AMERICAN WEST 33, 37–39 (1993) [hereinafter ABBOTT, THE METROPOLITAN FRONTIER] (discussing use of at-large voting and other Progressive-Era devices by major southwestern cities during the postwar period to foster growth); CARL ABBOTT, THE NEW URBAN AMERICA: GROWTH AND POLITICS IN SUNBELT CITIES 123–45, 214–17 (rev. ed. 1987) [hereinafter ABBOTT, THE NEW URBAN AMERICA] (discussing growth in southwestern cities); AMY BRIDGES, MORNING GLORIES: MUNICIPAL REFORM IN THE SOUTHWEST 125–35, 151–74 (1997) (explaining how elites in Southwestern cities used rules of political participation, including at-large voting, to minimize dissent and perpetuate a univocal governing coalition and discussing how elite governing coalitions in Southwestern cities pursued relentless pro-growth agenda); *infra* note 33 and accompanying text.

25. *See* Richard C. Feiock et al., *Policy Instrument Choices for Growth Management and Land Use Regulation*, 36 POL'Y STUD. J. 461, 465, 474 (2008) (explaining that "[a]t-large representation . . . creates entry barriers for citizen groups seeking to restrict growth" and thereby advantages development interests); *infra* notes 51–54 and accompanying text.

26. *See* FULTON, *supra* note 8, at 44–46 (explaining how Los Angeles's large ward system favors developers and mutes neighborhood influence); SUSAN WELCH & TIMOTHY BLEDSOE, URBAN REFORM AND ITS CONSEQUENCES 35–53 (1988) (hypothesizing that at-large systems require greater financial resources to obtain publicity and name recognition, and finding some evidence to this effect); *infra* note 57 and accompanying text.

27. *See* TRACY M. GORDON, PUB. POLICY INST. CAL., THE LOCAL INITIATIVE IN CALIFORNIA 1 (2004), *available at* http://www.ppic.org/content/pubs/report/ R_904TGR.pdf (last visited Dec. 14, 2010).

28. *See id.* at 19–20, 22 (reporting sharp increase in slow-growth initiatives during the 1990s); WILLIAM FULTON ET AL., SOLIMAR RES. GROUP, GROWTH MANAGEMENT BALLOT MEASURES IN CALIFORNIA 1 (2002), *available at* http://www.lgc.org/freepub/docs/community_design/reports/ca_growth_mgmt_report.pdf (last visited Dec. 14, 2010); *infra* notes 97–99 and accompanying text.

means of the homeowners' association.[29] Thus, local politics in southern California is defined by a quiet but occasionally explosive tension between its pro-growth and anti-growth structural underpinnings.

Despite their apparent opposition, however, at-large voting and direct democracy share a set of ideological assumptions stemming from their common ancestry. As this Part shows, both of these devices were introduced by Progressives in early twentieth-century southern California as complementary facets of the Progressive campaign to reform local government. The relationship between these reforms grew more complex and problematic as they became enmeshed in southern California's bitter growth wars. Thus, this Part provides some background on southern California's long-standing ambivalence towards development, and situates at-large voting and direct democracy within this context. This Part also points out the ways in which southern California has been an archetype of local growth politics throughout the Southwest.

A. The Paradox at L.A.'s Inception

The metropolis that became Greater Los Angeles (L.A.) was built on an apparent paradox: while its boosters promoted heedless growth as the engine of the region's economic prosperity, they simultaneously advanced a vision that Los Angeles would be a tranquil suburban paradise and an antidote to the congested and degenerate eastern city. This paradox created an inevitable tension between the need to promote a citywide growth agenda and the imperative to protect existing neighborhoods against the adverse consequences of growth.[30] L.A.'s early boosters recognized that the fledgling settlement they hoped to turn into a great city was, aside from its abundance of sunshine, quite inhospitable. Its Mediterranean climate was unpredictable, with sporadic flooding, mudslides, wild fires, and earthquakes.[31] It had no port or proximity to a navigable body of water, no transportation network, little potable water, and none of the pathway advantages of

29. *See, e.g.*, Tracy M. Gordon, *Bargaining in the Shadow of the Ballot Box: Causes and Consequences of Local Voter Initiatives*, 141 PUB. CHOICE 31, 33–34 (2009) (discussing disadvantages homeowners face in the electoral process and advantages they possess in the initiative process); *infra* note 97 and accompanying text.

30. On the tension between growth and stability in Los Angeles, see for example, FULTON, *supra* note 8, at 9–10. *See also* ROBERT M. FOGELSON, THE FRAGMENTED METROPOLIS 151–53 (1967). Similar tensions exist throughout the Sunbelt. *See, e.g.*, ABBOTT, THE NEW URBAN AMERICA, *supra* note 24, at 217–18 (examining this tension in cities such as Atlanta, San Antonio, Denver, Albuquerque, San Francisco, and others).

31. *See* FULTON, *supra* note 8, at 6. *See generally* MIKE DAVIS, ECOLOGY OF FEAR: LOS ANGELES AND THE IMAGINATION OF DISASTER (1998).

established cities such as San Diego and San Francisco.[32] One thing L.A. appeared to have in great supply was land. This fact proved decisive, for during L.A.'s formative era, cities in the Northeast and Midwest were becoming increasingly congested as they were overwhelmed by huge waves of immigrants from southern and eastern Europe. These cities were consumed with a host of problems including class and ethnic conflicts, strained infrastructure capacity, overcrowded buildings, street crime, disease, and corruption. Los Angeles's boosters quickly realized that the future of their city would depend on its ability to entice weary eastern-city dwellers by promising them a cheap slice of a perennially sun-baked suburban oasis far from the problems of the great urban centers.[33] Growth, in other words, was to be the foundation of Los Angeles's success.

In pursuing its growth mandate, the new "growth machine," comprised of a matrix of politicians, developers, transportation barons, bankers, and newspaper publishers, consciously chose to build horizontally rather than vertically.[34] This decision ensured a seemingly inexhaustible supply of cheap land on the ever-expanding outskirts, while enabling the growth boosters to successfully market far-flung suburban subdivisions as tranquil antitheses to the congested, vice-ridden eastern cities.[35] Thus, the commodification of Los Angeles facilitated seemingly contradictory commitments to growth on a massive scale and decentralized, stable suburban communities sheltered against the encroachment of urban problems.

B. The Progressive Restructuring of Local Politics

Around the turn of the century, L.A. adopted several important Progressive political reforms that were designed, like the city's intentionally decentralized urban form, to differentiate Los Angeles from eastern cities. Middle-class business and professional groups were scandalized by the ascendancy of political machines in northeastern cities, with their immigrant constituencies, casual corruption, and

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32. *See* FULTON ET AL., *supra* note 28, at 6; Robert Fishman, *Foreword* to FOGELSON, *supra* note 30, at xvi ("[T]he city lacked . . . water, power, a port, [and] transportation . . . .").

33. *See, e.g.*, FULTON, *supra* note 8, at 7–13; Fishman, *supra* note 32, at xvi ("[T]he Los Angeles elite very early realized that their real business was growth").

34. *See* FULTON, *supra* note 8, at 7–9, 13 (noting that Los Angeles "marketed itself, especially in the Midwest, as the anti-city," and that immigrants to the area "were profoundly anti-urban in attitude" and "reveled in the decentralized small-town life Los Angeles had deliberately produced").

35. *See id.* at 7–9.

nakedly redistributive policies.[36] The machines gestated in the cities' ethnic neighborhoods, where ward heelers and precinct captains lorded over their districts and showered constituents with targeted benefits.[37] Structurally, the machine was abetted by a system of ward-based voting that enabled tightly knit ethnic neighborhoods to elect their own representatives to the city council.[38] Professional elites answered the rise of the machine with a host of regulatory innovations, which became part of an extraordinarily productive effort to reform the condition of modern industrial society known as the Progressive Movement. The Progressive reformers sought, among other things, to break the machine by replacing ward voting with at-large systems in which all city officials would be elected citywide, rather than by individual districts.[39] Relatedly, the Progressives introduced "direct democracy" innovations such as the initiative, referendum, and recall in order to substitute a citywide constituency for the sectional politics of the machine.[40] They also called for nonpartisan elections, appointed administrative boards, professional city managers, and civil service reforms.[41] These changes would professionalize and depoliticize local government, deprive political bosses of the ability to hand out patronage jobs, and ultimately weaken the political machine.[42]

The reformers insisted that the aim of these centralizing structural

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36. *See* RICHARD HOFSTADTER, THE AGE OF REFORM 175, 178–79 (1955); Samuel P. Hays, *The Politics of Reform in Municipal Government in the Progressive Era*, 55 PAC. NORTHWEST Q. 157, 157–58 (1964).

37. *See* Hays, *supra* note 36, at 161.

38. *See* EDWARD C. BANFIELD & JAMES Q. WILSON, CITY POLITICS 92 (1963) ("[D]istricts are . . . the building blocks from which machines are normally constituted."); ERNEST S. GRIFFITH, A HISTORY OF AMERICAN CITY GOVERNMENT 130 (1974) ("The ward and precinct were at the heart of machine control . . . ."); Hays, *supra* note 36, at 161 (stating that the ward systems gave representation to lower and middle income groups).

39. *See* BANFIELD & WILSON, *supra* note 38, at 141 (noting that Progressives pushed for institution of at-large elections to weaken "neighborhood and other partial interests"); Hays, *supra* note 36, at 161 ("[The reformers] objected to the structure of government which enabled local and particularistic interests to dominate.").

40. *See* HOFSTADTER, *supra* note 36, at 261; DAVID B. MAGLEBY, DIRECT LEGISLATION: VOTING ON BALLOT PROPOSITIONS IN THE UNITED STATES 21–24 (1984).

41. BRIDGES, *supra* note 24, at 16–17.

42. *See id.* at 55–56, 58–59 (describing Progressive reforms in the southwest and their goal to reduce local government to a form of business administration); *see also* BANFIELD & WILSON, *supra* note 38, at 139 (noting that reformers saw local government as the "businesslike management of essential public services"); STEPHANIE S. PINCETL, TRANSFORMING CALIFORNIA 26–29 (1999) (noting that direct democracy and other Progressive devices were part of an effort to professionalize local government and based on "a belief in the possibility of creating a logically ordered environment based on technical knowledge").

devices was to replace the selfish, parochial politics of the ward system with a system that would transcend the particular to consider the needs of the city as a whole.[43] They disdained the "spirit of sectionalism" that cleaved the city into rival factions, each seeking to wrest its share of largesse from the municipal trough with unseemly logrolling.[44] Lurking beneath the Progressives' high-minded rhetoric, however, was a conviction that this new political system would shift power from the urban immigrant classes to middle class professionals like themselves.[45] The centralization of local politics necessarily would advantage those with access to money, the media, and the social and professional connections required to run an effective citywide campaign, while disadvantaging those, such as the machine's lower and middle income constituencies, who had no money and whose contacts were limited to the informal connections of the dense urban neighborhood.[46] Likewise, devices such as nonpartisan elections and appointed city managers, ostensibly designed to reform and professionalize city politics, tended to concentrate power in the hands of those with professional training while systematically reducing participation by the poor and less well-educated.[47]

Cities throughout the nation adopted many of these reforms, but by and large, the reforms proved short-lived in the face of fierce opposition from the machine and its vast constituency. In the Southwest, however,

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43. *See* WELCH & BLEDSOE, *supra* note 26, at 55 (noting that reforms such as at-large elections were "designed to encourage [citizens] to look upon the city as a whole as their primary constituency rather than smaller groups of neighborhoods, fellow ethnics, partisan, or other constituents").

44. *See* Hays, *supra* note 36, at 164 (stating that Progressives decried a "spirit of sectionalism" and urged that adoption of at-large voting would cause elected officials to think of the city "as a unit" (quoting HARRY AUBREY TOULMIN, JR., THE CITY MANAGER 42 (1915)).

45. *See* Chandler Davidson & George Korbel, *At-Large Elections and Minority Group Representation*, *in* MINORITY VOTE DILUTION 68 (Chandler Davidson ed., 1984) (stating that although ostensible purposes of reforms such as at-large elections were "lofty goals of abolishing corrupt machines and bringing efficiency and businesslike principles to local government," real purpose was to remove power from hands of "neighborhood and ethnic" leaders, and place it in the hands of businessmen and experts); Hays, *supra* note 36, at 163, 167 ("[Progressives] were in practice shaping the structure of municipal government so that political power would no longer be broadly distributed, but would in fact be more centralized in the hands of a relatively small segment of the population.").

46. *See* FOGELSON, *supra* note 30, at 218; Hays, *supra* note 36, at 162 (noting that lower and middle income groups lacked private social and professional networks that upper class had; the machine "filled this organizational gap").

47. *See* BRIDGES, *supra* note 24, at 16, 127–30 (describing numerous barriers to public participation in local politics in the Southwest).

the reform movement struck much firmer roots.[48] The populace in cities like Los Angeles was largely composed not of immigrants beholden to the machines, but of native-born Americans who repudiated the machine-dominated eastern cities and were thus predisposed to be sympathetic to the Progressive reform agenda.[49] Here, reforms such as at-large voting and direct democracy were principally adopted to prevent the corrupt machine politics of eastern cities from taking hold.[50] Although Los Angeles reintroduced ward voting a few years after adopting the at-large system, the ward system it adopted effectively mimicked the dynamics of an at-large voting system. Under L.A.'s existing ward system, each city council member represents a district consisting of approximately thirty square miles and up to several hundred thousand constituents. In such huge wards, the interests of individual neighborhood groups are as effectively muted, and council members are as dependent on money and publicity, as they would be in an at-large system.[51] Outside the City of Los Angeles, virtually all communities in the Los Angeles area and throughout the state continue to use at-large elections.[52]

In addition to burnishing Los Angeles's image as the *bête noire* of corrupt eastern cities, the introduction of these Progressive reforms also served a practical purpose: it facilitated the growth agenda that was the lifeblood of the nascent Los Angeles economy. A major potential political obstacle to growth everywhere is neighborhood opposition. Neighborhoods often fear that a new project, such as a highway for example, while benefiting the city as a whole, will do so at the expense of neighborhoods located adjacent to the highway, who must bear the burdens of increased noise and traffic congestion, decreased air quality, lowered property values, and a general diminution in quality of life.[53] An electoral system featuring small wards may effectively give a veto power to neighborhoods opposed to the highway.[54] Council members in

48. *See id.* at 19 (contrasting failure of reform movement in northeastern and midwestern cities with success in southwestern cities).

49. *See* ABBOTT, THE METROPOLITAN FRONTIER, *supra* note 24, at xxii ("The absence of entrenched political machines and ethnic-group politics opened the way for professionalized government in central cities and self-directed suburbs."); BRIDGES, *supra* note 24, at 25; FOGELSON, *supra* note 30, at 211.

50. *See* FOGELSON, *supra* note 30, at 211.

51. For additional information on Los Angeles's ward system and how it replicates the dynamics of an at-large system, see FULTON, *supra* note 8, at 44–46.

52. *See* HAJNAL ET AL., *supra* note 22, at 21, 25 tbl 2.2.

53. *Cf.* FISCHEL, *supra* note 2, at 9–10 (articulating an economic model to explain homeowner opposition to neighborhood change).

54. *See* BRIDGES, *supra* note 24, at 203 (noting pattern of council deference to district

such a system represent specific neighborhoods and, to stay in office, must vociferously oppose growth that imposes externalities on their constituents, even if growth is favored by the general public.[55] These representatives can then use logrolling to form alliances with other ward-based council members and defeat growth proposals—perhaps by promising to oppose future projects affecting the other representatives' districts.[56] In an at-large or large-ward system, by contrast, council members represent large swaths of the city, making them far less captive to parochial neighborhood concerns. Moreover, while council members in at-large or large-ward systems are not beholden to neighborhood interests, they *are* beholden to those who can finance large-scale political campaigns. In local politics, such deep pockets belong to developers and their allies.[57]

Not surprisingly, in many southwestern cities, Progressives explicitly endorsed at-large systems in terms of their ability to facilitate growth. In Austin, Texas, for example, reformers advocated a change from a ward-based system to at-large voting by arguing that "so long as the town is divided by wards and controlled by politics the growth of the

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representatives on land use issues in southwestern ward-based cities); FISCHEL, *supra* note 2, at 94 (noting that ward representation gives neighborhoods more power to block unwanted land-use changes); James C. Clingermayer, *Electoral Representation, Zoning Politics, and the Exclusion of Group Homes*, 47 POL. RES. Q. 969, 978 (1994) (finding that ward representation in cities is strongly associated with the exclusion of group homes in municipal zoning ordinances).

55. *See* Clingermayer, *supra* note 54, at 974–75 (noting that ward-based representatives must pursue policies that bring benefits targeted to their geographic constituency yet financed by the broader community, and that zoning restrictions are prime examples of this type of policy); Laura I. Langbein et al., *Rethinking Ward and At-Large Elections in Cities: Total Spending, the Number of Locations of Selected City Services, and Policy Types*, 88 PUB. CHOICE 275, 289–90 (1996) (finding that ward representatives must respond to preferences of geographically concentrated residents, and thus that cities with ward representation provide more locations for desirable land uses and fewer locations for undesirable land uses than cities with councils elected at-large).

56. *See* Douglas R. Dalenberg & Kevin T. Duffy-Deno, *At-Large Versus Ward Elections: Implications for Public Infrastructure*, 70 PUB. CHOICE 335, 335–336 (1991) (arguing that logrolling is more likely to be prevalent in ward than at-large systems, and providing empirical evidence).

57. *See* FULTON, *supra* note 8, at 46 (describing developer influence in large-ward Los Angeles); LOGAN & MOLOTCH, *supra* note 3, at 230-32 (describing the role of developer campaign contributions in elections in New York, San Francisco, and Los Angeles). Developers are likely to be influential, of course, even in cities with ward systems because of their organizational capacity and ability to contribute money to political campaigns. *See* Robert C. Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 YALE L.J. 385, 407 (1977) (articulating "influence" model of local politics). Developers' influence is heightened, however, in an at-large or large-ward system that inherently mutes neighborhood opposition and accentuates the importance of campaign contributions.

town will be retarded."[58] Thus, it was widely understood that the adoption of at-large and large-ward systems advantaged pro-growth interests. The fact that the initiative process, perceived at the time as a complement to the at-large system, later turned out to be a potent anti-growth tool is a critical irony to which we will return.

L.A.'s adoption of Progressive reforms such as at-large voting and direct democracy reinforced the paradox at the core of the city's political life: while these reforms promoted the centralization of authority and the policy of inexorable growth, they also perpetuated the belief that Los Angeles, freed from the sordid urban politics that prevailed elsewhere, was a tranquil refuge from the congestion and conflict of eastern cities. Thus, the movement toward centralization was offset by an equally strong push for decentralization, and a typically suburban antipathy toward urban growth and congestion rested alongside the ideology of growth boosterism and the concomitant reality of increasing population congestion. Los Angeles rejected at-large voting after a short experiment, opting to retain a large-ward voting system.[59] According to Robert Fogelson, the rejection of at-large voting was a "protest against the incongruity of at large representation and decentralized development [that] reflected a widespread reversion to localism in the politics and government of Los Angeles."[60] L.A. residents also counteracted the centralization of city government and the predominance of the "growth machine" by forming neighborhood associations to assert their collective interests.[61]

After World War II, the demand for neighborhood associations declined with the advent of the famous "Lakewood Plan," which was perhaps the high point of Los Angeles's decentralizing impulse. As large cities like Los Angeles and Long Beach rapidly expanded, unincorporated neighborhoods in the path of expansion felt their independence threatened. Under pressure from these smaller communities and desirous of maintaining its own influence, Los Angeles County offered to contract out municipal services to cities at cut-rate prices determined by the county's economy of scale. The Lakewood Plan, as it became known, freed small unincorporated neighborhoods from the crushing burden of financing their own services, enabling them

58. BRIDGES, *supra* note 24, at 61 (quoting Frank Staniszewski, *Ideology and Practice in Municipal Government Reform: A Case Study of Austin* 27 (University of Texas at Austin Studies in Politics Series I: Studies in Urban Political Economy, Paper No. 8, 1977)).

