

Polycentralization of Urban Governance and the Role of Law: Legal Geography of Business Improvement Districts in San Francisco

Gakuto TAKAMURA¹

Abstract:

Early studies by Elinor Ostrom focused on ways of providing urban public goods in metropolitan areas. She argued that a polycentricity of public and private agents and community-based organizations providing services performed better.

In recent decades, American metropolitan cities have promoted the creation of Business Improvement Districts (BIDs) in their central areas, delegating to them responsibilities such as the management of public space, provision of public safety, and cleaning services. The BIDs, which are community-based organizations run by private property owners within the district, have succeeded in general at reducing crime rates and at economic revitalization. This success is often explained by Ostrom's theory. David Harvey, however, criticizes BIDs for the increase in property values; excluding the homeless, street vendors, and activists from public spaces; and changing these spaces into commercialized, homogeneous areas. More theoretically, he notes that Ostrom did not consider the type of legal framework required to control the polycentric governance and enable dialogues between multi-level agencies and among people.

This paper considers the legal-theoretical question raised by Harvey, based on long-term participatory observations of BIDs in San Francisco and interview surveys in New York City. By examining this question, this paper aims to characterize the role of law in polycentric governance, which assures a rightness of city.

Keyword: Polycentric; Urban Governance; Property Law and Judicial Review

¹ Professor of Law, Graduate School of Policy Science, Ritsumeikan University, Japan.
takamura@sps.ritsumeikan.ac.jp

1.Introduction

All over the world, the tendency to delegate the management of urban public spaces to private entities is growing. The “Occupy Wall Street” movement began by occupying the ground of Zuccotti Park, a privately owned public space named after the president of the property company that owns and governs the park and a nearby tall building (Eisenberg 2012; Kayden 2000). The movement aimed to contest the trend toward the privatization of public space and the excessively tight control over assembly and free speech there.

In recent decades, American metropolitan cities have promoted the creation of Business Improvement Districts (BIDs) in their central areas, delegating to them responsibilities for the management of public space and sidewalks, the provision of public safety, and cleaning services, among other things. The BIDs, which are community-based organizations formed and run by private property owners within the district, have generally succeeded in reducing crime rates and economic revitalization, introducing the efficient management methods of private companies (Becker, Seth, and Dos Santos 2011).

The BIDs provide local public goods, based on an assessment, to the property owners within the district. The services that they provide are not standardized but determined by the collective choice of property owners, reflecting their preferences and paying capacities. Previously, the provision of local public goods was carried out by city government, based on a uniform standard rule applied to all areas of the city. Thus, through the creation of the BIDs, city government is encouraging the formation of the different standards of provision of local public goods, based on the collective choice of the property owners. Instead of the city government standard rules, the many centers of decision making have begun to generate autonomous rules among the BIDs. In light of Ostrom (1999), we can call this state of affairs polycentric governance.

There are pros and cons to this polycentralization of urban governance promoted by the BIDs. Zukin (2009) criticizes the commercialization of public space and the gentrification of areas. Madden (2010) points out that there are fewer democratic values in privatized public spaces and a danger for free speech. MacDonald et al. (2013) bring into question the widening disparity between wealthy and poor neighborhoods.

By contrast, Ostrom et al. (1973) and Ostrom (1990, 2010) argue that the polycentric

public and private agents and community-based organizations that provided services performed better than a monocentric system did; a small-size community's control over the provision of local public goods enables services to meet the preferences of community members, and the bureaucratic unresponsiveness of large-size government produces cynicism and frustration on the part of citizens, who are unable to locate the point of access to solve public problems (Baer 2008: 53).

Although Ostrom (1999, 2010) stresses the need for a higher-order rule that governs the relationship between independent and autonomously functioning communities in order to solve conflicts between them and to serve as a constitutional guarantee of individual liberties, Harvey (2012) criticizes this concept of rule as obscure.

But we are left in the dark as to how such higher-order rules might be constituted, by whom, and how they might be open to democratic control. For the whole metropolitan region some such rules (or customary practices) are both necessary and crucial. Furthermore, such rules must not only be established and asserted. They must also be enforced and actively policed (as is the case with any common). (Harvey 2012: 83)

This paper therefore considers the legal-theoretical question raised by Harvey, based on long-term participatory observations of BIDs in San Francisco and interview surveys in New York City.

The model of Ostrom, which argues for the efficiency of polycentric governance in metropolitan areas, was formulated on the basis of research into public safety in suburban residential local governments (Ostrom et al. 1973); the homogeneity of inhabitants assures the same concern for safety and good relationships between them and police.

Ostrom's theory is also based on public choice theory: residents can afford to "vote with their feet" by leaving situations they do not like or moving to locations they believe to be more preferable.

In contrast with the homogeneity of suburban areas, the downtown or inner-city areas

where the BIDs have been created feature a heterogeneity of interests; a wide variety of people visit there, various businesses and livelihoods co-exist, and there are always conflicts about how to use spaces. Therefore, the role of law to regulate the conflict over public space and to ensure democratic control is more important in metropolitan governance.

Compared with rural areas, where physical settings divide communities, urban space is continuous. Thus, the setting of boundaries for communities in a city is a highly political act. As the movement of legal geography proposes (Blomley, Delaney, and Ford 2001), we should pay attention to how the boundaries of communities are socially constructed and legitimized by the law.

Hence, this paper examines how the law provides democratic control over the governance of the BIDs and what impacts polycentric urban governance has for the metropolis as a whole. In particular, we focus on the possibility of laws that might make the BIDs more inclusive.

2. What is a BID?

2.1 The Legal Characteristics of a BID

A BID is a hybrid of public and private elements (Briffault 1999). As a special district, the BID resembles a public entity, but in its co-management of sidewalks with adjacent property owners, the BID resembles a private entity.

Briffault (1999:368) identifies the four characteristics below as public elements of a BID:

- 1) A BID is a territorial subdivision of a city;
- 2) Property owners or businesses within the BID are subject to additional tax;
- 3) The revenues generated by these district-specific taxes are reserved to fund services and improvements within the district and to pay for the administrative costs of BID operations;
- 4) BIDs' services are provided in addition to those offered by city governments.

So far, most BIDs have been created in downtown or inner-city areas whose zoning is commercial². Their main activities are cleaning services on sidewalks, garbage collection, and

² Ellickson (1998) proposes the establishment of quasi-BID structures in residential areas to

safety patrols that are more frequent than those provided by the city are. Large-size BIDs engage in street repairs, landscaping, the provision of street furniture, and the creation of public amenities.

Most states in the United States passed an act in the 1980s or 1990s enabling the formation of BIDs. Chambers of commerce and merchants associations who had tried to improve a district requested the legislation on BIDs to solve the free-rider problem.

According to Briffault (1999: 369), “[B]y assessing all properties or firms in an area, instead of depending on contributions from civic-minded volunteers, a BID provides a ‘stable stream of income for activities and projects.’”

This coercive function of the BID requires state laws and local ordinances of a city that give it the authorization for creation and renewal. The BID is subject to the oversight of the city.

On the other hand, the BID has private elements. In the United States, up to the early nineteenth century, adjacent property owners held the ownership of the land that would later constitute the sidewalk (Novak 1996; Loukaitou-Sideris and Ehrenfeucht 2009: 26). Sidewalks were constructed at their request, and it was property owners who paid for the sidewalks.

Even today, in most American cities, responsibility for the maintenance of the sidewalk belongs to the adjacent property owners (Loukaitou-Sideris and Ehrenfeucht 2009). This responsibility comes from the historically private nature of sidewalks. Given that most activities of BIDs are carried out on the sidewalks, BIDs could be regarded as an organization of private property owners for sharing the management duties on the sidewalk.

Although the BID has a public character as a subdivision of a city, the agreement of property owners within the district is required for the formation of a BID. They then create a non-profit organization, separate from the particular district, to manage the activities of the BID. The members of the board of this organization are mainly composed of property or business owners; the efficient management methods of private companies are reflected in the BID. While the general tax of the city is used to provide public goods equally in all areas of the city and has a redistributive character, the assessment collected for a BID goes exclusively to the BID.

improve their safety.

2.2 Efficiency of BIDs

As a hybrid organization of public and private characters, the BID succeeds in overcoming the free-rider problem in the provision of local public goods and the bureaucracy of large-city governments.