59. *See supra* notes 49–51 and accompanying text.

60. FOGELSON, *supra* note 30, at 222.

61. *Id.* at 195.

to incorporate as independent municipalities and assume control of their own land-use regulation and tax base. A rash of incorporations followed, resulting in the widespread conversion of neighborhoods into self-contained municipalities. Today there are eighty-eight cities within Los Angeles County.[62]

Although there is an apparent incongruity between decentralizing mechanisms such as the Lakewood Plan and centralizing Progressive reforms such as at-large voting and direct democracy, they both served at least one common purpose, either by design or simply in effect. Decentralization no less than centralization operated to exclude lower income and minority populations from political power in L.A. Where the Progressive reforms diluted the influence of these groups and alienated them from the political process, neighborhood associations and the Lakewood Plan simply shut them out of the polity altogether. Neighborhood associations provided a powerful means for white homeowners to enforce the segregation of L.A.'s minority populations through racially restrictive covenants, and they did so with vigor as Los Angeles became one of the nation's most segregated cities.[63] The associations yielded to the Lakewood Plan after World War II largely because neighborhood incorporation and the exclusionary zoning practices it sanctioned proved even more effective at protecting white, middle-class homeowning enclaves against incursions by minorities, renters, and other low income populations.[64] We will return later to see how centralization (through at-large voting) and decentralization (through the local initiative process) continue to serve a common exclusionary purpose in local politics in southern California.

C. The Postwar Growth Coalition and the Stirrings of Neighborhood Discontent

While the Lakewood Plan could be seen as exemplifying a pattern of extreme fragmentation in the Los Angeles metropolitan area, that would not be an entirely accurate picture. In fact, during the postwar years, and ever since, the trend throughout the Southwest and in southern California specifically has been toward *larger* municipalities, not smaller ones. As cities have grown, tensions between the citywide growth agenda (fostered almost everywhere by at-large voting) and

62. For the definitive account of the Lakewood Plan, see generally GARY J. MILLER, CITIES BY CONTRACT: THE POLITICS OF MUNICIPAL INCORPORATION (1981). For more on the Lakewood plan, see DAVIS, *supra* note 8, at 165–69.

63. *See* DAVIS, *supra* note 8, at 160–64; FOGELSON, *supra* note 28, at 195.

64. *See* DAVIS, *supra* note 8, at 165–69.

neighborhood interests have been exacerbated.

At the same time the Lakewood Plan was breaking Los Angeles County into eighty-eight little fiefdoms, cities in the seemingly decentralized conurbations of neighboring Orange, Ventura, Riverside, and San Bernardino Counties were growing rapidly, presumably fueled by large numbers of exiles from Los Angeles County. Census reports reveal stunning growth between 1950 and 1970 in several Greater L.A. municipalities, led by Ventura County's Thousand Oaks with almost 3,000% growth and Orange County's Anaheim with greater than 1,000% growth.[65] By 1970, cities such as Anaheim, Santa Ana, San Bernardino, and Riverside already had populations larger than 100,000.[66] Today, close to half the residents of Greater Los Angeles live in cities with populations over 100,000, even if we exclude the city of Los Angeles itself and its population of nearly 4 million.[67] Nationwide, only 25% of Americans live in cities with greater than 100,000 residents.[68]

The trend toward larger municipalities, though most noticeable in southern California, was evident throughout the Southwest after World War II. Cities expanded rapidly as they liberally annexed neighboring territory.[69] Older elites, leery about growing too fast, were pushed out of power by younger leaders who saw growth as both an economic boon and a point of civic pride. In cities such as Phoenix and Albuquerque, growth advocates appropriated the rhetoric of reform to attack the old guard as corrupt "bosses," and called for professionalized, business-oriented government that they claimed would spur growth.[70] Cities

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65. LANG & LEFURGY, *supra* note 13, at 37 tbl. 2–2.

66. *Id.*

67. I define the greater Los Angeles region to consist of Los Angeles, Orange, San Bernardino, Riverside and Ventura Counties. According to 2009 estimates, these counties have populations of roughly 9.9 million, 3 million, 2 million, 2 million, and 800,000 respectively, for a total population of 17.7 million. *See* U.S. Census Bureau, 2009 Population Estimates, California By County, http://factfinder.census.gov/servlet/GCTTable?geo_id=04000US06&ds_name=PEP_2009_EST&_box_head_nbr=GCT-T1-R&format=ST2S&_lang=en&_sse=on (last visited Dec. 14, 2010). Setting aside the city of Los Angeles, with a population of 3.8 million, there are 34 cities in these five counties with a population of at least 100,000, and the total population of these 34 cities combined is approximately 5.9 million. *See* U.S. census Bureau, 2009 Population Estimates, California By City, http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=04000US06&-_box_head_nbr=GCT-T1-R&-ds_name=PEP_2009_EST&-_lang=en&-redoLog=false&-mt_name=PEP_2009_EST_GCTT1R_ST9S&-format=ST-9S&-_sse=on (last visited Dec. 14, 2010). This is approximately 40% of the county's population, excluding the city of Los Angeles.

68. *See* LANG & LEFURGY, *supra* note 13, at 7.

69. *See* ABBOTT, THE METROPOLITAN FRONTIER, *supra* note 24, at 142–45; BRIDGES, *supra* note 24, at 152–54.

70. *See* ABBOTT, THE METROPOLITAN FRONTIER, *supra* note 24, at 33, 38–39; ABBOTT, THE NEW URBAN AMERICA, *supra* note 24, at 121–22.

throughout the Southwest adopted Progressive political reforms such as at-large voting, nonpartisan elections, and city-manager government to ensure the hegemony of the growth coalition.[71] As the Progressives envisioned, this new political structuring permanently ensconced the professional middle classes in power. Council members in most at-large cities were consistently drawn (as they are today) from a handful of the city's most affluent neighborhoods.[72] Participation in local affairs was extremely low, especially among the poor and minority populations. In these cities, "[i]ncumbents could as confidently count on reelection as any machine politician."[73] Opposition to growth, to the extent it existed, was systematically suppressed by at-large voting and the variety of other reforms designed to minimize dissent. "[T]he political arrangements of southwestern cities," Amy Bridges concludes, were "the foundation and insurance of their unchallenged pursuit of growth."[74]

As cities grew and became more diverse, however, the growth coalition began to strain. Pro-growth elites consistently funneled resources toward downtown and newly annexed neighborhoods on the cities' outskirts, at the expense of the downtrodden minority neighborhoods near the downtown. These neighborhoods captured none of the benefits from downtown revitalization but were often forced to bear the burdens associated with urban renewal, such as dislocation by "slum removal" programs, isolation from downtown by freeways that functioned as barriers, or other massive disruptions in their quality of life.[75] Many established white middle-class neighborhoods were also unhappy with the growth coalition because they perceived that their taxes were financing the new infrastructure for outlying subdivisions while they suffered from traffic congestion, loss of environmental amenities, and other negative effects of growth.[76] By the mid-1960s, both minority and white middle-class neighborhood groups had become extremely distressed by the dominance of the growth machine and the

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71. *See* ABBOTT, THE METROPOLITAN FRONTIER, *supra* note 24, at 40–45.

72. *See* ABBOTT, THE METROPOLITAN FRONTIER, *supra* note 24, at 43; BRIDGES, *supra* note 24, at 171; LANG & LEFURGY, *supra* note 13, at 123.

73. BRIDGES, *supra* note 24, at 29.

74. *Id.*

75. *See* ABBOTT, THE METROPOLITAN FRONTIER, *supra* note 24, at 45–49, 104–105 (opining on urban renewal and its impact on minority neighborhoods and on neglect of minority neighborhoods by growth coalitions); BRIDGES, *supra* note 24, at 154–55, (explaining that older, poorer neighborhoods were often neglected as infrastructure was built to service outlying areas); *id.* at 183–86 (chronicling minority discontent over a variety of issues).

76. BRIDGES, *supra* note 24, at 191–94 (noting concerns with taxes, congestion, diminishing environmental quality).

at-large electoral system that persistently suppressed neighborhood concerns.[77] The discontent crystallized initially in the form of the 1965 Watts riot, a powerful expression of minority discontent with decades of neglect as well as a rejection of the normal political process as a means of effecting change.[78] The Watts riot touched off similar protest riots by minority groups throughout the Southwest and elsewhere. According to Carl Abbott, the riots were clearly directed against the growth machine and the ideology of at-largism. He writes that the protests

> signaled the unraveling of postwar growth coalitions as the guardians of the general public interest. They made it unmistakable that significant segments of the community actively rejected a unitary statement of community goals. Even blacks who sat out the riots recognized that they were an effort to force local establishments to pay serious attention to minority communities.[79]

White middle class neighborhoods shared the resentments of minority groups. In their view, local governments "played the whole against the sum of its parts," leaving neighborhoods "isolated victims" of tax and environmental burdens while a citywide growth agenda brought prosperity elsewhere.[80]

Sensing their shared discontent with the growth coalition, white middle-class and minority neighborhood groups joined forces to change the political system that consistently suppressed their concerns. In almost all of the large southwestern cities, an alliance of white slow-growth and minority neighborhood groups deployed grassroots campaigns or the threat of litigation under the federal Voting Rights Act to force a change from at-large to ward voting systems.[81] Advocates of the change argued that ward voting would diminish the influence of "[s]pecial interests who can make large campaign contributions" in at-large elections and "give an equal voice to the different communities in

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77. *Id.* at 29.

78. *See* ABBOTT, THE METROPOLITAN FRONTIER, *supra* note 24, at 101–102.

79. *Id.* at 101.

80. BRIDGES, *supra* note 24, at 193–94 (quoting Timothy Raymond Mahoney II, Neighborhoods and Municipal Politics: A Case Study of Decentralized Power Systems: Austin, Texas (Spring 1981) 80 (1983) (M.A. thesis, University of Texas, Austin) (on file with University of Texas Libraries)).

81. *See id.* at 187–91; ABBOTT, THE METROPOLITAN FRONTIER, *supra* note 24, at 107–11. *See generally* ABBOTT, THE NEW URBAN AMERICA, *supra* note 23, at 214–43.

the city."[82] Most big cities in southern California, including San Diego, Riverside, and San Bernardino, adopted ward-voting systems, while Los Angeles, which already had a ward-voting system, was forced by a Voting Rights Act suit to adjust some of the ward boundaries to increase minority representation.[83]

Outside the largest urban centers of the Southwest, virtually all communities retained, and continue to use, at-large voting systems. This fact is significant because many of the suburban communities neighboring the largest southwestern cities are not the traditionally small, bedroom communities that predominate in the East but large "boomburbs" or "supersuburbs" that rival many eastern cities in size and influence.[84] The Greater Los Angeles region contains the largest concentration of these boomburbs, and more than half the region's residents live in municipalities larger than 100,000.[85] Boomburbs confront many of the same challenges traditional southwestern cities have long faced, including the difficulty of reconciling a citywide growth agenda with the concerns of diverse neighborhood groups. Boomburbs, like the core Sunbelt cities they surround, have traditionally pursued a policy of continual expansion in order to secure a steady revenue stream and prevent competition from fledgling communities on the periphery. As boomburbs have grown, however, they have become increasingly diverse both ethnically and socioeconomically, and they have experienced the same backlash against growth that other southwestern cities have faced. Unlike traditional cities, however, boomburbs must address these issues within the context of an at-large electoral system that provides little representation to neighborhood interests. In these cities, then, a homogenously pro-growth political structure remains overlaid upon a diverse populace with varied opinions about growth, with the result that opposition to growth must manifest itself outside the ordinary political process.[86]

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82. BRIDGES, *supra* note 24, at 196 (quoting SAN ANTONIO EXPRESS, Jan. 7, 1977, at 3A).

83. *See* ABBOTT, THE METROPOLITAN FRONTIER, *supra* note 24, at 105–07.

84. *See generally* LANG & LEFURGY, *supra* note 13 (describing the "boomburb" phenomenon). According to Lang and LeFurgy, a boomburb is defined as an incorporated city of at least 100,000 residents, not being the core city of its region, that has experienced double-digit population growth in every census since 1970. *Id.* at 6. They identify fifty-four boomburbs as of the 2000 census. All but two (Chesapeake, Virginia, and Naperville, Illinois) are located in the South and West. *See id.* at 6 tbl. 1–1.

85. *See id.* Lang and LeFurgy report that nineteen of the fifty-four boomburbs are located in the Greater-Los Angeles region. *See id.* Another three are located in San Diego County. *See id.*

86. On the increasing diversity in boomburbs, see *id.* at 56. On local politics in the

Even in the largest cities, the structural change to ward voting provided mostly illusory gains. As mentioned earlier, cities such as Los Angeles and San Diego feature wards as large as whole cities, effectively replicating the effects of an at-large system. These cities continued to vigorously pursue pro-growth policies, further antagonizing both white middle-class and low-income minority neighborhoods, who remained politically marginalized even after successfully electing minority politicians or purported slow-growth activists to office.[87] Perhaps as a result, neighborhood groups adopted a more doctrinaire anti-growth ideology.

D. Direct Democracy as a Slow-Growth Weapon

By the early 1970s, as discontent over growth was reaching its apex, neighborhood activists discovered a long-neglected but potentially powerful tool that the Progressives had bestowed on the state of California precisely to enable the people to circumvent their own legislators and directly enact desirable policy: direct democracy. In short order, the initiative process became a powerful vehicle for the assertion of neighborhood prerogatives against the citywide growth machine. This was announced with devastating clarity in June of 1978 when neighborhood groups in southern California spearheaded Proposition 13, which crippled the ability of local governments to collect property taxes.[88] As Mike Davis and Clarence Lo have argued, the tax revolt was deeply linked to neighborhood groups' growth complaints.[89] The leaders of the tax revolt, in fact, were neighborhood associations in the long-suffering San Fernando Valley, Los Angeles's vast adherent

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boomburbs, see *id.* at 121–44. Lang and LeFurgy believe that the "growth machine" remains dominant in the boomburbs and that the size of boomburbs largely dilutes the influence of slow-growth homeowners. *See id.* at 127–28. They also see the initiative as a largely ineffectual response to growth policies. *See id.* at 193 n.23. I believe that Lang and LeFurgy understate the importance of the initiative process as a slow-growth tool. As argued in *infra* notes 94, 134, 135 and accompanying text, the initiative process exerts an influence on local politics that is perhaps out of proportion to its measurable impact on growth.

87. *See, e.g.*, ABBOTT, THE METROPOLITAN FRONTIER, *supra* note 24, at 116–19; JUDD & SWANSTROM, *supra* note 15, at 380–94. Los Angeles proved particularly resistant to any change in its pro-growth policies, even and perhaps especially after the historic election of African-American mayor Tom Bradley. *See* ABBOTT, THE METROPOLITAN FRONTIER, *supra* note 24, at 116–17; JUDD & SWANSTROM, *supra* note 15, at 388–90.

88. *See, e.g.*, DAVID O. SEARS & JACK CITRIN, TAX REVOLT: SOMETHING FOR NOTHING IN CALIFORNIA 124, 140 (1982) (reporting that support for Proposition 13 was highest in metropolitan Los Angeles region and among affluent, white male homeowners).

89. *See* DAVIS, *supra* note 8, at 180–84; CLARENCE Y.H. LO, SMALL PROPERTY VERSUS BIG GOVERNMENT: SOCIAL ORIGINS OF THE PROPERTY TAX REVOLT 52–66, 74–75, 86–89 (1990).

suburb. "The valley" had long resented its treatment as a "tax colony" of downtown Los Angeles, and its frustrations boiled over in the mid-1960s and '70s as property taxes escalated while unmitigated growth threatened the valley's suburban character.[90] In the years before Proposition 13, neighborhood groups in the valley and elsewhere in southern California had taken lead roles in fighting new growth that affected their neighborhoods. The political experience the associations obtained in the growth wars gave them the confidence and organizational ability to orchestrate the massive tax revolt that became Proposition 13.[91]

Proposition 13 signaled, among other things, that the short-lived coalition between slow-growth white homeowners' groups and minority neighborhoods had shattered. Minorities were overwhelmingly opposed to Proposition 13, which promised drastic cuts in necessary social services for minority communities.[92] For Proposition 13's supporters, by contrast, growth and tax complaints were intertwined with concerns about minorities. Homeowners groups feared that a growing minority presence was changing the character of their residential neighborhoods. They were also angry about the forced busing of children to integrate public schools and bloated tax assessments that they believed were subsidizing welfare benefits for inner-city minorities.[93]

The success of Proposition 13 also revealed a significant power gap between slow-growth white homeowners' groups and minority neighborhood groups, despite their shared misery over being shut out of the at-large (or large-ward) system. Proposition 13 proved that the initiative process could be a remarkably effective tool to counteract the unresponsiveness of the local political system, but this tool has by and large been at the exclusive disposal of the white homeowning middle-class. As discussed further below, direct democracy, like at-large voting, consistently disadvantages minorities because it requires access to capital and organizational resources that are often outside the reach of minority communities, but well within reach of middle-class

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90. *See* DAVIS, *supra* note 8, at 180–86; *see also* LO, *supra* note 89, at 53–55, 57, 75, 86–88.

91. *See* DAVIS, *supra* note 8, at 181–83; *see also* LO, *supra* note 89, at 63–64, 86–89.

92. *See* SEARS & CITRIN, *supra* note 88, at 100 (reporting that blacks were staunch opponents of Proposition 13); *Power in Numbers*, THE ECONOMIST, Jan. 9, 2010, at 31, 32 (reporting that Latinos, who tend to be renters rather than homeowners, largely oppose Proposition 13).

93. *See* DAVIS, *supra* note 8, at 183–85; SEARS & CITRIN, *supra* note 88, at 162, 167–70, 185–87 (reporting that opposition to government aid for minorities was central to white support for Proposition 13).

homeowners.[94]

Proposition 13 emboldened homeowners' groups to use the initiative process to further assert their interests against the citywide growth coalition as well as perceived threats from minorities. Homeowners' groups in the valley spearheaded Proposition 1, which reversed the California Supreme Court's decision requiring cross-district school busing to effect integration; and Los Angeles's Proposition U, which dramatically limited commercial zoning throughout the city.[95] The most explicit instantiation of neighborhood rights, however, may have been statewide Proposition 218, passed in 1996. Proposition 218 forbids municipal governments from levying special assessments—neighborhood-specific financing devices that became popular after Proposition 13—without the consent of a majority of the landowners to be assessed.[96] The combination of Propositions 13 and 218 effected a permanent transfer of power over important municipal financing decisions from local governments to neighborhood homeowners.

More important than the statewide measures, although far less publicized, has been the use of the local initiative process to enact growth controls. Throughout the 1980s and '90s, neighborhood groups in southern California proposed and enacted scores of anti-growth measures by local initiative, such as urban growth boundaries, growth moratoria, voter approval requirements for zoning changes, and referenda overriding rezonings granted by legislatures.[97] The heaviest concentrations of initiative activity were in Los Angeles and San Diego Counties and the coastal areas in Orange and Ventura Counties.[98] Local anti-growth initiatives have continued to be popular in southern California during the past decade, even after the recent real estate downturn.[99]

Despite the inroads made by the slow-growth movement, however,

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94. *See infra* notes 185, 187, 189 and accompanying text.