According to a census of BIDs, there were 1,002 in the United States in 2010, and they are increasing in number. Most of them have performed very well. Only around 5% of BIDs had dissolved up to that point (Becker, Grossman, and Dos Santos 2011).

Baer (2008) and Warner (2011) rely on the theory of Ostrom to explain the efficiency of BIDs. Certainly, the management of public spaces by BIDs is slightly different from that of common land in rural areas and of the common spaces of a gated community that excludes outsiders to solve the tragedy of the commons; a BID cannot build walls within its boundaries. Even so the success of the BID can be explained, argue Baer and Warner, from the perspective of a community-based organization formulated by Ostrom (1990).

In terms of the advantages of community-based resource management, Ostrom (1990) points to the flexibility of the evolution of rules, the lower cost of monitoring, and the credible commitment of members. We may be able to apply these advantages to BIDs.

First, the administration of a BID is carried out by local property owners who know their community better than city officers do. Thus, the board of a BID is able to understand problems and situations easily and to respond to them quickly, changing operational rules by, for example, increasing the frequency of the cleaning service and enhancing safety patrols at crime hot spots. The city government has no such responsiveness.

Second, monitoring costs are less because board members or staff members of a BID can see what is happening in their community in their daily activities. Field workers of a BID who engage in cleaning or in guiding tourists simultaneously act as monitors; if they find an abnormality or a crime, they report it quickly to the police or private security personnel hired by the BID. The members of the board can monitor field workers' performance on a daily basis and can propose measures to improve their performance.

Third, the property owners in a district can cooperate with each other and commit to the activities of the BID because the improvement of the community is in their common interest. The

assessment imposed on every property owner provides a stable financial resource and solves the free-rider problem.

However, there are negative aspects to this community-based management: the redesign of the community from the narrow viewpoint of property owners, the prohibition of actions that are undesirable for businesses, the dispersion of homeless people and street vendors, and the obstruction of political speeches. The BID does not regard what happens in public spaces as a social issue but as a spatial matter, hoping that those phenomena that might discourage business will move elsewhere.

The problem of the narrow-interest orientation of community-based organizations has not arisen that much in studies of local commons in rural areas. However, urban space is continuous, and the attractiveness of the city consists in encounters with unassimilated others (Jacobs 1961). The attitude of exclusion adopted by BIDs would diminish this attractiveness. Thus, we have to make BIDs more inclusive in order to revitalize the city as a whole.

2.3 Legal control over BIDs

Briffault (1999) emphasizes the public nature of the BID and proposes the oversight by city officials to assure the public nature and the accountability of BIDs. However, it may be difficult to rely too much on city officials because the city often has the same values as the BID and is concerned mainly with how tourists and visitors would regard the city. Therefore, in addition to this vertical oversight between the city and the BID, we need to encourage dialogue between the BID and citizens and also judicial oversight of the activities of the BID; instead of efficiency, we have ensure that the values of liberal democracy penetrate into the administration of BIDs.

Loukaitou-Sideris and Ehrenfeucht (2009: 11) argue that, “A just city would have controls that define the parameters of public-space use and access and also processes that enable different voices and interests to help define those controls.” In this paper, we would like to examine how the law could provide the parameters and the processes to make the city more just and the BID more inclusive, using case studies in New York and San Francisco.

3. Vertical Control over BIDs in New York City

3.1 BIDs in New York

New York City has the largest number of BIDs: 67 in 2013. Much research has been carried out into the success stories of the major BIDs, but if we examine their governance of BIDs, they are overseen strictly by the city and do not have much autonomy and flexibility to govern by themselves.³

In 1981, New York State enacted the Business Improvement District Law; in the following year, New York City enacted a local ordinance to implement the state law. The contents of the state law and the city ordinance are nearly identical. The city's Small Business Services help in the formation of BIDs and oversees them. However, for the formation and the renewal of BIDs, the review and the approval of the state are required.

The state law and the local ordinance both require that the board of directors of the management association of any BID be composed of representatives of property owners, tenants of commercial space or dwelling units, and four members appointed by the mayor, the controller, the borough, and the city council member representing the district, and that nothing less than a majority of its members represents property owners.

3.2 The case of Grand Central Partnership BID and the legal nature of the BID

The Grand Central Partnership BID (GCP), the largest BID in the world, is famous not only for its active management but also for a disputed case⁴ that is often used in case books of law schools (Frug, Ford, and Barron 2010). The issue in this case related to the constitutionality of the state law and the local ordinance bylaw requiring that a majority of the board be composed of property owners.

The GCP was created in 1988 when Manhattan was emptying because of the deterioration of security in the borough. In 1995, on the back of the success of improvement of their district, the GCP extended its territory to surrounding areas: It manages an area with a total

³ The description below is based on an interview in March 2014 with James Mettham, who is in charge of oversight of the BIDs for Small Business Services in New York City.

⁴ *Kessler v. Grand Central Management District Management Association, Inc.* 960 F. Supp. 760; 1997 U.S. Dist.

office space of about 6.5 million square meters and had an annual budget for 2012 amounting to 13.5 million dollars.

In addition to the usual services, such as cleaning and safety patrol, the GCP has invested actively in paving sidewalks with high-quality designs and in installing and maintaining luxury street furniture, lights, and flowerbeds. Because the annual budget was not enough to finance such major improvements, the GCP issued a long-term bond to raise money.

This activity certainly improved the district, succeeded in bringing business back to the downtown, and increased the value of properties. However, too much activity on the part of the management brought sharp criticism: the *New York Times* and the city council criticized the security staff hired by the GCP for its aggressive conduct in moving homeless people to a shelter in the name of a homeless outreach activity, and Mayor Giuliani advised against the GCP issuing a bond because, if it was unable to redeem it, the city would have to take the responsibility for its redemption.⁵

When the GCP was trying to extend the boundary, some time before 1995, these negative aspects were reported by newspaper with the result that residents who would be included in the district of the GCP organized an opposition campaign to the extension. Although this opposition campaign did not succeed, the residents of the cooperative housing that was newly included within the boundary of the GCP sued the GCP, New York City, and New York State; they alleged that the stipulations of the city and the state requiring a majority of the board to be composed of property owners and the fact that the residents of the cooperative housing had no entitlement to participate in the board as individuals as a violation of the “one person, one vote” principle that is protected by the 14th amendment and applicable to government bodies.

The plaintiffs alleged that the services provided by the GCP were similar to those provided by local governments and that the influence of the GCP was so huge for local inhabitants that the BID should be regarded as a government body to which the constitutional guarantees apply and that local inhabitants should have the right to participate in any decision making.

However, the judgments of district court and appeal court were not in favor of the

⁵ *The New York Times*, “Grand Central Partnership Is Subject of U.S. Inquiry,” May 26, 1995.

plaintiff and concluded that the services provided by the BID are nothing but additional services; that the scope of the activities of the BID is strictly limited by the state law and the local ordinance; that the city oversees the BID; that the BID is not independent body; and that the “one person, one vote” principle did not apply to the BID.

The case law defined the legal character of the BID as a derivative of city government. Thus, it was considered that the governance of the BID should be assured by the vertical oversight of the city, not by horizontal participation by local residents and stakeholders in the administration of the BID.

Soon after the judgment of the appeal court, Mayor Giuliani, who realized that judicial review was unable to provide for democratic control and self-regulation of the BID, expressed to the GCP his intention not to renew the administrative contract between the city and the GCP, implying that if the president of the GCP resigned, he would renew the contract. Under this pressure, the president of the GCP had no choice but to resign.⁶

3.3 Governance through administrative contract

More than 15 years have passed since the lawsuit and the resignation of the president. How is the GCP actually governed? What impact does this judgment have on the relationship between the city and the GCP? On the basis of my interviews with the city and the GCP⁷, I can clarify some aspects.

The BID local ordinance of New York City specifies that the activities of the BIDs are not their own activities but legally tasks delegated by the city. Thus, this local ordinance clarifies that these tasks originally belonged to the competence of the city council and specifies that these tasks be delegated to the BIDs by administrative contract.

The contents of the administrative contract are different from BID to BID; however, it is common that the contract defines not only the activities performed by the BID but also the competences and the operational rules of the inner commissions of the BID very precisely. To reform an organizational structure, the BID is obliged to ask the city and the state to revise the

⁶ *The New York Times*, “Business Improvement District at Grand Central is Dissolved” July 30, 1998.