95. *See* DAVIS, *supra* note 8, at 184–85, 192–94 (observing linkages between support for Proposition 13 and Proposition 1 and discussing Proposition U); *see also* FULTON, *supra* note 8, at 51–52, 54–55, 64–66 (discussing Proposition U).

96. On Proposition 218, see generally Derek P. Cole, Comment, *Special Assessment Law Under California's Proposition 218 and the* One-Person, One-Vote *Challenge*, 29 MCGEORGE L. REV. 845 (1998).

97. *See* GORDON, *supra* note 27, at 22; FULTON ET AL., *supra* note 28, at iii–iv.

98. *See* GORDON, *supra* note 27, at 28–32; FULTON ET AL., *supra* note 28, at 41–44.

99. *See* California Planning & Development Report Staff, *November 18 Election Update: Another Transit Victory*, California Planning & Development Report, Nov. 5, 2008 (reporting thirty-nine local slow-growth initiatives in California during November 2008 general election, twenty-two of which were successful.) I address the likely effects of the real-estate downturn on local growth politics further *supra* note 6 and accompanying text.

the growth coalition remains strong. Although Proposition 13 had strong anti-growth underpinnings, in practice it supercharged the growth machine by forcing municipalities into an increasingly virulent competition for new tax revenue.[100] The measure fueled the "fiscalization" of land use, in which municipalities judge new development almost solely based on its anticipated contribution to the tax base, notwithstanding the impacts such development may have on existing neighborhoods.[101] Moreover, even where slow-growth advocates have succeeded in electing sympathetic candidates to office, they have frequently seen those very officials experience a pro-growth conversion once they hear the siren call of development money.[102] Some scholars have argued that the slow-growth movement has done little more than force developers and pro-growth city governments to change their tactics in dealing with potential opposition, while growth has continued unabated.[103]

The measurable impact of the slow-growth movement is subject to dispute, but slow-growth sentiment has clearly had a substantial effect on the local political process. As the next Part shows, government in southern California today is characterized above all by a strong tension between the citywide agenda in favor of growth and the neighborhood desire to repel growth. Whatever inclination pro-growth and anti-growth groups might otherwise have to mitigate this tension and seek

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100. *See, e.g.*, FULTON, *supra* note 8, at 262, 280 (describing incentives for municipalities to create new retail shopping centers to compensate for diminished property tax base after Proposition 13); *see also* Jonathan Schwartz, *Prisoners of Proposition 13: Sales Taxes, Property Taxes, and the Fiscalization of Municipal Land Use Decisions*, 71 S. CAL. L. REV. 183, 184–86, 198–202 (1997) (discussing how Proposition 13 fueled the "fiscalization of land use," causing cities to approve new growth that promises increased revenue even where growth harms or destroys existing neighborhoods).

101. *See*, *e.g.*, Schwartz, *supra* note 100, at 184–86, 198–202.

102. A prominent example is Ruth Galanter, a staunch environmental activist who was elected to the Los Angeles City Council in 1987 on a slow-growth platform after the passage of Proposition U. Homeowners' groups expected Galanter's support for a measure to decentralize zoning control to elected neighborhood planning boards, but she quickly disappointed them by voting along with the rest of the council against the proposal. *See* DAVIS, *supra* note 8, at 194–95; FULTON, *supra* note 8, at 56–58, 63–66.

103. *See* WARNER & MOLOTCH, *supra* note 7, at 52–129 (finding that growth controls implemented between 1970 and 1990 in southern California had no impact on residential development and explaining tactics developers use to obtain approvals despite growth controls); Elisabeth R. Gerber & Justin H. Phillips, *Direct Democracy and Land Use Policy: Exchanging Public Goods for Development Rights*, 41 URB. STUD. 463, 465 (2004) (finding that growth controls in California have not stopped growth but forced developers to make concessions to neighborhood groups). *But see* Mai Thi Nguyen, *Local Growth Control at the Ballot Box: Real Effects or Symbolic Politics?*, 29 J. URB. AFF. 129, 133, 143 (2007) (finding that growth controls in California have slowed residential growth, particularly among Latino and low-income populations).

common ground is defeated by a political structure that juxtaposes at-large or large-ward voting against a robust culture of direct democracy. This structure distorts the local political process by creating an artificial pro-growth/anti-growth dichotomy and by precluding the possibility of compromise or the articulation of alternative visions for the polity. It also restricts participation in local politics to a small, privileged subgroup of affluent pro-growth and affluent anti-growth elites, who pursue their competing agendas largely oblivious to the needs of poor, low income, and minority residents who comprise increasingly large segments of the population. Finally, and somewhat ironically, this political structuring leads to widespread apathy about and disengagement from local government. In these respects, the existing local political system , while not quite what its Progressive architects envisioned, still faithfully carries out their mission to abolish unseemly "logrolling," entrench the political power of the white professional classes, diminish the voting strength of concentrated ethnic minorities, and reduce local government to a form of professional administration.

III. THE MECHANICS OF LOCAL ELECTIONS AND THE DISTORTIONS OF GROWTH POLITICS

A. Case Study Number 1: "The Land of Gracious Living"

Yorba Linda, a city with a population of approximately 65,000 in northeastern Orange County, is perhaps the most affluent city in the county and one of the wealthiest cities in the United States. In 2006, Yorba Linda had the highest median income of any city in the nation with a population between 65,000 and 250,000.[104] The city, which goes by the moniker "The Land of Gracious Living,"[105] is most famous as the birthplace of President Richard M. Nixon and today is the location of the Nixon Presidential Library and Museum.[106] The Nixon library sits near Yorba Linda's historic downtown, also called "Old Town Yorba Linda."[107] In the early 2000s, Yorba Linda's at-large city council embarked on a project to redevelop Old Town into a tourist attraction to complement the Nixon library.[108] The city announced preliminary

104. Les Christie, *The Richest (and Poorest) Places in the U.S.*, CNNMONEY.COM, Aug. 31, 2007, http://money.cnn.com/2007/08/28/real_estate/wealthiest_states/index.htm.

105. *See* Key to the City's Page for Yorba Linda, http://www.usacitiesonline.com/cacountyyorbalinda.htm (last visited Dec. 15, 2010).

106. *See* Jerry Hicks, *Yorba Linda's Old Town: New Visibility in Store*, L.A. TIMES, Jan. 14, 2002.

107. *See id.*

108. *See id.*

plans for the redevelopment in a series of town meetings and began acquiring property in the Old Town area through eminent domain.[109] Many community residents were pleased with the redevelopment plans, although those whose property stood to be taken were understandably less pleased. As one complained, "Nobody from the city has ever talked to me about a price for my place. All they've told me is 'You better get a lawyer.'"[110]

By 2005, the downtown redevelopment proposal, now called "Town Center," had become a flashpoint of controversy. The city council approved plans, including needed zoning changes, for a 60-acre redevelopment project that would add 500,000 square feet of commercial space and up to 500 new housing units in the Town Center district.[111] Community residents were dismayed at the massive scale of the new project, believing it would disrupt the low density, suburban character of the community. As one project opponent lamented, "This is the end of gracious living. It's gone. They're closing us in."[112] Many residents were resigned to the belief that despite their objections, approval of the project was a "done deal."[113] Nevertheless, angry residents formed "Yorba Linda Residents for Responsible Redevelopment" (YLRRR) and spearheaded a "Right to Vote" ballot initiative that would require voter approval of any zoning changes for "major projects" in the future.[114] The city council delayed the vote on the ballot initiative until June 2006, then pushed through the necessary zoning changes for the Town Center project. Members of YLRRR expressed frustration that the city planning commission had "just breezed through" consideration of the Town Center project without listening to the concerns of the public; the city council vote in favor of the project was seen as "a foregone conclusion."[115]

The situation took a dramatic turn shortly after the zoning changes

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109. *See id.*

110. *Id.* (quoting interview with Alex Mikkelson).

111. Cindy Arora, *Downtown Showdown*, ORANGE COUNTY REG., Dec. 4, 2005; David Reyes, *Measure Would Limit O.C. Land Grabs*, L.A. TIMES, May 7, 2006, at B1, B8.

112. Amanda Beck, *Residents React to Yorba Linda Project Plans*, ORANGE COUNTY REG., May 6, 2005; *see also* James Horton, *Reader Rebuttal: Land use in Yorba Linda*, ORANGE COUNTY REG., Sep. 4, 2005, at Commentary 4 (citing need to preserve Yorba Linda's character as a "a predominantly single-family residential community of well-planned, low-density neighborhoods").

113. Jim Drummond, *Still Time To Refine Town Center Project*, YORBA LINDA STAR, Jan. 20, 2005 (referencing a Yorba Linda resident and apparent opponent of Town Center characterizing project as a "done deal").

114. Amanda Beck, *New Set of Three-Rs in Town*, YORBA LINDA STAR, Mar. 23, 2005.

115. Arora, *supra* note 111.

when project opponents collected more than double the number of signatures needed to qualify a pair of referenda for the June 2006 ballot that would overrule the zoning changes, despite opposition from the city council and deep-pocketed development interests.[116] After seeing the number of signatures, the council hastily reversed course by rescinding the zoning changes, terminating its relationship with the controversial developer heading the Town Center project, and establishing a blue-ribbon committee to solicit community opinion about how best to proceed with the redevelopment.[117] Perhaps emboldened by its success in the referendum campaign, YLRRR demanded that the city relinquish its power of eminent domain.[118] Surprisingly, the city council unanimously agreed to do just that.[119] YLRRR was still not satisfied. Residents had become increasingly skeptical of their elected officials' good faith. They saw the council's knee-jerk reaction to the signature campaign as calculated political maneuvering and the blue-ribbon commission as a cynical means to paper over neighborhood opposition.[120] YLRRR thus pressed ahead with the "Right to Vote" initiative.

The rhetoric heated up during the initiative campaign. Supporters of the initiative claimed that they were promoting "responsible" growth consistent with Yorba Linda's "low density" character, while blasting opponents as "special interests" and accusing city officials of being "captives of mega-developers."[121] The pro-growth opposition presented itself as standing for the dispassionate assessment of proposed land-use regulations while painting supporters of the measure as a small, self-interested cabal seeking to restrict private property rights.[122] The initiative passed in June 2006.[123] Two years later, in November 2008, Yorba Linda voters enacted another ballot measure barring the use of

116. Cindy Arora, *Council, Critics Planning Next Step*, ORANGE COUNTY REG., Feb. 9, 2006, at Local 5.

117. *See* Jim Drummond, *Blue-Ribbon Commission Needs Identity*, YORBA LINDA STAR, Apr. 6, 2006; Jim Drummond, *City Council Touched The Local Third Rail*, YORBA LINDA STAR, Mar. 23, 2006 [hereinafter Drummond, *Third Rail*].

118. *See* Arora, *supra* note 116, at Local 5.

119. *See* Cindy Arora, *Yorba Linda Rejects Town Center Eminent Domain*, ORANGE COUNTY REG., Mar. 22, 2006.

120. *See* Drummond, *Third Rail*, *supra* note 117; Drummond, *supra* note 113.

121. Horton, *supra* note 112, at Commentary 4 ("captives of mega-developers"); SmartVoter.org, Yorba Linda Right-to-Vote Amendment, http://www.smartvoter.org/2006/06/06/ca/or/meas/B/ (last visited Dec. 14, 2010) (discussing the arguments for and rebuttal to arguments against Measure B).

122. *See* SmartVoter.org, *supra* note 121 (discussing arguments against and rebuttal to arguments for Measure B).

123. *Id.*

eminent domain for redevelopment purposes.[124]

B. The Structure of Local Government and the Polarization of Growth Politics

For critics of direct democracy—and there are many—the preceding case study would provide ample support. Commentators have long lamented the tendency of the initiative process to reduce complex political issues to simplistic yes/no dichotomies, to encourage caricatured portrayals of opposing positions, to privilege well-heeled special interests, and to quash the possibility of good-faith compromise or bargaining.[125] Critics have specifically assailed ballot-box zoning for these very failings.[126] It is quite commonplace, as we saw in Yorba Linda, for both sides of a land-use initiative campaign to assume the mantle of balancing neighborhood character and environmental amenities with "responsible" development in the interest of the public as a whole, while attacking the opposition as special-interest minorities. Yorba Linda is by no means an exceptional case. A few other recent examples will reinforce the point. In the Ventura County city of Thousand Oaks, supporters of a slow-growth initiative spoke of protecting neighborhoods from pollution, traffic, and noise and complained that developers exercised too much influence;[127] opponents of the measure touted redevelopment that promised a "vibrant pedestrian friendly district" and additional tax revenue, while claiming that the measure's principal sponsor was a self-interested downtown business seeking to prevent competition.[128] Supporters of a slow-growth measure in the Orange County city of Seal Beach declared that a "few landowners" were threatening the community's quality of life, while opponents claimed that the measure was being sponsored by a "higher-taxes, reverse-growth, anti-business, special interest minority."[129]

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124. *See* SmartVoter.org, Directory of Orange County, CA Measures, http://www.smartvoter.org/2008/11/04/ca/or/meas/ (last visited Dec. 15, 2010) (Measure B).

125. For a representative sample, see MAGLEBY, *supra* note 40, at 181 ("[Direct democracy] tends to deemphasize compromise, continuity, and consensus."); Burke, *supra* note 17, at 1460–61; Callies, *supra* note 17, at 54–55; Kublicki, *supra* note 17, at 100–01.

126. *See infra* note 226 and accompanying text; Selmi, *supra* note 18, at 294, 313, 317 (discussing these and numerous other objections to land-use initiatives).

127. *See* City of Thousand Oaks, Argument in Favor, http://www.toaks.org/civica/filebank/blobdload.asp?BlobID=12064 (last visited Dec. 15, 2010); SmartVoter.org, Measure B, General Plan Amendment City of Thousand Oaks, http://www.smartvoter.org/2008/06/03/ca/ vn/meas/B/ (last visited Dec. 15, 2010).

128. *See* City of Thousand Oaks, Rebuttal to Argument in Favor, http://www.toaks.org/civica/filebank/blobdload.asp?BlobID=12091 (last visited Dec. 15, 2010).

129. *See* OCVote.com, Full Text of Measure Z, http://www.ocvote.com/election/

Perhaps apotheosizing the trend, in one initiative fight, a group called "This is Our Town" competed against a group called "Protect Our Town"; in another case, "Citizens for Responsible Growth" did battle with "Citizens for Responsible Development."[130]

Ballot-box zoning is also problematic because it essentially gives homeowners a veto power over unwanted growth. While homeowners may have legitimate concerns about the effects of new development on the environment or their quality of life, such concerns are often secondary to more parochial issues such as preserving their own wealth by restricting the supply of available land, or excluding undesirable persons.[131] The latter was, indeed, a subtext in the Town Center affair. Opponents of the project decried the inclusion of affordable housing in the redeveloped district.[132]

Those who have lamented the deficiencies of ballot-box zoning have rarely subjected the ordinary legislative process to the same level of scrutiny. As the Town Center case study shows, however, the legislative process by which land-use policy is made is often just as uncompromising, just as nondeliberative, just as subject to special-interest "capture," and just as polarizing as the initiative. City councils are desperate for revenue and thus predisposed to favor development interests over neighborhood groups.[133] They rely on mechanisms such as eminent domain and institutions such as the planning commission to circumvent neighborhood opposition to growth under the guise of advancing a unitary public interest.[134] Confronted with an apparent *fait accompli* and frustrated by the council's failure to compromise its pro-growth agenda, neighborhood groups often feel compelled to answer with similar intransigence, and the ballot box becomes the outlet for

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gen2008/SB_FT.pdf (last visited Dec. 15, 2010); OCVote.com, Argument in Favor of Measure Z, http://www.ocvote.com/election/gen2008/SB_AF.pdf (last visited Dec. 15, 2010); OCVote.com, Rebuttal to Argument in Favor of Measure Z, http://www.ocvote.com/election/gen2008/SB_RAF.pdf (last visited Dec. 15, 2010).

130. *See* PHYLLIS MYERS, DIRECT DEMOCRACY AND LAND USE 23 (2007), *available at* http://www.iandrinstitute.org/REPORT%20Myers%20Land%20Use.pdf.

131. Mike Davis provides a searing account of southern California NIMBYism's dark side in DAVIS, *supra* note 8, at 159. A more sanguine view, arguing that NIMBYism is a rational response to homeowners' inability to insure their most valuable asset, is articulated in FISCHEL, *supra* note 2, at 10–11, 96–97.

132. *See* Jim Drummond, Viewpoint, *Town Center Debate Targets Density Numbers*, YORBA LINDA STAR, Mar. 17, 2005 (reporting that Town Center opponents expressed concern that percentage of high-density units would be set aside for affordable housing).

133. *See* LOGAN & MOLOTCH, *supra* note 3, at 50–98, 154–62.

134. *See, e.g.*, *id.* at 50–98, 147–99 (describing various mechanisms used by growth interests to effect development agenda, such as zoning, eminent domain, tax-increment financing, and planning).

their pent-up anger.[135] Insofar as ballot-box zoning rejects deliberation and compromise in favor of a scorched-earth, "winner-take-all" approach to growth politics, then, it is merely a structural complement to the institutional biases of city councils.[136]

Where city councils are elected at-large, as they are throughout southern California, the inherent tendency of municipal governments to favor growth and to resist accommodation of competing interests is intensified. At the superficial level, because at-large council members all represent the same citywide constituency, there is simply no utility in logrolling or deal-making between council members.[137] In many at-large jurisdictions, furthermore, every member of the city council resides in one of a few affluent neighborhoods, so the council will hardly represent a diverse set of political views requiring mutual accommodation.[138] Finally, because at-large council members are immune from neighborhood pressures and beholden to campaign contributions from developers, they are likely to share a uniformly pro-growth agenda.[139] Thus, at-large city councils have little incentive to compromise with opponents of growth. True, direct democracy represents the ubiquitous "gun behind the door" of which the council must be mindful;[140] however, because the voting public is not a pressure group that can be bargained with but an amorphous mass that only fitfully arises to express its ire, and because development pressures in most municipalities are so acute, city councils content themselves with carrying forward a pro-growth

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135. In jurisdictions where the ballot box is unavailable, neighbors resort to a variety of other tactics like litigation, media campaigns, even civil disobedience to fight the growth machine. *See* SENNETT, *supra* note 18, at 301–08 (discussing variety of tactics used by neighborhood of Forest Hills, Queens, to prevent siting of low income housing project); Dear, *supra* note 18, at 290–91 (describing tactics used by development opponents to prevent unwanted growth).

136. For a similar critique, see Selmi, *supra* note 18, at 330–36 (describing "growth machine" theory that political structures are deployed to create a consensus in favor of growth, and arguing that "initiatives and referenda may act as a political counter-weight to the tendency of local politicians to act favorably toward development proposals").

137. *See* Dalenberg & Duffy-Deno, *supra* note 56, at 335–336 (arguing that logrolling is more likely to be prevalent in ward than at-large systems, and providing empirical evidence).

138. *See* ABBOTT, THE METROPOLITAN FRONTIER, *supra* note 24, at 43; BRIDGES, *supra* note 24, at 170–71; LANG & LEFURGY, *supra* note 13, at 123.

139. *See* Clingermayer, *supra* note 54, at 972–73 (speculating that at-large legislators are more concerned with policies affecting the city as a whole, such as "aggregate economic growth," than specific neighborhood concerns); Dalenberg & Duffy-Deno, *supra* note 56, at 335–336; *supra* text accompanying notes 57-61.