⁷ The interview was conducted in March 2014 with staff members of the GCP Duane Roggendorf and Ryan Pukos.

contents of the contract and approve them. To renew or revise the contract, it takes about two years. Transaction costs are very high. For the GCP, they have still the threat of the city refusing to renew the contract at its discretion. Transactions concerning administrative contracts place an excessive strain on the nerves of the GCP.

Even though the administrative contract has such an important role in defining the competences of the BID, the documents of the contracts are not open to the public. The staff members of Small Business Services of New York City oversee each BID; on average, each staff member is in charge of six or seven, attending every board and financial committee meeting and providing advice.

According to the state law and the local ordinance, the BID has an obligation to organize a public meeting at least once a year. However, they do not specify the nature and content of this meeting or how the public is to be informed. Everything is at the discretion of the BID.

Actually, the composition of the board of the GCP is composed of 40 property owners' seats and 2 residents' seats; residents are non-voting members. As resident board members, the representatives of community boards 5 and 6 attend board meetings. The GCP is proposing the revision of the zoning of East Manhattan, which eases the restriction of heights of buildings to promote redevelopment. The competence of zoning is reserved to the city, but proposals from the GCP have a major influence. The representatives of the community boards are strongly opposed to this revision plan. The dispute over the zoning takes place in the board meeting. The staff members of the GCP are unhappy with the adversarial attitude of the community boards at the formal meetings of the GCP.

4. Democratic control by open meetings in San Francisco

4.1 The Community Benefit District in San Francisco

In contrast with the BID in New York, administration of which was closed to citizens, generating antagonism and opposition from them, San Francisco City has made BIDs serve the community by requiring that their meetings be open to the public.⁸

⁸ The description below is based on interviews in March 2014 and September 2014 with Crezia

While California State's BID law refers to a BID as a "Property & Business Improvement District," the local ordinance of San Francisco, which implements this state law, refers to it as a "Community Benefit District (hereafter CBD)" hoping that CBDs would be concerned not only for property owners but would also include all members of the community.

Although the state's law requires more than 50% of agreement among property owners within a district for the formation of a BID, the local ordinance of San Francisco, revised in 2004, eased this requirement to 30% and specified that 20% of members of the board must be representatives of tenants and residents of the district (Office of Economic and Workplace Development 2012). The philosophy of the city is that the openness of the board to the community complements the legitimacy of the formation of the CBD.

With the support of the Office of Economic and Workplace Development of San Francisco City, there are actually 11 BIDs in the city. As mentioned below, they are formed not only in the wealthy downtown areas but also in the blighted inner city, to improve the community.

It is a state law, called the Brown Act, rather than the local ordinance, that makes the administration of the CBDs more democratic and transparent. This act requires all local public agencies to open their meetings to the public. The CBD is also included in the category of local public agency. Not only board meetings but also all meetings of inner commissions in the CBD, regarded as legislative bodies of the agency, should be open to the public. To participate in a substantial discussion, members of the public have the right to express their opinions before the relevant agenda is brought to a vote. In all meetings, a president of meeting should secure sufficient time for public comments.

Thanks to the guarantee of the Brown Act and with the support of CBDs, I have been attending the meetings of Union Square BID, Tenderloin Community Benefit District, and Castro CBD and conducting interviews with members since August 2014. In the following, I will analyze how they work to improve their communities and how the law functions to make them inclusive to the community.

Tano, who is in charge of the oversight of Community Benefit Districts at the Office of Economic and Workplace Development of San Francisco City.

4.2 New Urbanism and Tight Control over Public Space

Union Square BID, the first BID in San Francisco, was formed in 1999 and extended its boundary to twice its original size in 2009. World-class brand stores, department stores, and luxury hotels are gathered around Union Square Park. In the district, there are many restaurants, cafes, and retail shops. The real estate price of this district is the highest on the West Coast.

The board of directors is mainly composed of business managers or property owners of the above businesses and properties. As representatives of tenants and residents, urban planners and private consultants who have their offices in the district are on the board. The members of the board are keen on improving the management efficiency of the BID and cutting the fat; recently, after a proposal competition, they changed their main bank and the provider of cleaning and security services. Their decision making is rational and rapid.

Union Square BID has generated some positive changes. First, the enhancement of cleaning, garbage collection, and safety patrols provided by Union Square BID improved the atmosphere and business conditions of the district significantly and contributed to revitalizing the city's downtown.

Second, influenced by Danish architect Jan Gehl's theory of New Urbanism, Union Square BID is trying to change the downtown area to a more pedestrian-oriented location and to make public spaces more vibrant. As an experiment, Union Square BID shut off one of its streets, restricting vehicle entry and covering it with green carpet to create a pedestrian public space. Reducing parking spaces in the streets, Union Square BID also installed "parklets" where passengers can sit and rest. These pedestrian-oriented improvements are regarded positively in San Francisco.

However, the BIDs are unwelcoming to undesirable individuals and obstructive activities. The "ambassadors," who usually walk around and provide information to tourists, are also expected to warn people who sit or lie on the sidewalk, engage in aggressive panhandling or public drinking, or otherwise disturb the peace. In bimonthly board meetings, the service provider company tells the board how often their ambassadors have intervened against such annoying behaviors, with information about location and date and how the problems was resolved. It is this moment when the discussion is at its hottest in the board meetings, and many requests arise from property and business owners.

Since 2010, in San Francisco, the most liberal city in the United States, there have been local ordinances that prohibit sitting and lying on the sidewalk during the day and which make aggressive panhandling against the law. However, the ambassadors are private security guards; they cannot ticket anyone engaging in annoying behavior or arrest criminals. Consequently, Union Square BID pays the San Francisco Police Department to increase the presence of police officers in the district. Although this enhanced police force, called the 10B police,⁹ has a uniform that is slightly different from that of the regular police, it is difficult for ordinary people to distinguish them. These 10B police officers, financed by the BID, enforce the ordinances for annoying behavior.

According to the executive director of the Union Square BID, the warning activities of their ambassadors conform to the content of the local ordinance of San Francisco and simply convey this information to sleeping people. The sit-lie ordinance prohibits passage-disturbing behavior from 7:00 am to 11:00 pm, and thus the ambassadors begin warning people from 7:00 am. However, according to the service provider, the true aim of sleeping disruption is to disperse these undesirables from the district.

Recently, the captain of police on the beat that includes Union Square served as an intermediary between the Silicon Valley Foundation and Union Square BID to raise money from the foundation for an increase in 10B police numbers and the installation of security cameras in the district. The enhancement of patrolling and law enforcement is not only an initiative of the BID but also a goal of the San Francisco Police Department.

Given the close relationship between the Union Square BID and the Police Department, we cannot describe the management of public space by the BID as privatization; Union Square BID is subordinate to the local ordinance and to the oversight of the police captain, and everything that the Union Square BID does in relation to safety needs to be endorsed by the Police Department. Thus, the oversight of the city does not serve to make the BID inclusive. The voices of citizens need to be heard by the BID and the city, but from my observations of the meetings of the Union Square BID, there has been no public comment on its activities. Rather than participate in the meeting, the Coalition on Homelessness is organizing a campaign to

⁹ Because this additional police service, paid for by private entities, is prescribed in Art. 10B of the San Francisco Administrative Code.

change the state law to protect the right to rest and to annul the sit-lie ordinance.

4.3 The Node of Networks in an Area of Blight

By contrast, there are many public participants in the meeting of the Tenderloin Community Benefit District. The Tenderloin is a blighted area where many inhabitants suffer from poverty, with the highest rate of crime in San Francisco, where street sleepers are concentrated, and where drug dealing and prostitution is rife. It is the Skid Row of San Francisco.

However, because of these difficult conditions, there are many non-profit organizations and activists who are engaged in improving the community and people's lives. The staff members of these organizations participate in the discussions of the Tenderloin Community Benefit District as members of the public.

The Tenderloin is located at the heart of the city, between Union Square and Civic Center. Historically, the Tenderloin was a place of entertainment and culture: there were theaters, live jazz houses, and ethnic restaurants; many artists and musicians lived in there (Shaw 2015).

However, after WW2, because of suburbanization and white flight, the Tenderloin began to decline; migrants, veterans, and the poor began to live in old, single-room-occupancy (SRO) hotels. The living conditions of these residential hotels were bad. However, they functioned as absorbers and residences for the people who came from outside and had low incomes.