140. Todd Donovan & Shaun Bowler, *An Overview of Direct Democracy in the American States*, *in* CITIZENS AS LEGISLATORS: DIRECT DEMOCRACY IN THE UNITED STATES 1, 2 (Shaun Bowler et al. eds., 1998) (describing initiative as the "gun behind the door" that can force legislatures to be more responsive).

agenda leavened with just enough lip service to slow-growth concerns as to deaden any potential opposition before it stirs.[141]

At-large jurisdictions use a variety of devices to silence debate about the growth agenda. One popular device, which played a critical role in sparking the Town Center dispute, is eminent domain. Eminent domain is a popular redevelopment tool because it permits government agencies to acquire, via a forced sale, contiguous parcels of property in an area designated for redevelopment, such as Old Town Yorba Linda. As shown further below, however, eminent domain is more than just a tool for redevelopment. Like the at-large system itself, eminent domain is a powerful vehicle for short-circuiting dialogue with affected neighborhood groups and the general public about the wisdom of redevelopment schemes.

As an initial matter, many scholars believe that the very *raison d'être* of eminent domain is to bypass dialogue. Economists argue that the principal rationale for eminent domain is that it permits government agencies to avoid negotiations with landowners in situations where the existence of a bilateral monopoly may cause landowners to engage in strategic holdouts.[142] This is a problem that may be encountered by a government agency when, for example, it attempts to assemble a large parcel of land to build a highway or an airport by purchasing a number of small contiguous lots from different landowners.[143] Each landowner is in a strategically advantageous position to negotiate with the agency because she is aware that the government must acquire her individual lot in order to assemble the larger parcel it needs.[144] This system encourages landowners to hold out for extortionate prices. To avoid this hazard, economists argue, the use of eminent domain is justified, although ordinarily free negotiations between the parties would be

141. *See* JUDD & SWANSTROM, *supra* note 15, at 384, 389–90 (explaining that big cities continued to have pro-growth orientation even after "incorporation" of neighborhood groups and minorities into city politics, but latter groups obtained significant "symbolic" benefits); WARNER & MOLOTCH, *supra* note 7, at 60–62, 104–05, 107–09, 117 (arguing that many growth controls are symbolic concessions to slow-growth sentiment by pro-growth interests and have no real impact on growth and describing ways in which developers are able to continue advancing pro-growth policies despite growth controls); Gerber & Phillips, *supra* note 103, at 465, 473 (finding that growth controls in California have not stopped growth but forced developers to make concessions to neighborhood groups).

142. *See* RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW 55–56 (6th ed. 2003); *see also* Gregory S. Alexander, *Eminent Domain and Secondary Rent-Seeking*, 1 N.Y.U. J. L. & LIBERTY 958, 960 (2005); Thomas W. Merrill, *The Economics of Public Use*, 72 CORNELL L. REV. 61, 65 (1986).

143. *See* POSNER, *supra* note 142, at 55–56.

144. *See id.*

preferred.[145]

The problem with eminent domain in practice is that it is used not only to avoid negotiations where there are bilateral monopoly problems, but also to circumvent political opposition to redevelopment by neighborhood groups concerned about the disruption of their community or the loss of their homes. In this sense, eminent domain is analogous to the at-large system. During the era of urban renewal in the 1950s and '60s, for example, at-large cities in the Southwest used eminent domain liberally to pursue an aggressive policy of downtown redevelopment—bulldozing low income housing and small businesses near the city center and driving highways through the heart of once-vibrant neighborhoods—while simply ignoring opposition from those adversely affected. Using the rhetoric of at-largism to deflect criticism from neighborhood interests, "[r]enewal advocates claimed the high ground of public interest and argued that the real beneficiaries of urban renewal were not merely downtown department stores and newspapers but rather the entire metropolitan population, since the central business district was the one 'neighborhood' that was common to everyone."[146] Eminent domain has remained popular in pro-growth, at-large jurisdictions, especially in California. In California today, there are 395 local redevelopment agencies, which own $12.9 billion in property and have jurisdiction over 759 redevelopment zones (where state law permits the use of eminent domain for redevelopment purposes).[147]

The United States Supreme Court has pointedly declined to place

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145. *See* Alexander, *supra* note 142, at 960.

146. ABBOTT, THE NEW URBAN AMERICA, *supra* note 24, at 167.

147. CASTLE COALITION, CALIFORNIA SCHEMING: WHAT EVERY CALIFORNIAN SHOULD KNOW ABOUT EMINENT DOMAIN ABUSE 3 (2008), *available at* http://www.castlecoalition.org/images/publications/californiaschemingfinal.pdf (last visited Dec. 15, 2010). The popularity of eminent domain in California should come as no surprise. The incentives to use eminent domain are enormous. After Proposition 13, revenue-starved municipalities are desperate to entice tax-generating entities like auto dealerships and shopping centers and to unload tax-draining uses like low-income housing and small businesses. With eminent domain, municipalities can in one fell swoop provide attractive, vacant land to the former *and* eradicate the latter. At the same time, there is little to deter California municipalities from freely using eminent domain. California law limits the use of eminent domain to areas designated as "blighted," but the legislative blight standards are fairly vague and subject to manipulation. *See id.* at 3–4. In addition, opponents face numerous financial and procedural hurdles in attempting to challenge a blight designation. *See* George Lefcoe, *Finding the Blight That's Right for California Redevelopment Law*, 52 HASTINGS L.J. 991, 1024–27 (2000–2001).

The preceding paragraph should make clear that all local governments in California, not just at-large municipalities, have huge incentives to exercise the eminent domain power. As I argue in the text, however, eminent domain acts as a structural complement to the at-large system by similarly muting neighborhood opposition to new growth.

any substantive limits on the use of eminent domain for redevelopment. In the now well-known (perhaps notorious) decision of *Kelo v. City of New London*,[148] the Supreme Court held that municipalities could constitutionally exercise the eminent domain power for redevelopment purposes and that the courts should broadly defer to municipal redevelopment plans. Although most of the negative publicity surrounding the *Kelo* decision has centered on this holding, in a less-noticed passage the Court also held that local governments have unfettered discretion to determine what particular land should be acquired as part of a redevelopment scheme.[149] In other words, according to the Supreme Court, local governments are not limited to acquiring land in order to overcome strategic holdouts, but may do so as long as they can articulate a plausible rationale for the condemnation.[150] California's redevelopment law is somewhat stricter in principle, but contains numerous procedural hurdles that make it very difficult for opponents to challenge the exercise of eminent domain.[151] Thus, if landowners object to a condemnation scheme, they must express those objections through the political process and not by pressing their legal rights as property holders. Ironically, as I have stressed, the political process provides little succor for those dispossessed because the at-large electoral system prevalent in California localities mutes the political influence of neighborhood residents as effectively as redevelopment law limits their legal recourse.[152]

In the same way that localities are able to avoid dialogue with

148. Kelo v. City of New London, 545 U.S. 469 (2005).

149. *See id.* at 488–89 (quoting Berman v. Parker, 348 U.S. 26, 35–36 (1954)).

150. According to the Court, the use of eminent domain will be sustained, provided it is supported by a "public purpose," and courts should defer to the legislature's determination of what public purpose requires the exercise of the eminent domain power. *See id.* at 480–85. Although the Court repeatedly stressed that New London exercised its eminent domain power pursuant to a well-considered redevelopment plan, *id.* at 483–84, 488–89, it did not hold that such a well-considered plan was necessary to sustain the use of eminent domain. The Court also did not hold, as Justice O'Connor's dissent argued, that the use of eminent domain should be limited to alleviating "blight." *See id.* at 498–500 (O'Connor, J., dissenting).

151. *See* Lefcoe, *supra* note 147, at 1024–27 (describing barriers including expense of litigation, strict filing deadlines, and the difficulty of compiling an administrative record).

152. As the preceding discussion has been critical of eminent domain and the *Kelo* decision, I should note here that eminent domain also has many virtues, such as enabling struggling cities like New London to compete with surrounding suburbs for needed development. The *Kelo* decision would have been more defensible had it actually articulated this or some other persuasive rationale, rather than mechanically deferring to local government authorities. Thus, I do not oppose eminent domain for redevelopment purposes in principle, but oppose its use as a means to circumvent dialogue about growth. I address this point further *infra* note 289.

affected landowners about redevelopment by simply acquiring property through eminent domain, they can also circumvent any broader political debate with the general public about redevelopment plans through the use of tax-increment financing, which virtually always accompanies eminent domain.[153] Tax-increment financing (TIF), which originated in California and has seen a sharp increase in popularity there since Proposition 13,[154] enables municipalities to finance acquisitions of property via eminent domain without using general property tax revenue. Instead, the municipality issues bonds to finance the acquisitions and improvements within a geographically-bounded TIF district.[155] The "incremental" tax revenue generated by the redevelopment must be used either to pay off the bonds or to support additional development within the district, and may not be directed elsewhere in the city.[156] In theory, the TIF district pays its own way because the improvements within the district cause a sufficient increase in its incremental tax revenue to fully pay off the bonds.[157] The municipal taxpayer is not on the hook for the bonded indebtedness, so from her perspective the redevelopment is "free." The taxpayer is thus insulated against both the costs and benefits of the redevelopment scheme, as she is neither liable for its debts nor eligible to receive any of the incremental revenue generated by the redevelopment, which must be directed to the TIF district. Accordingly, the taxpayer has no stake in the success or failure of the redevelopment, and thus no incentive to voice any opinion about its merits.[158] In short, tax-increment financing simply removes redevelopment, and hence eminent domain, from the realm of political discourse.

The foregoing should not be understood to mean that there is no discontentment with eminent domain. The nationwide outcry over the *Kelo* decision should dispel that notion. However, the barriers that at-large voting, eminent domain, and tax-increment financing erect to

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153. For a discussion of TIF and its political implications, see Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 512–514 (1997).

154. *See* George Lefcoe, *After* Kelo, *Curbing Opportunistic TIF-Driven Economic Development: Forgoing Ineffectual Blight Tests; Empowering Property Owners and School Districts*, 83 TUL. L. REV. 45, 97–99 (2008) (describing increase in TIF popularity after Proposition 13).

155. *See* Briffault, *supra* note 153, at 512–14.

156. *See id.*

157. For a discussion of the mathematics of TIF, see ROBERT C. ELLICKSON & VICKI L. BEEN, LAND USE CONTROLS 844–45 (3d ed. 2005).

158. *See* Briffault, *supra* note 153, at 514 ("For the purposes of financing new development, the TIF district thus functions as a self-contained sublocal structure embedded within the broader city.").

opposing redevelopment require that such opposition take place outside the normal local political process. Where this opposition occurs, furthermore, it is usually expressed as a wholesale rejection of local government. We have seen previously that anger about urban renewal's impact on minority neighborhoods and middle class white neighborhoods sparked uprisings such as the Watts riots and led to widespread challenges to at-large voting systems throughout the Southwest.[159] Similarly, some have speculated that Los Angeles's use of tax-increment financing to redevelop a huge swath of downtown L.A. in the 1980s ignited the Rodney King riot in the summer of 1992.[160] Long-neglected minority neighborhoods exploded in anger after years of city hall ignoring their needs while funneling enormous sums of revenue to the adjacent downtown.[161] I take up the plight of minorities under the existing system more fully in Part D, below.

Middle class resentment with the growth agenda manifests itself in a somewhat different type of revolt against the system: the initiative process. As we have seen, urban riots in the era of urban renewal and the grassroots neighborhood struggle to abolish the at-large system planted the seeds for the later explosion of neighborhood-based ballot-box growth initiatives. Proposition 13, which initiated the ballot-box revolution, was in fact dubbed "the Watts riot of the middle classes,"[162] an allusion to the fact that the initiative process, like the urban uprisings, represents a rejection of a systematically unresponsive local political structure. Given the widespread discontent over localities' use of eminent domain to quash neighborhood opposition, it should come as no surprise that in the years since *Kelo*, the initiative process has been a vital tool in a nationwide campaign to curb eminent domain. A number of states, including California, passed ballot initiatives limiting the use of eminent domain for redevelopment.[163] As well, a handful of California communities have passed ballot measures either abolishing eminent domain for redevelopment purposes or severely limiting it.[164]

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159. *See supra* notes 74, 75, 77 and accompanying text.

160. *See* JUDD & SWANSTROM, *supra* note 15, at 388–89.

161. *See id.*

162. *See* DAVIS, *supra* note 8, at 180. Davis believes that a contemporaneous newspaper account gave Proposition 13 this moniker. *See id.* at 215 n.62.

163. *See* Cal. Proposition 99 (2008) (enacted) (amending CAL. CONST. art. I, § 19). For a comprehensive list and critique of the various state responses to the *Kelo* decisions, see Ilya Somin, *The Limits of Backlash: Assessing the Political Response to* Kelo, 93 MINN. L. REV. 2100, 2120–48 (2009).

164. *See* CASTLE COALITION, *supra* note 147, at 12–13 (discussing local eminent domain initiatives).

One of those communities, of course, was Yorba Linda. The Town Center fiasco culminated in November 2008, when the voters abolished eminent domain for redevelopment purposes. But eminent domain infused the conflict from the beginning and was an important undercurrent in the earlier 2006 "Right to Vote" initiative (which required voter approval of rezonings for all "major projects"). James Horton, a sponsor of the "Right to Vote" initiative who claimed that his downtown property stood to be seized by eminent domain, wrote a letter to the Orange County Register in September 2005 defending the initiative. In the letter, Horton asserted that the initiative was the community's only defense against eminent domain abuse, given that the deadline to challenge the municipality's eminent domain authorization under the state redevelopment law had passed.[165] Horton lamented that "[s]tate redevelopment law is designed to exclude voters from redevelopment decisions" and thus, "[t]he only way to protect our neighborhoods and local businesses in Yorba Linda from eminent domain is to limit the re-zoning power of those bureaucrats and politicians [city officials]."[166]

Interestingly, as noted earlier, the initiative drive went forward—and succeeded—even after the city rescinded the rezoning for the Town Center area, established a blue-ribbon committee to assess prospects for downtown redevelopment, terminated its relationship with the developer commissioned to carry out the redevelopment, and relinquished its eminent domain powers. The voters then returned to the polls two years later to ban eminent domain for redevelopment purposes, stripping the city council of the very powers it had already voluntarily surrendered.[167] It appears that the city's initially heavy-handed approach toward the redevelopment project so poisoned the political environment that compromise became inconceivable for its opponents. Moreover, the availability of the initiative process made compromise completely unnecessary. At-large voting, eminent domain, and the initiative process thus worked hand-in-hand to defeat the possibility of genuine dialogue about the Town Center project.

C. Growth Conflict and the Depoliticization of Local Government

The preceding discussion should make clear that while the at-large electoral system and the initiative process have emerged as adversaries in southern California's bitter growth politics, they nevertheless share a

165. *See* Horton, *supra* note 112, at Commentary 4.

166. *See id.*

167. *See supra* note 124 and accompanying text.

set of structural underpinnings that reveal their common ancestry in Progressive reform ideology. The Progressives, we recall, introduced these reforms as correctives to the sordid logrolling that characterized the governance of machine cities; with at-large voting and direct democracy in place, civic-minded public officials and an enlightened citizenry would be free to realize the unitary interest of the city-at-large without the need to cut deals with a myriad of special interests.[168] The fact that today city officials and the voting public so often end up on opposite sides of the growth debate, with each accusing the other of being captive to special interests, is a powerful demonstration of just how naive the Progressive reformers were to think they could ever structure local politics to capture a homogenous public interest. And yet, their ideology continues to exert a powerful influence. In a form of tribute to the Progressive abhorrence of political bargaining, both the at-large system and direct democracy as practiced today completely reject the idea of a political process involving compromise or dialogue about desired ends. Each party in the growth debate seeks instead to simply enact its own agenda while ignoring or excoriating the other side.

In at least one respect, the character of southern California's modern growth politics seems wholly inconsistent with Progressive ideology. For the Progressives, eliminating logrolling and discourse was part of a larger program to depoliticize local government. Direct democracy and at-large voting, along with a number of other innovations like nonpartisan elections, professional city managers and planning agencies, and civil service reforms, were all intended to remove the politics from local government and reduce it to a form of professional administration.[169] The preceding discussion of modern-day growth conflicts, however, depicts at-large elections and direct democracy as contributing to an environment of hyper-politicization. On closer inspection, though, this extreme politicization is something of an illusion. Local government in southern California remains, paradoxically, thoroughly depoliticized. The sound and fury of the artificially polarized growth debate obfuscates the fact that most local issues, including growth, municipal financing, school control, provision of utilities, social services, and others, have been largely removed from the municipal political agenda. Authority over many areas commonly associated with local government has been siphoned away from political entities toward professional planning agencies, special districts,

168. *See supra* notes 40, 41, 43, 44 and accompanying text.

169. *See supra* notes 42–43 and accompanying text.

homeowners' associations, or county governments.[170] Those functions that are still performed by cities and are nominally political, such as land-use control, are often conducted like private business transactions between the city government and developers, from which the public is excluded.[171] The bargaining that takes place in these dealings contrasts sharply with the complete absence of dialogue between city officials and the public about land-use issues. Given the widespread depoliticization of local government, most voters are generally apathetic about its everyday affairs.[172]

What about those bitter initiative battles? The fact is that while slow-growth initiatives are highly publicized, they actually represent a relatively small part of local politics.[173] Most elite growth policies go

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170. *See, e.g.*, LANG & LEFURGY, *supra* note 13, at 122, 128–29, 136–37 (discussing truncation of political agenda in southwestern "boomburb" cities given the expanding role of special districts, homeowners' associations, and county governments); LOGAN & MOLOTCH, *supra* note 3, at 154 (noting how the planning process's "fetish" for jargon, data, and maps masks the "inherently political" nature of planning under a façade of expertise and efficiency).

171. Land-use scholars frequently refer to the predominant model of land-use regulation as a "dealmaking" model, in which cities and developers negotiate the terms of land-use entitlements. *See* Carol M. Rose, *Planning and Dealing: Piecemeal Land Controls as a Problem of Local Legitimacy*, 71 CAL. L. REV. 837, 846, 848–49 (1983) (contrasting "planning" and "dealing" models of land-use regulation); Selmi, *supra* note 15, at 3–4 (describing the changing nature of relationship between developers and local governments with ascendancy of "development agreements"). The dealmaking model is epitomized by the widespread use of exactions, in which cities offer land-use entitlements in exchange for concessions provided by the developer to mitigate the impact of the development, and development agreements, in which cities and developers essentially enter into a contractual agreement to provide the developer with vested rights to build in exchange for the developer agreeing to certain conditions. Exactions and development agreements have both been extremely popular in California because they enable municipalities to finance needed infrastructure without resorting to the property tax. *See* Vicki Been, *Impact Fees and Housing Affordability*, 8 CITYSCAPE 139, 140–41 (2005) (discussing exactions); Stephanie Pincetl, *The Politics of Influence: Democracy and the Growth Machine in Orange County, U.S.*, *in* THE URBAN GROWTH MACHINE: CRITICAL PERSPECTIVES, TWO DECADES LATER 195, 195–98 (Andrew E.G. Jonas & David Wilson eds., 1999) (discussing development agreements). Both exactions and development agreements have been criticized on the grounds that the public is largely excluded from the negotiating process. *See, e.g.*, Selmi, *supra*, note 15, at 54–59. On occasion, the initiative-referendum process can cause the dealmaking model to work in reverse. One study of San Diego showed that voter approval requirements for land-use changes caused developers to negotiate directly with neighborhood groups for approval, bypassing the city council. Gerber & Phillips, *supra* note 103, at 469; *see also* Gordon, *supra* note 29, at 35 (interpreting Gerber and Phillips study as demonstrating ability of developers and neighborhood groups to "bypass government" through initiative process).

172. *See* PINCETL, *supra* note 42, at 310 (describing voter apathy arising from Progressive political institutions in California).

173. *See, e.g.*, FULTON ET AL., *supra* note 28, at 16–17 (reporting that ballot measures account for only a small number of growth management schemes, most of which are enacted

unchallenged. When ballot-box zoning does take place, it is usually a temporary interruption of the ordinary governing process that enables neighborhood groups to effect some discrete change while leaving undisturbed the underlying, depoliticized structure of local government. This trend explains, at least in part, why voters have largely declined to make structural changes to local government, such as creating elected planning boards or replacing at-large systems with ward systems.[174] In short, for neighborhood groups in southern California, the initiative process is not a means to participate in or change the local political system, but to protect themselves from that system. In his classic description of a land-use conflict in Forest Hills, New York, Richard Sennett observes that when a neighborhood fights to defend its turf against the demands of the community at large, "it fights to be left alone, to be exempted or shielded from the political process, rather than to change the political process itself."[175] In California, the initiative provides the neighborhood with a powerful weapon to prevail in its fight to be left alone while avoiding any political entanglements.

D. The Plight of Minority Residents in the Polarized Culture of Local Growth Politics

The depoliticization of local government might be a matter of indifference if it accurately reflected the will of the electorate. However, the municipal political agenda has been so truncated and distorted that voters are often forced to choose between a narrow set of extreme alternatives that may not accurately represent their own views on growth. Beyond this concern, however, perhaps the central problem with the current system of local government in southern California is that it severely dilutes the influence of the large and growing populations of renting, low income minorities and, in the process,

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by the local governing body).

174. It is true, as shown earlier, that many large cities throughout the Southwest switched from at-large to ward voting systems in the 1970s and '80s as part of a joint campaign by slow-growth neighborhood groups and minority rights activists. *See supra* notes 78–80 and accompanying text. Moreover, in the decade between 1990 and 2000, when ballot-box zoning was perhaps at the height of its popularity in California, a significant number of local initiatives were certified that sought to switch from at-large to ward voting systems. *See* GORDON, *supra* note 27, at 26 tbl. 3.5 (reporting that twenty-six local initiatives qualified for the ballot between 1990 and 2000 seeking a change from at-large to ward voting). Nevertheless, today over 90% of California cities retain at-large systems, and the "boomburb" areas of Orange, Ventura, and San Diego counties, which have been hotbeds of slow-growth initiative activity, almost universally retain at-large systems (or large-ward systems, in the cities of Los Angeles and San Diego). *See* League of California Cities, *supra* note 23 (listing California cities that use at-large or district systems).

175. SENNETT, *supra* note 16, at 295–96.

persistently generates land-use policies that adversely impact these groups. As we have seen, it was a principal tenet of the Progressive reform ideology to minimize political participation by the geographically concentrated ethnic minorities who were the primary constituency for the machines and privilege the interests of the professional, white middle classes.[176] The southwestern cities that adopted Progressive reforms such as at-large voting found them to be effective means of consolidating political control in a small, affluent, white professional elite.[177] Minorities remained excluded from power even as these cities became increasingly diverse.[178]

The absence of minority voices in local politics enabled southwestern elites to push an agenda that consistently ignored, and often actively harmed, the interests of minorities concentrated within the inner cities. Authorities skimped on providing infrastructure to minority neighborhoods while paving new roads and building new sewer lines for wealthy white neighborhoods in the suburbs.[179] They used eminent domain to demolish low income housing and create gleaming new downtown buildings that brought jobs and wealth only to the professional classes.[180] As we saw previously, minority discontent with urban renewal was widely blamed for the urban riots of the 1960s and, more recently, the Rodney King riots in 1992.[181]

The riots manifestly demonstrated the impotence of minorities in the face of the at-large system. This stands in startling contrast with the uprisings' middle class analogue, the initiative process. As noted earlier, the initiative process and the urban riots both grew out of a grassroots, neighborhood protest against the unresponsiveness of the at-large system.[182] The difference, of course, is that riots draw only fleeting attention to urban problems (while doing long-term damage to minority neighborhoods), whereas the initiative process, when deployed, is

176. *See supra* text accompanying notes 43, 44.

177. BRIDGES, *supra* note 24, at 16 ("[T]he characteristic political community of reform government was relatively small, affluent, and Anglo."). Empirical studies have consistently shown that at-large voting systems under represent minorities. *See, e.g.*, Davidson & Korbel, *supra* note 45, at 65, 65–67.

178. BRIDGES, *supra* note 24, at 16.

179. *See* ABBOTT, THE METROPOLITAN FRONTIER, *supra* note 24, at 104–105; BRIDGES, *supra* note 24, at 154–157.

180. *See supra* note 147 and accompanying text; *see also* Matthew J. Parlow, *Unintended Consequences: Eminent Domain and Affordable Housing*, 46 SANTA CLARA L. REV. 841, 843–46 (2006) (discussing displacement of Mexican-Americans from Chavez Ravine in Los Angeles to make way for Dodger Stadium).

181. *See supra* notes 75, 76, 158 and accompanying text.

182. *See supra* notes 76, 158 and accompanying text.

extremely effective at directly and permanently enacting desired social change. Minorities have not been very successful using the initiative to their advantage, as the process is weighted in favor of highly educated, affluent voters with access to money, media, and organization.[183] As a result, minorities have often been on the losing end of the initiative process. We have seen previously how middle class support for Proposition 13 was linked to concerns about redistribution of wealth to inner-city minorities and anger over forced school integration.[184] In addition, during the 1960s and '70s, Californians used the initiative and referendum regularly in ways that harmed minority populations, such as blocking low income housing projects, repealing fair-housing legislation, and preventing school integration.[185] In recent years, these narrowly targeted measures have given way to more sophisticated and ostensibly neutral growth-control devices, like growth moratoria and voter approval requirements, that do not facially discriminate against any class.[186] Nevertheless, empirical research has shown that the impact of these growth controls in California has been to restrict the supply and increase the price of housing, such that in cities where growth controls have been enacted, the white population is growing at a much faster rate than the minority—and specifically the Latino—population.[187] This is despite the rapidly increasing population of Latinos statewide.[188]

The combination of at-large elections and ballot-box zoning thus generates a distorted political culture in which affluent pro-growth elites do battle with affluent anti-growth elites while minority interests are marginalized. Consider again the case of eminent domain. As we have seen, after the *Kelo* decision, neighborhood groups like Yorba Linda's YLRRR successfully used the initiative process to push back against the at-large system by limiting or abolishing the eminent domain power.

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183. *See, e.g.*, David B. Magleby, *Let the Voters Decide? An Assessment of the Initiative and Referendum Process*, 66 U. COLO. L. REV. 13, 33–34, 35 (1995) (explaining that turnout for ballot propositions is significantly lower for less educated, poorer, and younger voters and that "issues of concern to the poor, the less educated, and those who lack political organization or financial resources" do not appear on ballot initiatives because the agenda is set by voters who can hire professional signature-gathering firms or who can mobilize single-issue groups); Nguyen, *supra* note 103, at 133 (participation in ballot-box zoning is typically dominated by more affluent whites).

184. *See supra* note 92 and accompanying text.

185. This was the context for Derrick Bell's noted article attacking the referendum as a tool of racial oppression. *See* Bell, *supra* note 17, at 2.

186. *See* FULTON ET AL., *supra* note 28, at 16–17 (describing popular growth control tools); GORDON, *supra* note 27, at 17–18 (describing popular "growth management strategies").

187. *See* Nguyen, *supra* note 103, at 142–44.

188. *See id.*

Yorba Linda, however, is a highly affluent and largely white community.[189] There is little question that historically, the brunt of the burdens associated with eminent domain have fallen on minority neighborhoods, not white communities like Yorba Linda. Justice Thomas's dissent in *Kelo*, which became a touchstone for would-be eminent domain reformers, forcefully articulated the devastation eminent domain had brought upon minority neighborhoods, noting how "urban renewal" became synonymous with "negro removal."[190] But it is indicative of the disadvantage minorities face in the initiative process that, despite Justice Thomas's dissent and the strong evidence of eminent domain's impact on minority neighborhoods, many of the anti-eminent domain initiatives that followed *Kelo*, such as Yorba Linda's, focused exclusively on affluent, white homeowners, often to the detriment of minority populations. Indeed, much of the opposition to Yorba Linda's Town Center redevelopment—which culminated in an initiative barring eminent domain for redevelopment—centered on the high density nature of the project and particularly the fact that a significant number of new housing units in the redeveloped district would be set aside for affordable housing.[191] Yorba Linda's success in defeating the Town Center project thus directly and negatively impacted the supply of affordable housing in Orange County.

Likewise, when the state of California passed an initiative intended to curb eminent domain after *Kelo*, the initiative said only that eminent domain could not be used to condemn an *owner-occupied residence* for the purpose of conveying it to a private person.[192] The initiative thus privileged the concerns of the relatively affluent and disproportionately white class of homeowners, while leaving low income minority renters, the group most victimized historically by eminent domain, open to the predations of the growth machine.

In concluding his captivating discussion of the slow-growth wars in

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189. *See* Christie, *supra* note 104 (reporting that Yorba Linda was the wealthiest city in American with a population between 65,000 and 250,000 for the year 2007); 2000 Census Report, Profile of General Demographic Characteristics, http://censtats.census.gov/data/CA/1600686832.pdf (last visited Dec. 15, 2010) (reporting that Yorba Linda had an 81.5% white population for census year 2000).

190. Kelo v. City of New London, 545 U.S. 469, 521–22 (2005) (Thomas, J., dissenting) (quoting Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and The Private Uses of Eminent Domain*, 21 YALE L. & POL'Y REV. 1, 47 (2003)); *see also* Parlow, *supra* note 180, at 841–42 (discussing how eminent domain has contributed to the lack of affordable housing by razing affordable housing without replacing it).

191. *See* Drummond, *supra* note 132 (reporting that Town Center opponents expressed concern that percentage of high density units would be set aside for affordable housing).

192. *See* Cal. Proposition 99 (2008) (enacted) (amending CAL. CONST. art. I, § 19).

Los Angeles, Mike Davis powerfully addresses the untenable position of minorities in the artificially polarized environment of growth politics in southern California. Davis, writing just before the Rodney King riots, observes:

> Like all ideology, 'slow-growth' and its 'pro-growth' antipode must be understood as much from the standpoint of the questions *absent*, as those posed. The debate between affluent homeowners and mega-developers is, after all, waged in the language of *Alice in Wonderland*, with both camps conspiring to preserve false opposites, 'growth' versus 'neighborhood quality'. It is symptomatic of the current distribution of power (favoring both capital *and* the residential upper-middle classes) that the appalling destruction and misery within Los Angeles's inner city areas . . . became the great non-issue during the 1980s, while the impact of growth upon affluent neighborhoods occupied center-stage.[193]

The Yorba Linda case study was a classic example of a situation in which "affluent homeowners" and "mega-developers" fought over questions of "growth" and "neighborhood quality" while those most acutely interested in high-density housing stood on the sidelines. In an affluent, mostly white city like Yorba Linda, perhaps that is to be expected. I therefore conclude this part with a second case study set in Santa Ana, one of Orange County's poorest cities, with one of the largest Latino populations of any city in the nation. This case study will show how the structure of local politics in southern California can silence minority voices even where minorities are a significant presence in the city.

E. Case Study Number 2: Santa Ana and the Battle Over Lorin Griset Elementary

Santa Ana, located in central Orange County, is the county seat and the county's second largest city.[194] It has experienced rapid population growth since 1970, most of which is due to increases in the Latino population. In 1970, Santa Ana had a population of about 156,000 and was 26% Latino.[195] Today, Santa Ana is the tenth largest city in California, with a population of about 340,000, and is 76% Latino.[196] Ninety-two percent of the students in Santa Ana's public schools are

193. DAVIS, *supra* note 8, at 212.

194. *See* Daniel Yi, *Ethnic Politics Cloud Santa Ana School Races*, L.A. TIMES, Oct. 21, 2002, at B1.

195. Lisbeth Haas, *Grass-Roots Protest and the Politics of Planning: Santa Ana, 1976–88*, *in* POSTSUBURBAN CALIFORNIA: THE TRANSFORMATION OF ORANGE COUNTY SINCE WORLD WAR II 254, 256–57 tbls. 9.1 & 9.2 (Rob Kling et al. eds., 1991).

196. *See* Yi, *supra* note 194, at B4.

Latino.[197] The exponential increase in Santa Ana's population over the past thirty years has placed great strain on Santa Ana's housing and school capacities, and there is severe overcrowding in both the housing stock and the city schools.[198]

During the 1980s, Santa Ana embarked on an ambitious plan to redevelop its downtown. As part of the plan, the city moved to condemn downtown Latino-owned businesses, which were deemed obsolete. City officials declared that existing Latino businesses would be displaced by businesses that catered to "tourists, young urban professionals, and the upper-middle class," and that new residential construction would appeal to "yuppies . . . who will make downtown exciting."[199] At the same time, the city initiated a strict "code enforcement" program to crack down on overcrowding in inner city neighborhoods that had become increasingly Latino since 1970.[200] Overcrowding had become a political "code word" in Santa Ana for a variety of urban problems associated with the burgeoning Latino population.[201]

A political coalition called the Santa Ana Merged Society of Neighbors (SAMSON) formed to fight the redevelopment plans and the code enforcement scheme. SAMSON sought to replace the city's existing hybrid at-large system (in which members are nominated by wards and then elected citywide) with a pure ward system, to replace the appointed planning commission with an elected board, and to replace the city manager with an elected "strong" mayor.[202] In short, SAMSON sought to undo several of the most important Progressive political reforms. After being rebuffed by the city council, SAMSON placed its proposed reforms on a local ballot initiative in 1985. Opponents assailed the initiative with anti-immigrant and anti-Latino attacks, and the initiative was defeated by a still mostly Anglo voting population.[203] A similar measure failed the following year as well.[204] None of the proposed reforms were ever implemented.

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197. *See id.*

198. *See id.*

199. Haas, *supra* note 195, at 280 (quoting director of Downtown Development Commission).

200. *See id.* at 267–71.

201. *Id.* at 271; *see also* Stacy Harwood & Dowell Myers, *The Dynamics of Immigration and Local Governance in Santa Ana: Neighborhood Activism, Overcrowding, and Land-Use Policy*, 30 POL'Y STUD. J. 70, 75–76 (2002).

202. *See* Haas, *supra* note 195, at 272–73.

203. *Id.* at 273.

204. *See id.*

Overcrowding continued to be a problem for Santa Ana over the succeeding decades, resulting in severely crowded schools. In 2002, Santa Ana's school board voted to build a new elementary school, to be named after former mayor Lorin Griset. The board settled on a plot of vacant land in Floral Park, one of the few remaining predominantly white neighborhoods in Santa Ana. The city council, however, had already designated this land for luxury housing. Nevertheless, the school board condemned the parcel by eminent domain. Floral Park residents were outraged, complaining that the proposed school would bring added noise and traffic to their neighborhood.[205] "It will destroy the ambience of the neighborhood," one resident said.[206] "This is the best and one of the few remaining good neighborhoods in the city."[207] The city council sided with the neighborhood residents and suggested that the school board condemn apartment buildings elsewhere in the city and tear them down to build the new school.[208] Several school board members, including the board's ideological leader Nativo Lopez, saw the city's proposal, in the words of one reporter, as a "barely disguised effort to shift the burden to their students and Latino immigrant families, many of whom live in the sort of apartments the city suggests demolishing."[209] They further charged, according to the reporter, that the council was beholden to a growth machine "more interested in gentrification than the welfare of its lower income Latino residents."[210]

In November 2002, several school-siting advocates were voted off the school board. School opponents then joined a campaign to remove Lopez from the school board by recall, and Lopez was recalled in February 2003.[211] In March 2003, the new school board voted unanimously to kill the proposed Lorin Griset school.[212] The school site was sold to a residential developer, who constructed luxury housing as originally planned.[213] A year later, the school board commenced

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205. *See* Daniel Yi, *Disputed Santa Ana School Site Ruled Out*, L.A. TIMES, Mar. 26, 2003, at B1, B7 [hereinafter Yi, *Disputed School*]; Yi, *supra* note 194, at B4.

206. Daniel Yi, *Santa Ana's Schoolyard Brawl*, L.A. TIMES, Jan. 23, 2002, at B1.

207. *See id.*

208. *See* James Sterngold, *In A Largely Latino City, 2 Governments Emerge*, N.Y. TIMES, Feb. 23, 2002, at A10; Yi, *Disputed School*, *supra* note 205 at B1.

209. *See* Yi, *supra* note 194.

210. *See id.*

211. *See* Yi, *Disputed School*, *supra* note 205, at B7.

212. *Id.* at B1.

213. The disputed school site was 2800 North Farmers Drive in Santa Ana. *See* Santa Ana Board of Education, Regular Meeting (Oct. 14, 2003), at Minute Book 287, http://www.sausd.us/1443102812408810/cwp/view.asp?A=3&Q=343206&C=62222 (follow

proceedings to condemn land for a new elementary school in Santa Ana's Artesia-Pilar barrio, and a school was subsequently constructed on that site.[214]

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The preceding study is revealing in many respects, but of principal interest here is the way in which the structure of local government in southern California renders the concept of neighborhood highly malleable. A neighborhood can be so powerful as to stop the growth machine cold or so weak that its protests are ignored easily. The affluent white neighborhood of Floral Park and the poor Artesia-Pilar barrio in downtown Santa Ana are both "neighborhoods," both sharing the same legal and political status. That is to say, neither has any legal or political status. As far as the at-large system and the mechanics of redevelopment are concerned, both neighborhoods are equally irrelevant. But Floral Park has the ability to assert its neighborhood prerogatives against the citywide growth machine, while the barrio is left vulnerable to its machinations, because the former can fight the at-large system through direct democracy—here, the recall of Nativo Lopez—whereas the latter cannot. Intuitively understanding their structural disadvantage in the existing system, the neighborhood groups that formed SAMSON attempted to alter the system to make it more responsive to the concerns of all neighborhoods. Their efforts were doomed by the necessity to effect such change through the very process that systematically suppressed their interests.

This last point suggests that if change is to come, it will not come from within the existing local political system. In the past, courts have taken an active role in policing the efficacy of political processes to ensure that the channels of participation are open to all. Yet, in more recent years, courts in California and elsewhere have declined to scrutinize the structural inadequacies of the local political system. To the contrary, courts have frequently rhapsodized about the salubrious role of direct democracy in local government, and have repeatedly

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"October 14, 2003" hyperlink) (noting board's intent to sell former Griset site at 2800 Farmers Drive); SheaHomes.com, Shea Homes Brochure, http://www.sheahomes.com/assets/MyHD/u_41/Brochures/The_Retreat.pdf (last visited Dec. 15, 2010).

214. The condemned property is located at 720 N. Fairview in Santa Ana, which is now the Otsuka Elementary School. *See* Editorial, *Eminent Domain Lessons*, ORANGE COUNTY REG., June 23, 2006, at Local 8 (detailing condemnation of property at 720 N. Fairview for elementary school); Santa Ana Board of Education, Regular Meeting (Jan. 27, 2004), at Minute Book 520 http://www.sausd.us/1443102812408810/cwp/view.asp?A=3&Q=343206&C=62222 (follow "January 27, 2004" hyperlink) (noting intent to condemn property at 720 N. Fairview for Otsuka Elementary school). The previous use of the condemned property was as a warehouse, retail facility, and mosque. *Eminent Domain*, *supra* at Local 8.

upheld the validity of the local land use initiative. The following Part suggests some reasons why the courts have been so supportive of ballot-box zoning, and offers a critique of the jurisprudence that will hopefully lead to a reinvigorated local political process.

IV. RECONSIDERING THE JURISPRUDENCE ON BALLOT-BOX LAND-USE CONTROLS

During the Warren Court Era and the early years of the Burger Court, the United States Supreme Court actively intervened to correct deficiencies in the political process, including both at-large voting schemes and local land-use initiatives, that inhibited deliberation and limited political participation by minorities.[215] Since then, however, the Court has largely reversed course. It has interpreted the federal Voting Rights Act strictly to make challenges to at-large voting systems very difficult,[216] and expressed deep skepticism about single-member districts drawn to increase minority representation.[217] The Court has also rejected challenges to local land-use initiatives with exclusionary impacts, broadly affirming the initiative process as a healthy democratic exercise.[218]

Challenges brought in state court have not fared much better. California continues to be a useful case study here. Although California

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215. In his classic work DEMOCRACY AND DISTRUST, Professor John Hart Ely elaborates at length on the Warren Court's preoccupation with ensuring a robust political process that accommodates competing viewpoints and is open to all on an equal basis, including discrete and insular minorities. *See* JOHN HART ELY, DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW 73–179 (1980). Of note here, the Warren Court paid particular attention to the right to vote. *See, e.g.*, Harper v. Va. Bd. of Elections, 383 U.S. 663, 670 (1966) (invalidating poll tax); Reynolds v. Sims, 377 U.S. 533, 558 (1964) (articulating "one person, one vote" rule). In 1969, the Court invalidated a city charter amendment, enacted by local initiative, that subjected any fair housing legislation passed by the city council to a citywide referendum. *See* Hunter v. Erickson, 393 U.S. 385, 392–93 (1969). In 1973, a few years after Warren Burger became Chief Justice, the Court held for the first time that an at-large voting system was unconstitutional, there because it diluted the voting strength of Mexican-Americans. *See* White v. Regester, 412 U.S. 755, 769 (1973). For more on "due process of lawmaking" as a basis for judicial review, see *infra* notes 264–68 and accompanying text.

216. *See* Thornburg v. Gingles, 478 U.S. 30, 46 (1986) (articulating three-prong test for establishing vote dilution).

217. *See* Shaw v. Reno, 509 U.S. 630, 647, 649 (1993) (invalidating two oddly-shaped legislative districts drawn to ensure elections of minority representatives).

218. *See* City of Eastlake v. Forest City Enters., 426 U.S. 668, 679 (1976) (upholding city charter amendment adopted by initiative requiring all zoning changes to be subjected to citywide referendum); James v. Valtierra, 402 U.S. 137, 141–43 (1971) (upholding California state initiative requiring low-rent housing projects to be approved by citywide referendum and describing referendum as a classic demonstration of "devotion to democracy").

recently passed its own Voting Rights Act (CVRA),[219] which makes it easier than the federal law to challenge at-large schemes, there have been few judicial decisions regarding the Act.[220] It remains to be seen how broadly the CVRA will be interpreted, and there are lingering questions about the Act's constitutionality and how far courts will be able to go under federal Equal Protection law in attempting to remedy violations.[221]

The California Supreme Court has had many more opportunities to rule on the validity of ballot-box zoning, and by and large the court has gone out of its way to uphold the right of the local electorate to enact land-use regulations by initiative or referendum.[222] In these rulings, the court has paid little attention to the process defects outlined in the above critique. The fault for this, however, lies less with the court itself than with the ways in which litigants have attempted to challenge ballot-box zoning. In short, previous challenges have failed to properly direct the court's attention to the structural problem in local government; to the contrary, they have entirely confused the issue.

Challenges to ballot-box zoning nationwide have taken many forms, but there have been three predominant lines of attack: (1) the initiative process fails to provide for notice and an opportunity to be heard, in violation of state zoning laws and due process guarantees; (2) small-scale zoning decisions are adjudicative in nature, thus requiring an impartial decision maker and the procedural protections of a quasi-judicial forum; and (3) land-use regulation is so inherently complex and implicates such a wide range of factors that it requires the input of professional planning experts and a commitment to comprehensive planning, neither of which are present in the initiative process.[223] Each of these lines of attack has had some success in other states,[224] but in a

219. CAL. ELEC. CODE §§ 14025–14032 (West 2003).

220. Only one published California case to date has addressed the CVRA. In Sanchez v. City of Modesto, 51 Cal. Rptr. 3d 821, 826 (Ct. App. 2007), the court of appeals upheld the constitutionality of the Act against a variety of facial challenges.

221. The *Sanchez* case, discussed in the preceding note, addressed only a facial challenge to the CVRA. *See id.* at 825. An as-applied challenge would provide a clearer indication of how strictly the courts will interpret the Act's provisions and how the courts will craft remedies to ensure compliance with *Shaw v. Reno*, 509 U.S. 630 (1993).

222. *See infra* notes 239, 241, 246, 252, 258 and accompanying text.

223. Selmi, *supra* note 18, at 314, 317, 330 (discussing some of the major objections to land-use initiatives); *see also* Callies et al., *supra* note 17, at 54–55 (reviewing major objections); Kublicki, *supra* note 17, at 101 (reviewing three major objections).

224. *See, e.g.*, City of Idaho Springs v. Blackwell, 731 P.2d 1250, 1255 (Colo. 1987) (concluding that choice of site and structure of a new city hall was administrative rather than legislative decision and therefore not subject to initiative or referendum); Nordmarken v. City of Richfield, 641 N.W.2d 343, 349–50 (Minn. Ct. App. 2002) (referendum invalid because of

series of important decisions, the California Supreme Court has soundly rejected them all.[225]

The common thread that links the three major objections to ballot-box zoning is the presupposition that land-use regulation may not be a wholly political exercise, but must be tempered by planning expertise and other procedural safeguards in order to ensure sound land-use decision-making.[226] Direct democracy, devoid of these apolitical checks, does not involve the sort of deliberation and accommodation of competing interests that land-use regulation requires.[227] As the critique set forth in the preceding Part should make clear, I agree that direct democracy is unacceptably deficient in this regard. Nevertheless, the premise of these objections is mistaken in an important respect. As the above critique has argued, the problem with the structure of local government in California is not that it suffers from too much politics, but from too little, if we understand politics to mean a deliberative process in which competing groups negotiate toward terms over a wide range of issues. The absence of such a deliberative process, as I have argued, can be traced directly to Progressive efforts to remove the politics from local government, which were specifically designed to

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lack of comprehensive planning or "expertise of land use professionals"); Heitman v. City of Mauston Common Council, 595 N.W.2d 450, 453 (Wis. Ct. App. 1999) (zoning or rezoning by initiative must comply with procedures in state zoning law).

225. *See* DeVita v. County of Napa, 889 P.2d 1019, 1023 (Cal. 1995) (holding that general plan amendments adopted by initiative are valid under the state's planning law, and exempt from procedural requirements that apply to plan amendments adopted by the legislature); Arnel Dev. Co. v. City of Costa Mesa, 620 P.2d 565, 567 (Cal. 1980) (holding that zoning and rezoning decisions are legislative in character, not adjudicative); Associated Home Builders of the Greater Eastbay, Inc. v. City of Livermore, 557 P.2d 473, 475 (Cal. 1976) (holding that local land-use initiatives are exempt from the procedural requirements of notice and hearing that apply to zoning ordinances enacted by legislative bodies).

226. *See, e.g.*, Leonard v. City of Bothell, 557 P.2d 1306, 1311 (Wash. 1976) ("Amendments to the zoning code or rezone decisions require an informed and intelligent choice by individuals who possess the expertise to consider the total economic, social, and physical characteristics of the community."); Peter G. Glenn, *State Law Limitations on the Use of Initiatives and Referenda in Connection with Zoning Amendments*, 51 S. CAL. L. REV. 265, 304 (1978) ("In such [small-tract rezoning] cases, an intelligent decision would seem to require a factfinding and assessment process by persons who have developed some expertise and who are conversant with the less obvious implications of the decision for the community's overall planning effort."); Selmi, *supra* note 18, at 314 (noting assumption that "the use of direct democracy politicizes a decision that otherwise is a 'technical' one").

227. *See, e.g.*, *supra* note 123 and accompanying text; *DeVita*, 889 P.2d at 1052 (Arabian, J., dissenting) (interpreting California planning law to require a "special commission to undertake 'careful and comprehensive surveys and studies of present conditions and future growth,' to consult with experts and other interested civic groups and public agencies, to conduct public hearings, and to balance all of these interests in the pursuit of 'accomplishing a coordinated, adjusted, and harmonious development . . . . '") (quoting 1927 Cal. Stat. 1901).

avoid rather than facilitate any kind of discourse.[228] Ironically, the very apolitical procedural mechanisms in which direct democracy's critics invest so much confidence, such as expert planning, are among the prime culprits in the depoliticization of local government. The idea of vesting land-use authority in city-planning experts was, along with at-large voting and direct democracy, a key part of the Progressive Movement's effort to depoliticize local government and reduce it to a process of professional administration.[229] At-large voting and direct democracy would eliminate the corrupt ward–boss politician, and the institution of appointed planning commissions would enable disinterested land-use professionals to make enlightened policy in the interest of the city as a whole, eschewing the special interests that plagued the machine-run city. In practice today, the seemingly technical nature of planning and the lack of accountability for planning professionals functions to discourage political participation in land-use matters.[230]

Thus, the faith that critics have placed in expert planning as a medium of deliberation and accommodation is misplaced. Like at-large elections, planning has largely been appropriated by the "growth machine," the network of pro-growth interests that controls most local political institutions. Legislatures today often use planning commissions and other procedural safeguards in furtherance of their own pro-growth agendas.[231] This trend was evident in both of our case studies, in which

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228. *See supra* notes 172-79 and accompanying text.

229. *See* FOGELSON, *supra* note 30, at 248–50 (noting that implementation of city planning in Los Angeles "reflected the conservative inclinations of progressivism"); JON A. PETERSON, THE BIRTH OF CITY PLANNING IN THE UNITED STATES, 1840–1917, at 270–75 (2003) (noting how planning was part of the Progressive plan to remove authority from politicians and vest it in experts); PINCETL, *supra* note 42, at 28–29.

230. *See* Paul Davidoff, *Advocacy and Pluralism in Planning*, 31 J. AM. INST. OF PLANNERS 331 (1965) *reprinted in* READINGS IN PLANNING THEORY 210, 218 (Scott Campbell & Susan S. Fainstein, eds., 2d ed. 2003) (stating that these plans are "filled with professional jargon and present sham alternatives," and "[i]nstead of arousing healthy political contention . . . these plans have deflated interest"); *see also* LOGAN & MOLOTCH, *supra* note 3, at 153, 154 ("This faith in a technocracy of urban expertise has been widely accepted, with planning and local government efficiency accepted as neutral forces leading to public betterment."). Logan and Molotch also note how the planning process's "fetish" for jargon, data, and maps masks the "inherently political" nature of planning under a façade of expertise and efficiency. *See* LOGAN & MOLOTCH, *supra* note 3, at 154.

231. *See* John R. Logan et al., *The Character and Consequences of Growth Regimes: An Assessment of Twenty Years of Research*, *in* THE URBAN GROWTH MACHINE, *supra* note 171, at 73, 80 (noting that planning bureaucracy acts "as a stabilizing force in pro-growth regimes, maintaining a predictable tilt in favor of development proposals despite minor shifts in the governing coalition"). For a similar criticism, *see* Selmi, *supra* note 18, at 314–17, 335–37 (describing capture of planning commissions by growth interests and suggesting that "the

disaffected neighborhood groups saw the planning commission as nothing more than a rubber stamp for a downtown redevelopment agenda.[232] Thus, to the extent critics have attacked ballot-box zoning as nondeliberative, elitist, and subject to interest-group capture, they have left themselves open to the response that the notion of expert planning they so venerate shares those very same flaws.

Likewise, while critics see planning as a corrective to the deficiencies of direct democracy, the reverse is more likely to be accurate. In the same way that neighborhood groups have used the initiative process to counteract the pro-growth bias of the at-large system, they have frequently resorted to direct democracy as a countermeasure against the failure of expert planning agencies to respond to community concerns about growth. This was true in both of our cases studies, where discontent with the planning commission's unmitigated pro-growth agenda spurred anti-growth initiative campaigns.[233] In the Santa Ana case, indeed, one of SAMSON's goals was to replace the appointed experts on the city planning commission with elected political officials.[234] Thus, at least in the existing political system, ballot-box zoning has utility insofar as it can effectively counteract the programmed unresponsiveness to neighborhood concerns of the growth machine and its Progressive-Era institutional enablers.[235]

The California Supreme Court has easily dispensed with challenges to ballot-box zoning by noting the flawed logic in critics' efforts to denigrate direct democracy by comparing it unfavorably with romanticized portrayals of planning and other governmental institutions. In an early indication, when the court upheld the constitutionality of Proposition 13, it cited approvingly from the following passage in a text on direct democracy: "[The initiative] is deficient as a means of legislation in that it permits very little balancing of interests or compromise, but it was designed primarily for use in situations where *the ordinary machinery of legislation had utterly failed in this respect.*"[236] In other words, the "ordinary machinery of

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normal land use process does not employ technical expertise in the idealized fashion that critics of direct democracy assume").

232. *See supra* notes 112, 117, 118, 209 and accompanying text.

233. *See supra* notes 111, 117, 209 and accompanying text.

234. *See supra* note 202 and accompanying text.

235. *See* Selmi, *supra* note 18, at 337 ("The expanded use of the initiative and referendum arguably has a leveling effect that counteracts, at least to some degree, the overly dominant influence of the development industry on local politics.").

236. Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, 583 P.2d 1281, 1289 (Cal. 1978) (quoting KEY & CROUCH, THE INITIATIVE AND THE REFERENDUM IN CALIFORNIA 485 (1939) (emphasis added).

legislation" is defective in exactly the same manner as the initiative itself, a fact that, ironically, justifies the use of the initiative as a means of counteracting the flawed legislative process.

More recently, in *DeVita v. County of Napa*, the court applied this same reasoning to the question of planning.[237] The issue in *DeVita* was whether a general plan could be amended by initiative. The dissent argued forcefully that it could not, relying on an idealized characterization of the planning process as a means of balancing the competing interests involved in land-use regulation.[238] The court, however, implicitly answered the dissent by observing that modern planning is not a dispassionate exercise in balancing but is instead driven "by the desire of local governments to approve development that will compensate for their diminished tax base in the post-Proposition 13 era."[239] As such, a slow-growth initiative like the one adopted by Napa County was a legitimate "response to what some localities view as unwelcome development pressures."[240]

Thus, the court appears to have grasped what the critics of ballot-box zoning missed: direct democracy is merely a part of a flawed local political system in which the balancing of interests is entirely absent. Moreover, ballot-box zoning may very well be necessary in the current system to counteract the reflexively pro-growth institutions it opposes. Given the court's understanding of the structural defects in local government, one might suppose the court would take the next logical step and attempt to correct those flaws so as to facilitate the emergence of a deliberative process within the local polity itself. Instead, the court's cynicism about the existing political system seems to have convinced it of the critics' point that *some* apolitical mechanism is needed to ensure that the interests implicated in land-use regulations are appropriately balanced. And because planning and the other procedural safeguards advocated by the critics have proven inadequate in this regard, the apolitical mechanism the court has chosen is – judicial review.

In the seminal case of *Associated Homebuilders of the Greater Eastbay, Inc. v. City of Livermore*, the court upheld the constitutionality of a growth moratorium adopted by initiative, but also recognized that land-use regulations affect "deep social antagonisms" between

237. 889 P.2d 1019, 1036 (Cal. 1995).

238. *Id.* at 1052 (Arabian, J., dissenting) (discussing need to balance the interests).

239. *Id.* at 1036 (majority opinion).

240. *Id.* at 1037.

"environmental protectionists" and "egalitarian humanists."[241] Accordingly, the court established a process for future trial courts to determine whether a challenged land-use regulation—enacted by initiative or otherwise—was valid. Under the *Livermore* test, trial courts are required to (1) "forecast the probable effect and duration of the restriction"; (2) identify and weigh the competing interests affected by the restriction; and (3) "determine whether the ordinance, in light of its probable impact, represents a reasonable accommodation of the competing interests."[242] The court stressed that in applying the test, trial courts must be mindful that "judicial deference is not judicial abdication," and that "[t]he ordinance must have a *real and substantial* relation to the public welfare."[243]

Ultimately, *Livermore* did not deliver on its promise that judicial review would succeed where other apolitical mechanisms had failed to balance the competing interests implicated by land-use regulation. I have found only one published case in the thirty-three years since *Livermore* that has actually used the test described above to invalidate land-use legislation, and as I discuss below, that decision's current viability is doubtful. The reason the *Livermore* test has proven inadequate is that, frankly, it gave the judiciary an impossible task. As a general matter, because land-use regulations involve a wide array of complex policy issues, substantive judicial review of such regulations is extremely difficult, and courts have generally shied away from it.[244] The inability of courts to effectively scrutinize land-use regulations is exacerbated where, as in southern California, the mechanics of local growth politics have generated a polarized political discourse that requires both advocates and opponents of proposed growth policies to assert that they alone speak for the public interest, using the starkest possible rhetoric to bolster their own position and weaken that of their adversaries. It has proven impossible for courts to cut through this hyperbole and determine whether the actual purpose of land-use controls matches the high-minded motivations rhetorically advanced by their proponents.

The problem facing courts attempting to apply the *Livermore* test is

241. 557 P.2d 473, 488 (Cal. 1976).

242. *Id.*

243. *Id.* at 489 (emphasis in original).

244. *See, e.g.*, Sager, *supra* note 17, at 1422–23 (noting that state courts have "self-consciously assumed a peripheral role in modern land use disputes" because of a perception that legislative and administrative bodies are better equipped than courts to balance "the virtues of popular will, technical expertise, and the capacity to plan comprehensively along both temporal and geographic axes" that land-use requires).

nicely illustrated by contrasting two post-*Livermore* cases, *Arnel Development Co. v. City of Costa Mesa*[245] and *Northwood Homes, Inc. v. Town of Moraga*.[246] In *Arnel*, the city council of Costa Mesa approved a rezoning and development plan that would have enabled the construction of a 50-acre development including 127 new single-family homes and 539 apartment units to be occupied by moderate-income families.[247] Shortly after the approval, a neighboring homeowners' association circulated an initiative petition to rezone the property for single-family residential use only.[248] The court of appeal invalidated the result of the initiative, relying on the *Livermore* test. The court parsed the ballot arguments advanced in favor of the initiative and found that the specific purpose of the initiative was to prevent the development in question, rather than to serve any broad public interest.[249] The court noted that "[t]he shortage in affordable housing has been declared to be a subject of statewide importance," and that the proposed rezoning would limit the supply of affordable housing in a high demand area.[250] Finding that "there was not even an attempt to accommodate competing interests," the court held that the initiative did not properly balance the competing interests under *Livermore*.[251]

At the time *Arnel* was decided in 1981, it might have been thought that the decision would usher in an era of close judicial scrutiny of municipal growth controls. In fact, *Arnel* was the last published case I could identify in which any land use regulation was invalidated based on the *Livermore* test. After *Arnel*, homeowners' groups apparently became more adept at using the rhetoric of environmentalism and the public interest to support their aims. Consider *Northwood Homes*, decided a few years after *Arnel*. In *Northwood Homes*, as in *Arnel*, a group of residents who opposed a development project formed a neighborhood association to stop the project.[252] Perhaps having familiarized themselves with the *Arnel* decision, the group did not seek a rezoning of the property in question but a moratorium on development of all open space. The association circulated an initiative entitled "Moraga Open Space Ordinance," which, when passed, drastically

245. 178 Cal. Rptr. 723 (Ct. App. 1981).
246. 265 Cal. Rptr. 363 (Ct. App. 1989).
247. *See Arnel*, 178 Cal. Rptr. at 724.
248. *Id.* at 725.
249. *Id.* at 727.
250. *Id.* at 728.
251. *Id.* at 729.
252. Northwood Homes, Inc., v. Town of Moraga, 265 Cal. Rptr. 363, 365 (Ct. App. 1989).

restricted permitted densities of development on lands designated open space and certain hillside areas. Of course, the initiative also amended the town's general plan and zoning ordinance to designate and rezone the Northwood property as "open space."[253] On appeal, Northwood argued that the case was factually similar to *Arnel* and that the asserted environmental basis for the open space initiative was a "smoke screen" to stop the Northwood project in circumvention of *Arnel*.[254] The court of appeal deferred to the ruling of the trial court, which found that the initiative in question focused on *both* the specific Northwood project and general development policies, and held that *Arnel* did not apply to initiatives with such mixed motivations.[255]

Northwood Homes encapsulates the difficulties courts face in attempting to apply the *Livermore* test, and perhaps explains why courts have given up on it after *Arnel*. It is impossible to know whether the "true" motivation underlying the Moraga Open Space Ordinance was genuine environmentalism or parochial NIMBYism, and therefore impossible for courts to meaningfully apply the *Livermore* test. Nor is *Northwood Homes* an isolated case. In 1995, the City of Ventura proposed to approve a housing development on land designated agricultural in the city's general plan. Residents of a neighborhood adjacent to the parcel were resistant, but rather than simply seeking a referendum on that specific parcel as in *Arnel*, they followed *Northwood Homes* and certified a ballot measure to require a citywide vote on any proposed re-designation of agricultural land. The measure, initially named "Save Our Agricultural Resources" (SOAR), was re-named "Save our Open Space and Agricultural Resources" after the California Supreme Court's landmark *DeVita* decision, discussed above, which upheld a Napa County initiative requiring voter approval of any changes to the general plan redesignating agricultural land or open space.[256] The SOAR example demonstrates that homeowners' groups pay attention to precedent and are quite savvy about ensuring that their actions are consistent with extant authority; it also shows how motivations are inchoate and can be easily manipulated to convince a court of a measure's *bona fides*. All of this is to say that genuinely applying the *Livermore* test to citywide initiatives and referenda is exceedingly difficult, and it might explain why courts have simply declined to do so since *Arnel*.

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253. For the factual background on *Northwood Homes*, see *id.* at 364–65.

254. *Id.* at 368.

255. *See id.* at 368 & n.9.

256. On SOAR, see FULTON ET AL., *supra* note 28, at 66–67.

The court in *Livermore* was mistaken, then, in believing that courts could do a better job than any other apolitical institution in balancing the competing interests involved in land-use regulation. The inability to implement an external mechanism that can effectively compensate for the defects in the existing political system suggests that courts should focus their efforts instead on *correcting* those defects so that the balancing of competing interests can occur within the political arena itself. In the next Part, I set forth some preliminary suggestions as to how courts could do this. The focus here remains southern California, but the reforms I suggest are relevant for boomburb communities throughout the Sunbelt, most of which still retain at-large voting systems despite a highly diverse population.[257] Hopefully, these proposed reforms will also raise awareness among civic leaders nationwide of the need to create a more open and inclusive local political system.

V. RESTRUCTURING LOCAL GROWTH POLITICS

The famous fourth footnote in *United States v. Carolene Products Co.* is often credited with giving rise to a new theory of judicial review.[258] Under this theory, the judiciary's proper role is one of monitoring the political process to ensure that it has incorporated the appropriate degree of deliberation, accommodation of competing interests, and solicitude for minorities. This process-policing conception of judicial review was elaborated in several important Supreme Court decisions during the 1960s and early '70s.[259] Among these, as discussed *supra*, the Court scrutinized and struck down at-large voting schemes as well as land-use initiatives that contained process deficiencies.[260] Then, just as growth conflicts were heating up nationwide, the Court began sharply reversing itself.[261]

One such "reversal" was *City of Eastlake v. Forest City Enterprises*.[262] Just six years after striking down, on equal protection grounds, a city charter amendment adopted by initiative that subjected all fair-housing legislation to a citywide referendum,[263] the *Eastlake* court upheld a city charter amendment adopted by initiative that required all zoning changes to be subjected to a citywide referendum, despite clear

257. *See supra* notes 81–83 and accompanying text (describing political and demographic characteristics of boomburbs).

258. United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938).

259. *See supra* note 215.

260. *See supra* note 215 and accompanying text.

261. *See supra* notes 216–18 and accompanying text.

262. City of Eastlake v. Forest City Enters., 426 U.S. 668, 679 (1976).

263. Hunter v. Erickson, 393 U.S. 385, 392–93 (1969).

evidence of the initiative's exclusionary motivation. Reacting to the *Eastlake* decision, Professor Lawrence Gene Sager invoked the process-policing theory of judicial review to assert that land-use initiatives were per se illegitimate.[264] Sager argued that while ordinarily the political process is best equipped to handle the sort of policy judgments implicated in land-use regulations, judicial intervention is appropriate under circumstances, such as the initiative, where we have reason to doubt the legitimacy of the political process because "the public will cannot enjoy the requisite deliberative mediation."[265] A claim for what Sager called "due process of lawmaking" would be most viable where a regulation implicates substantial constitutional values and where the judiciary is incapable of engaging in substantive review of the regulation.[266] Sager argued that given the liberty and property interests involved in land-use regulations, as well as zoning's role in perpetuating racial segregation, land-use policy does indeed implicate substantial constitutional issues.[267] He further argued that the judiciary has traditionally declined to entertain substantive review of land-use regulation because it views itself as institutionally deficient to conduct the complex policy analysis that land-use decisionmaking requires.[268]

A thorough examination of "due process of lawmaking," which is a highly contested approach to judicial review, is beyond this paper's purview. For purposes of this preliminary reform proposal, it is sufficient to note, as explained further below, that there are few other plausible options for reform given the powerful and entrenched interests supporting the existing system. Furthermore, Sager's approach is especially applicable in light of the present critique of local politics in southern California. As we have seen, the local initiative process has indeed contributed to the muffling of minority voices and increased residential segregation in southern California cities.[269] Meanwhile, as noted previously, whatever inherent difficulties courts may have in scrutinizing land-use controls are intensified by a polarized political discourse that makes substantive judicial review of land-use decisionmaking impossible.[270] Like other critiques of land-use initiatives, however, Sager's analysis makes the mistake of singling out the initiative process for reprobation. He does not acknowledge that the

264. *See* Sager, *supra* note 17, at 1412.
265. *Id.*
266. *Id.* at 1418.
267. *See id.* at 1418–21.
268. *See id.*
269. *See supra* notes 187, 189 and accompanying text.
270. *See supra* notes 125–26 and accompanying text.

legislative process and other governmental institutions may suffer from the same flaws that plague the initiative process, nor does he recognize that ballot-box zoning may be a useful corrective to these other institutions. From Sager's perspective, the remedy for a successful "due process of lawmaking" claim would likely be to simply invalidate land-use regulations enacted by initiative. But the problem, as we have seen, runs far deeper than the initiative process to the very core of the political system in southern California. The solution to the problem, then, must be a comprehensive reform of the system. I close this paper with a proposal for such a reform.

The proposal sketched here is necessarily preliminary. Transforming a political culture that has been a century in the making cannot be accomplished overnight. There will undoubtedly be false starts and missteps along the way. The choice of a political structure, furthermore, inevitably involves complex tradeoffs, such as between efficiency and responsiveness, consensus and conflict, the individual and the group, and the city as a whole and its constituent parts. In defending the choices I have made, I attempt to articulate the tradeoffs they involve and explain why I believe those tradeoffs are necessary. There is, however, ample room for disagreement about how to prioritize and balance the functions of a political system, and thus I invite further discussion about the desirability of these proposed reforms.

Considering the foregoing critique of local politics in California, my recommendation may seem obvious: I propose to replace municipal at-large and large-ward voting systems with ward systems featuring wards sufficiently small in size to adequately represent neighborhoods and abolish ballot-box zoning at the local level. This reform should, initially, make local elected officials more responsive to neighborhood and minority interests. Indeed, the Sunbelt cities that converted from at-large to ward systems during the 1970s and '80s under pressure of Voting Rights Act litigation have all experienced increased attentiveness to neighborhood and minority concerns, such as land-use sitings, provision of city services, and relations with the police.[271]

271. *See* ABBOTT, THE NEW URBAN AMERICA, *supra* note 24, at 214–15, 241–43 (discussing "new style of politics" in Sunbelt cities that have switched to ward voting, in which cities are forced to pay attention to concerns of slow-growth neighborhood groups and minority neighborhoods); BRIDGES, *supra* note 24, at 204–06 (noting improvement in equitable provision of city services after switch to ward voting); JUDD & SWANSTROM, *supra* note 15, at 217–18, 384, 390 (noting improvements in police relations, neighborhood involvement in city planning and development, and minority hiring in cities that switched to ward voting); Milton D. Morris, *Black Electoral Participation and the Distribution of Public Benefits*, *in* MINORITY VOTE DILUTION, *supra* note 45, at 271, 283–84 (noting increased responsiveness to needs for community services, increased municipal jobs held by African-

Americans, and shifts in governmental priorities). As all of these accounts note, however, and as detailed *infra* notes 272, 273 and accompanying text, ward systems have had a mixed record of delivering tangible benefits to minority and neighborhood groups.

Empirical studies also show that neighborhood groups have more success influencing policy in ward systems than in at-large systems,[272] and that ward systems lead to increased minority representation.[273] With a

272. *See* Clingermayer, *supra* note 54, at 978 (finding that ward representation in cities is strongly associated with the exclusion of group homes in municipal zoning ordinances); Langbein et al., *supra* note 55, at 289–91 (finding more locations for land uses desired by geographically concentrated communities in cities with councils elected by wards than with those elected at-large, and finding fewer locations for land uses that are undesired by geographically concentrated communities in cities with councils elected by wards than those with councils elected at-large). *See also* WELCH & BLEDSOE, *supra* note 26, at 67, 78 (finding that district systems are more responsive to neighborhood concerns)

273. *See, e.g.*, Davidson & Korbel, *supra* note 45, at 65; Jerry L. Polinard et al., *The Impact of District Elections on the Mexican American Community: The Electoral Perspective*, 72 SOC. SCI. Q. 608, 611–14 (1991); Jeffrey S. Zax, *Election Methods and Black and Hispanic City Council Membership*, 71 SOC. SCI. Q. 339, 353–54 (1990). While ward systems have undoubtedly increased "descriptive representation" for minorities—that is, the number of minorities elected to public office—there is a debate about whether they have increased "substantive representation" or the ability of minorities to influence public policy. As discussed in *supra* note 271, a substantial body of evidence shows that where cities have switched from at-large to ward voting systems, they have become more responsive to neighborhood concerns and particularly to the concerns of minority neighborhoods on a variety of issues. On the other hand, as discussed more fully *infra* in the text accompanying notes 284–86, there is also evidence that the switch to ward voting and the election of minority politicians to local office have not greatly diminished the voraciousness of the growth machine. Moreover, some have argued that a ward voting system that is designed to increase descriptive minority representation by creating "safe" minority districts, in which minority candidates are assured of victory, may diminish substantive representation if packing minority voters into a single safe district results in the creation of several neighboring districts that are majority white. Where there is racially polarized voting, the lone minority representative will be consistently outvoted by more numerous white representatives. *See, e.g.*, ABIGAIL M. THERNSTROM, WHOSE VOTES COUNT? AFFIRMATIVE ACTION AND MINORITY VOTING RIGHTS 242–43 (1987); Grant M. Hayden, *Refocusing on Race*, 73 GEO. WASH. L. REV. 1254, 1267 (2005). Recent research has shown that minorities might be better represented if instead of being packed into a single "safe" district, they were dispersed into several "coalitional" or "influence" districts, in which they would have a sufficiently strong presence to influence the outcome of numerous elections but insufficient numbers to ensure the election of their preferred candidate in any single election. *See* Richard H. Pildes, *Is Voting-Rights Law Now at War with Itself? Social Science and Voting Rights in the 2000s*, 80 N.C. L. REV. 1517, 1534, 1539–40, 1567–73 (2002). The Supreme Court affirmed the constitutionality of "influence" districts in *Georgia v. Ashcroft*, 539 U.S. 461, 482–83 (2003). The influence or swing-vote hypothesis is highly contested, however. Pamela Karlan argues, for example, that assuring descriptive representation is important because, even if minority representatives are outnumbered on a city council, they will be strong advocates for their communities and the group dynamics of council governance will encourage mutual understanding and the creation of coalitions among council members of different ethnicities. *See* Pamela S. Karlan, *Maps and Misreadings: The Role of Geographic Compactness in Racial Vote Dilution Litigation*, 24 HARV. C.R.-C.L. L. REV. 173, 216–19 (1989); *see also* Chandler Davidson, *Minority Vote Dilution*, *in* MINORITY VOTE DILUTION, *supra* note 45, at 1, 9–10 (disputing swing-vote hypothesis). Others argue that the "bleaching" of districts neighboring safe minority wards has been overstated and can be resolved with more sensitive district-drawing. *See* Steven J. Mulroy, *Alternative Ways Out: A Remedial Road Map for the Use of Alternative Electoral Systems as Voting Rights Act Remedies*, 77 N.C. L. Rev. 1867, 1897–98

ward system in place, the need for local ballot-box zoning should be less pressing. As I have argued, the impetus for many local land-use initiatives has been discontent with the at-large system and a desire to foreground neighborhood concerns.[274]

The substitution of a small-ward system should also lead to a significant improvement in the local political process by facilitating a robust dialogue between diverse interests within the city. Instead of council members who all represent the same citywide constituency, ward-based council members will generally represent highly diverse constituencies. The majority of southern California boomburbs, the populous and increasingly important suburban cities surrounding the major urban centers of L.A. and San Diego, have large and growing African-American, Latino, and Asian populations.[275] Boomburbs are also extremely diverse in terms of income and education levels, and neighborhoods vary in their permitted and existing land uses, building ages and types, population densities, quality of infrastructure, percentage of homeowners versus renters, and concentration of homeowners' associations.[276] Moreover, different ethnic groups may have divergent ideas about land use and urbanism. For example, as Asian influence has grown in many boomburbs, an increasing number of high-rise, mixed-use developments have emerged to cater to this

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(1999). Of course, there is also a question as to whether "safe" minority-majority districts are even constitutional. *See* Shaw v. Reno, 509 U.S. 630, 647, 649 (1993) (invalidating two oddly-shaped legislative districts drawn to ensure elections of minority representatives). The merits of this debate are largely immaterial to the present argument that a switch from pure at-large or large-ward systems to some kind of small-ward system would be advantageous for a variety of reasons. Even the most strident critics of race-conscious districting do not argue that ward systems or even small-ward systems *per se* diminish substantive representation for minorities as compared to pure at-large systems, only that race-conscious districting does. *See, e.g.*, THERNSTROM, *supra* at 242–43 (arguing that either pure at-large systems or district systems featuring districts drawn on a race-neutral basis will provide better substantive representation than race-conscious districting). The question of race-conscious districting is an obviously complex and controversial one that is well beyond the scope of this article. Given that a switch from an at-large to some kind of small-ward voting system can apparently be accomplished without diminishing substantive representation—while, as argued *supra* and in the text, promising gains in the diversity of views represented on the city council, adequate representation of neighborhood interests, increased descriptive representation of minorities, and a political process in which dialogue and negotiation is encouraged—it is a change worth pursuing.

The preceding paragraph emphasized the advantages of ward systems over *pure* at-large systems. Some scholars have argued that modified forms of at-large voting structures such as cumulative voting would be preferable to both pure at-large and ward systems. I address the merits of cumulative voting at length *infra* in notes 297–302 and accompanying text.

274. *See supra* notes 125–28 and accompanying text.

275. *See* LANG & LEFURGY, *supra* note 13, at 56–57.

276. *See id.* at 56, 116–18, 128–29.

population's taste for high-density living.[277] A system of neighborhood-based wards will hopefully invite a broad-minded dialogue between groups with varied perspectives on growth and other local issues and should encourage dialogue and negotiation to accomplish desired ends.[278] Indeed, where ward systems have replaced at-large systems in many southwestern cities, politics has become more inclusive, albeit more contentious at the same time.[279]

The foregoing observation points to an important qualification of my support for ward voting systems. A ward system is far more likely to have the desired effect in large, diverse cities than in smaller, homogenous suburban communities. Small suburbs are generally dominated by "homevoters" who share a fairly uniform set of preferences.[280] The homevoter has much less sway, however, in large, diverse, and dynamic boomburbs.[281] For this reason, ward systems are particularly appropriate in places, such as southern California and other Sunbelt regions, that are awash in boomburbs. Ward systems will be less useful in northeastern states like New Jersey, where very small suburban communities predominate.[282] The question of how to incorporate small suburbs into a broad, inclusive political culture is a vexing one that has bedeviled thoughtful commentators for years and is outside the scope of this article.

What I see as the major virtues of this proposal—increased representation for neighborhood interests and a robust political process—are precisely what critics would likely assail about it. As skeptics see it, ward systems risk "balkanizing" the city into warring ethnic enclaves, each seeking to wrest scarce municipal resources for

277. *See* Haya El Nasser, *Suburbs Get Urban Makeover*, USA TODAY, Jul. 15, 2009.

278. As noted *supra* note 2 and accompanying text, the municipal political agenda in California has been constricted in a variety of ways by mechanisms such as special districts, homeowners' associations, county government, and initiatives like Propositions 13 and 218. A move to ward voting will not change that fact. It may, however, awaken city voters to the desirability of a more robust political culture and cause them to advocate for policy changes that would reinvigorate city politics. At the least, it should enhance the quality of discourse about growth.

279. *See* ABBOTT, THE NEW URBAN AMERICA, *supra* note 24, at 214–15, 241–43 (discussing "new style of politics" in Sunbelt cities that have switched to ward voting, in which cities are forced to pay attention to concerns of slow-growth neighborhood groups and minority neighborhoods); BRIDGES, *supra* note 24, at 202–04 (noting improvement in equitable provision of city services after switch to ward voting but also noting that politics have become more "antagonistic").

280. *See generally* FISCHEL, *supra* note 2, at 15–16, 80, 93.

281. *See* LANG & LEFURGY, *supra* note 13, at 127–28.

282. *See id.* at 124–25 (contrasting boomburbs with New Jersey local government structures).

itself with little concern for the city as a whole.[283] Gridlock will be the order of the day, as representatives bicker over their divergent agendas and find themselves unable to reach consensus on important issues. NIMBYism will become ascendant as neighborhoods are empowered to halt any unwanted growth. Municipal budgets, already stretched thin, will be expanded to their breaking point as ward-based politicians engage in "pork-barrel" politics, gilding their re-election hopes by bringing targeted benefits to their constituents, financed of course by the citywide electorate. Can the return of the political machine be far behind?[284]

As an initial matter, it appears that many of these concerns may be overstated. Empirical studies have concluded that ward systems increase neither municipal conflict nor incidences of pork-barrel spending.[285] In any event, ever since Proposition 13 sharply restricted

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283. Several recent Supreme Court opinions have expressed concern about balkanization. *See* Holder v. Hall, 512 U.S. 874, 905 (1994) (Thomas, J., concurring) (stating that race-conscious districting is "nothing short of a system of 'political apartheid'" (quoting Shaw v. Reno, 509 U.S. 630, 647(1993)); *Shaw*, 509 U.S. at 647, 657 (arguing that racial gerrymandering "may balkanize us into competing racial factions"). *See also* Lani Guinier, *The Representation of Minority Interests: The Question of Single-Member Districts*, 14 CARDOZO L. REV. 1135, 1159 (1993) [hereinafter Guinier, *Minority Interests*] (noting that ward systems may "exacerbate intergroup conflict"); Pamela S. Karlan, *Our Separatism? Voting Rights as an American Nationalities Policy,* 1995 U. CHI. LEGAL F. 83, 92–96 (discussing "balkanization" critique). These criticisms have by and large been leveled against claims that the federal Voting Rights Act requires the creation of "safe" minority-majority districts as a remedy for violation of that statute, rather than against the creation of a ward system per se. As discussed *supra* note 273, this problem may be mitigated by the creation of "coalition" or "influence" districts, where minorities do not constitute a majority in any district but have sufficient critical mass to influence the outcome of elections. Nevertheless, Lani Guinier has argued that criticisms of race-conscious districting are, at bottom, criticisms of districting itself. *See* Lani Guinier, *Groups, Representation, and Race-Conscious Districting: A Case of the Emperor's Clothes*, 71 TEX. L. REV. 1589, 1592–93 [hereinafter Guinier, *Emperor's Clothes*] (1993). Given the de facto segregation that exists in many cities, neighborhood-based ward politics is, without question, ethnic politics. In that spirit, I treat the "balkanization" argument here as a critique of ward politics generally.

284. The Progressive reformers and their successors frequently argued that ward systems sowed conflict and lowered efficiency by promoting logrolling and pork barrel politics. *See, e.g.*, BRIDGES, *supra* note 24, at 61, 196–97 (discussing complaints that ward-based alderman "'will work for his ward against the general welfare of the city'" and that ward systems would introduce "Eastern-style" bossism, corruption, and patronage politics into city government (quoting AUSTIN DAILY STATESMAN, Dec. 29, 1908)).

285. *See* PEGGY HEILIG & ROBERT J. MUNDT, YOUR VOICE AT CITY HALL: THE POLITICS, PROCEDURES AND POLICIES OF DISTRICT REPRESENTATION 101, 113 (1984) (finding no evidence of increased conflict in several cities with district systems); Langbein et al., *supra* note 55, at 285, 289–90 (finding no evidence of increased spending in ward-based systems); Lynn MacDonald, *The Impact of Government Structure on Local Public Expenditures*, 136 PUB. CHOICE 457, 458 (2008) (finding no evidence of increased spending in ward-based systems). *But see* Lawrence Southwick, Jr., *Local Government Spending and At-*

general tax revenues, there has been precious little pork to go around. Moreover, the move to ward voting systems, while certainly increasing neighborhood influence, has not dramatically changed the policy choices of most municipalities.[286] In particular, there does not appear to have been a substantial diminution in the dominance of the growth machine in local politics.[287] The imperative for cities to attract tax revenue, especially after Proposition 13, is so overwhelming that even council members elected on slow-growth platforms often find themselves compelled to solicit new growth despite the concerns of their own constituents.[288] And cities continue to have at their disposal devices such as eminent domain, tax-increment financing, development agreements and the like, which enable them to pursue vigorous growth agendas.[289] Thus, a ward voting system may do little more than attempt to level the playing field between pro-growth and slow-growth interests, between citywide and neighborhood concerns.

On the other hand, anecdotal evidence from Sunbelt cities that have switched to ward voting schemes strongly suggests that district systems

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Large Versus District Representation; Do Wards Result in More "Pork"?, 9 ECON. & POL. 173, 199 (1997) (concluding that spending, debt, and taxes are higher in ward-based municipalities).

286. *See generally* JUDD & SWANSTROM, *supra* note 15, at 390 (describing mixed success of neighborhood and minority groups in influencing policy after their "incorporation" into municipal politics via the introduction of ward systems and increased elections of minority representatives).

287. *See* ABBOTT, THE METROPOLITAN FRONTIER, *supra* note 24, at 113; JUDD & SWANSTROM, *supra* note 15, at 388–89 (describing continuing growth pressures in large cities after incorporation of minorities and neighborhood interests); .

288. *See* Schwartz, *supra* note 103, at 185, 197–200 (discussing growth imperative after Proposition 13); *supra* note 102 and accompanying text (citing example of Ruth Galanter).

289. In light of this observation, it might be wondered why I do not advocate direct limitations on the use of devices like eminent domain and tax-increment financing. First, where courts or legislatures have attempted to impose substantive limitations on these devices, they have often made matters worse. Many states attempt to limit the use of eminent domain and tax-increment financing to areas that are "blighted," but the definition of blight is vague, poorly understood, and easily manipulated. *See* CASTLE COALITION, *supra* note 147, at 3–4. More importantly, "blight" is a loaded term that facilitates the condemnation of property in poor, crowded minority neighborhoods that may not necessarily be slums, while insulating low-density, middle-class neighborhoods. Second, despite my reservations about these devices, if properly used they can be valuable tools. Eminent domain enables older, fully developed communities to compete for valuable development with suburbs that have large amounts of vacant land due to the use of "wait and see" zoning. Tax-increment financing is needed to fund acquisitions of property in a post-Proposition 13 environment of diminished property tax revenue. My concern is that eminent domain and tax-increment financing not be used to circumvent dialogue about redevelopment. This concern can best be addressed, while enabling use of those devices where appropriate, by an open political process that permits neighborhood groups to effectively voice their concerns about eminent domain and tax-increment financing.

do increase conflict and balkanization.[290] Empirical and anecdotal evidence also shows that ward systems tend to empower NIMBY groups and generally to make growth more costly.[291] These attributes certainly could be seen as drawbacks to a ward system. I interpret this evidence much differently, however. At-large systems are efficient and largely conflict-free precisely because they exclude huge swaths of the population from political participation.[292] Where ward systems have increased acrimony, decreased efficiency, and emboldened slow-growth sentiment, they have done so as a consequence of increasing responsiveness to the many diverse interests that comprise the polity.[293] That is a trend to be applauded, not condemned. With regard to "balkanization," the segregation of the metropolitan population by income, race, and ethnicity is not a creation of the ward system, but of decades of segregatory policies such as redlining, racially restrictive covenants, exclusionary zoning, and the empowerment of autonomous suburban communities, all of which were deployed with the intent to create "balkanized" enclaves of affluent white homeowners and have, as a side-effect, also created inner-city ghettos for minorities.[294] Most of these segregatory policies have enjoyed the blessings of policymakers and the courts.[295] For good or ill, geographically concentrated interest

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290. *See* ABBOTT, THE NEW URBAN AMERICA, *supra* note 24, at 214–15, 241–43 (discussing "new style of politics" in Sunbelt cities that have switched to ward voting, in which cities are forced to pay attention to concerns of slow-growth neighborhood groups and minority neighborhoods); BRIDGES, *supra* note 24, at 202–04 (noting improvement in equitable provision of city services after switch to ward voting but also noting that politics have become more "antagonistic").

291. *See* BRIDGES, *supra* note 24, at 203 (noting anecdotal evidence of increasing deference to district representatives on growth issues affecting their neighborhoods); Clingermayer, *supra* note 54, at 978 (empirical study); Feiock et al., *supra* note 25, at 465, 474 (finding higher incidence of growth management measures in ward-based municipalities, including 31% increase in probability of impact fee adoption); Langbein et al., *supra* note 55, at 275–93 (finding fewer locations for land uses that are undesired by geographically concentrated communities in cities with councils elected by wards than councils elected at-large).

292. *See, e.g.*, BRIDGES, *supra* note 24, at 16–17, 29, 125, 154–56, 170–71, 181; *supra* notes 24, 25, 74, 80 and accompanying text.

293. *See supra* notes 272, 282 (on increased responsiveness under ward systems and the attendant rise in conflict).

294. For a sample of the voluminous literature on the many causes of residential segregation, see, for example, KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 190–230 (1985); Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1 (1990); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841 (1994). For arguments similar to my own here, see Guinier, *Emperor's Clothes*, *supra* note 283, at 1620 n.120 and Karlan, *supra* note 283, at 95–96.

295. *See, e.g.*, JACKSON, *supra* note 294, at 197–99 (on federal government policy of

groups are now a fact of urban life. It accomplishes little to wish away the de facto segregation of the metropolis. As the discussion herein has shown, the very idea of a unitary "public interest" peddled by the Progressive reformers was an illusion designed to mask the heterogeneity of the metropolitan population and rationalize the empowerment of a small, univocal elite.[296] Ward systems, then, have simply revealed the true face of urban politics, warts and all.

A more sophisticated critique, that recognizes both the promises and the limits of ward systems, urges that the at-large system can be modified to reduce sectional conflict while ensuring maximum responsiveness. Under cumulative voting, for example, all voters citywide are given a number of votes equivalent to the number of positions to be voted upon, just as in at-large systems. Unlike at-large voting, however, voters are not limited to casting only one vote per candidate but can "plump" their votes by allocating several or even all of their votes to a single candidate. This system, its advocates argue, will both empower minority groups to elect candidates of their choice by plumping their votes for a preferred candidate and avoid the perils of segmenting the population geographically.[297]

Cumulative voting is an elegant system with many virtues. It enables voters to choose their own coalitions on an election-by-election basis, rather than herding them into putative interest groups based on the proxy of residency.[298] It avoids "wasting" the votes of those who vote for the losing candidate in each ward.[299] Cumulative voting also meets my principal criteria of ensuring a reasonable diversity of perspectives on the city council and creating a dynamic in which dialogue and bargaining would be facilitated. Further, there is empirical support for the

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"redlining" areas in which residential mortgages for black purchasers would or would not be guaranteed); Briffault, *supra* note 294, at 3–4, 19, 23–24, 72–73 (discussing the pattern of court decisions upholding local government autonomy over land use and school finance decisions and largely validating practice of exclusionary zoning, and outlining permissive state policies toward municipal incorporation). The Supreme Court's decision in *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948), belatedly invalidating racially restrictive covenants, is a notable exception to the general judicial permissiveness toward segregatory policies.

296. *See* BRIDGES, *supra* note 24, at 16–17, 29, 125, 154–56, 170–71, 181; *supra* notes 44, 45 and accompanying text.

297. *See, e.g.*, Guinier, *Emperor's Clothes*, *supra* note 283, at 1632–42; Guinier, *Minority Interests*, *supra* note 283, at 1169–74. Similar modified versions of at-large voting are preference voting, in which voters rank-order the candidates they prefer, and limited voting, in which a voter is given fewer votes than there are seats to be filled. Both of these systems, it is argued, may increase minority prospects for electing candidates of their choice. *See* Mulroy, *supra* note 273, at 1876–83.

298. *See* Guinier, *Emperor's Clothes*, *supra* note 273, at 1602–03, 1617.

299. *See id.* at 1615.

conclusion that cumulative voting boosts descriptive representation for minorities.[300] However, cumulative voting has one fatal flaw. Like at-large voting, cumulative voting breaks the direct link between neighborhoods and city hall. As a result, neighborhood residents lack a specific "ombudsperson" who represents their interests in city government and are often frustrated by their inability to communicate directly with someone responsible for their welfare.[301] This problem is most acutely felt by the poor and minorities, who often lack alternative means of making their voices heard, such as through lawyers, lobbyists, or professional organizations.[302] This inattentiveness to neighborhood and minority concerns is, of course, one of the major problems with at-large and large-ward systems. It was the root cause of the neighborhood discontent that rocked cities during the 1960s and '70s and sparked the sharp increase in statewide and local initiatives that followed.[303] It is also at the heart of the polarized political culture chronicled throughout this paper. Absent representation keyed to geography, neighborhoods—particularly minority neighborhoods—will likely continue seeing their interests subordinated to the growth agenda, vulnerable to unwanted zoning changes, urban renewal schemes, undesirable land-use sitings, or inadequate provision of infrastructure. When in the past these problems have become acute, whether in the San Fernando Valley or in Watts, in affluent Yorba Linda or in struggling Santa Ana, a vigorous assertion of neighborhood interest has generally followed.[304] The present account thus counsels against a political system that disregards territorial interests.

To the extent a ward system may swing the pendulum too far in favor of neighborhood interests, one possible solution is to use a "mixed" electoral system of the sort popular in many jurisdictions outside California, where some council members are elected by districts and others at large.[305] Relatedly, California cities could switch to a "strong mayor" form of government, in which the mayor, elected at large, would have many of the administrative powers now held by city

300. *See* Richard H. Pildes & Kristen A. Donoghue, *Cumulative Voting in the United States*, 1995 U. CHI. LEGAL F. 241, 272–74 (reporting on cumulative voting in Chilton County, Alabama).

301. *See id.* at 294–95.

302. *See id.*

303. *See supra* notes 72–77 and accompanying text.

304. *See supra* notes 78 (discussing Watts), 88 (discussing San Fernando Valley), 113 (discussing Yorba Linda), 199 (discussing Santa Ana) and accompanying text.

305. *See* SVARA, *supra* note 23, at 25 (reporting that 28.2% of cities nationwide use mixed systems). No California cities use mixed systems. *See* HAJNAL ET AL., *supra* note 23, at 25.

managers and potentially a veto power over legislation passed by the council.[306] These reforms would enable a dialogue between presumptively pro-growth at-large representatives and presumptively slow-growth neighborhood representatives. A strong mayor would have the additional advantage of increasing political accountability by putting a recognizable face on local government policies.[307] Such a move could galvanize the citizenry to become more involved in local politics.

The need for courts to act on these proposed reforms is urgent. It is undeniable that growth, and the warped political system that has engendered a debased discourse about growth, has played an important part in creating the economic crisis currently facing California. California leads the nation in foreclosures, a problem that is especially acute in once fast-growing areas like the Inland Empire on the outskirts of the Los Angeles metropolitan region,[308] and southern California was at the epicenter of the mortgage meltdown that sparked the wider economic collapse.[309] More growth conflicts are looming on the horizon, as the specter of vacant ghost-town subdivisions in formerly booming suburban areas has bred cynicism about the unmitigated pro-growth policies of local governments and sparked calls for all major land-use changes to be subject to voter referenda.[310] Despite the near-absence of private-sector growth at the moment, slow-growth sentiment remains strong and may grow stronger as many communities shift their focus toward the sort of high density development that has traditionally drawn the ire of slow-growth neighborhood groups.[311]

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306. On the "strong mayor" system, see generally Richard C. Schragger, *Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System*, 115 YALE L.J. 2542 (2006).

307. *See id.* at 2572 (explaining virtue of accountability in strong-mayor system).

308. *See* Jesse McKinley, *If California Owes You, It Would Like to Pay You. Really. But Hurry.*, N.Y. TIMES, Jan. 15, 2010, at A16 (reporting that 630,000 California homes went into foreclosure in 2009, the highest number in the nation).

309. Southern California was the headquarters of Countrywide Financial Corporation, whose risky lending practices sparked the housing bubble before it collapsed under the weight of the bad loans it had issued, helping to set off the wider economic crisis. For a detailed look at the Countrywide saga, see Gretchen Morgenson, *Inside the Countrywide Lending Spree*, N.Y. TIMES, Aug. 26, 2007, at Sunday Business 1.

310. In Florida, a grassroots movement called "Hometown Democracy" is pushing a ballot measure for November 2010 that would require voter referenda on all amendments to a general plan. In its campaign literature, Hometown Democracy argues that land-use control needs to be taken out of the hands of local officials, whose habit of "rubberstamping speculative plan changes" caused Florida's "destructive boom-bust cycle." *See* Florida Hometown Democracy, *supra* notes 6, 12.

311. *See* Nasser, *supra* note 6 (noting that some formerly booming suburbs are focusing more on high-density, transit-oriented developments); Prado, *supra* note 6 (reporting opposition to high-density, transit-oriented development by slow-growth groups).

At the same time, Californians are growing weary of an initiative process that is captive to special interests and that has hamstrung the government's basic ability to function.[312] There is an increasing recognition that California's system of government simply is not working.[313] However, recent efforts to reform the existing system via a constitutional convention have faced insurmountable difficulties raising funds absent support from entrenched interest groups.[314] The manifest inability of the existing political system to reform itself is precisely the sort of process deficiency that courts must intervene to correct. After a century's experience with a Progressive system of government that has distorted and polarized southern California's growth politics, it can no longer be doubted that the time for change has arrived.

312. *See, e.g.*, Editorial, *A Plan that Works*, L.A. TIMES, Jan. 3, 2010, at A25; Editorial, *Start from Scratch*, L.A. TIMES, Aug. 16, 2009, at A29.

313. *See* John Grubb, Op-Ed, *Californians Have an Opportunity to Fix State*, S.F. CHRON., Jan. 3, 2010, at E2; Jim Wunderman, Op-Ed, *This Government Has Failed Us*, S.F. CHRON., Aug. 21, 2008, at B7.

314. *See* Evan Halper & Anthony York, *California Reform Bid Called Off*, L.A. TIMES, Feb. 13, 2010, at AA2 (discussing cancellation due to insufficient funding of a bid by "Repair California" to qualify an initiative that would call a constitutional convention to enact comprehensive reform of state constitution).

VI. CONCLUSION

While the proposal sketched here is an attempt to exorcise the specter of Progressivism from local politics, it could be argued that, in fact, this proposal merely evidences the triumph of Progressive ideology. Specifically, like so many Progressive reforms, the present proposal shares "the reformer's inclination to use procedural fixes to address substantive problems,"[315] as Richard Schragger has elegantly stated the issue. If the Progressives were naive to think they could eliminate special interests by tinkering with the mechanics of local government, is the instant proposal any less utopian in assuming that a few procedural reforms will reverse the entrenched antagonism that has ensnared our local politics? After all, as previously noted, the move to ward voting has not significantly weakened the growth machine, and NIMBYism remains an intractable problem nationwide. The enervated political culture of local government is a national epidemic. Its causes are manifold but include such disparate factors as the widespread fiscal crisis facing local governments; the legal disabilities of municipalities; the proliferation of special districts and homeowners' associations; the risk-aversion of homeowners; the ambitions of county governments; and, yes, procedural mechanisms such as weak mayors, powerful city managers, appointed planning boards, the initiative process, and nonpartisan, at-large elections. Considering the complexity of the problem, can the small handful of narrowly targeted procedural changes I propose effect a meaningful substantive change in local politics?

The experience of those Sunbelt cities that have converted from at-large to ward systems shows that this reform alone can indeed have a powerful substantive impact on local politics. Neighborhood and minority influence has increased in these cities, even if not as much as hoped. Perhaps more important is that the implementation of ward systems has caused more residents to believe that their concerns are taken seriously by city government.[316] This "symbolic" gain should not be underestimated. A sense of empowerment has encouraged historically disadvantaged citizens to participate in local politics and increased their faith in government.[317] No, ward systems have not

315. Schragger, *supra* note 306, at 2545.

316. *See* HEILIG & MUNDT, *supra* note 285, at 151–52 (finding high level of satisfaction with district systems and increased confidence in government's responsiveness in ten cities after switch from at-large to district systems, despite inconclusive evidence of any tangible benefits from switch); JUDD & SWANSTROM, *supra* note 15, at 390 (discussing important symbolic gains in cities where minorities have been "incorporated" into city politics).

317. *See* JUDD & SWANSTROM, *supra* note 15, at 390 (citing studies showing increased participation and trust in cities where minorities have been incorporated).

proven to be a magic fix for all that ails municipalities. But they have improved the vibrancy, diversity, responsiveness, and legitimacy of local politics in cities where they have been adopted. Considering the challenges facing local governments everywhere, this is no mean achievement.