The gentrification of the Tenderloin began slowly in the 1970s: chain hotels began to purchase the dilapidated SRO hotels to convert them into luxury tourist hotels. In 1978, to resist this gentrification and to protect the lives of tenants and SRO residents, advocacy groups for tenants and SRO residents and a non-profit organization that provided affordable housing in the Tenderloin formed the North of Market Planning Coalition; this coalition proposed local land use planning that defined the Tenderloin as a mainly residential area, prohibited commercial use of buildings except at the ground level, limited the new construction of tourist hotels, and set down zoning rules prohibiting the new construction of buildings of more than five stories (Shaw 2015).

The city accepted most of the proposals and helped Community Development Corporations to purchase deteriorated SRO hotels and convert them into community-based housing or supportive housing. As a result, there are major non-profit organizations in the

Tenderloin that own many properties, provide housing to the vulnerable, and help them in their lives.

The Tenderloin Community Benefit District was formed in 2005 to provide additional cleaning services in the district (Shaw 2015:243-). In meetings of North of Market Planning Coalition, many of participants agreed that the priority of the district was to improve public safety. They believed, on the basis of the Broken Window Theory (Wilson and Kelling 1982) that clear sidewalks would give an impression of orderliness and serve to prevent crime.

At first, an advocacy group for the homeless, the Coalition on Homelessness, expressed deep concerns, worried that homeless people would be dispersed from the Tenderloin by the enhanced service. However, the preparatory committee of the Tenderloin CBD succeeded in recruiting the president of the Coalition on Homelessness as a member of the board; they agreed that state of the sidewalks were important for the health of those sleeping on the streets, and they decided to make a strong effort to pick up needles that had been left on the sidewalks.

Because Community Development Corporations such as the Tenderloin Neighborhood Development Corporation and the Tenderloin Housing Clinic had many properties in the district, it was easy to obtain consensus to form the CBD from property owners of more than 30% of the district. The composition of the board is very diverse: a non-profit organization that owns properties; UC Hastings; owners of SRO hotels, tourist hotels, and theaters; and residents of SRO hotels.

At the meetings of the board and the commissions of the Tenderloin CBD, there are often participants who are not members of the board but who want to share information about their activities and to collaborate with the Tenderloin CBD; recently, through an initiative of the SRO collaborative, an advocacy group of SRO residents but not a member of the Tenderloin CBD, a statement was issued opposing a change to the police beat that might reduce the police presence in the district. The meetings of the Tenderloin CBD function as an open forum to discuss the issues of the community.

As a legal clinical education program, the Tenderloin CBD received law school students from UC Hastings; after participant observation and interview surveys, they proposed the revision of the bylaw of the Tenderloin CBD to conform more precisely to the requirements of the Brown Act. Following their proposal, the board revised their bylaw.

Compared with that of the Union Square BID, the management foundation of the Tenderloin CBD is unstable; the budget planning was so rough that because of recent cash-flow problems, the Tenderloin CBD could not pay the commission to the service provider by the appointed time and failed to employ a new executive director. To strengthen its organizational and financial structure, the board asked an accounting firm to propose a reform plan; it did not ask city officials to help with the financial deficit. Following the recommendations of the accounting firm, the board is restructuring the CBD's organization and elaborating operational rules to assure financial transparency.

The cleaning staff is hired by the service provider organization, not by the Tenderloin CBD. This organization is a non-profit located in the Tenderloin, and most of workers were homeless people from the area. To help them re-enter the job market, the non-profit hires them, and the Tenderloin CBD delegates this service to this organization.

Last year, in collaboration with the city's Department of Public Works, the CBD installed portable toilets as an experiment in the Tenderloin, where there is no public restroom, for security reasons. Urination on the sidewalks has been the cause of concern and an increase in cleaning costs and damage to public health. After six months, it was found that the reduced cost of cleaning was larger than the installation and maintenance costs of the portable toilets. Thus, this date-driven toilet project will continue into next year.

Because of the return of tech companies to the central area of San Francisco, the Tenderloin is once again witnessing some gentrification. New openings of restaurants and shops are on increase. For the advocacy group for the homeless, this revitalization has some positive aspects for the safety of those sleeping on the streets. Previously, there were no shops open at night, no lights, and no pedestrians in the Tenderloin, with the result that there were more cases of homeless people being assaulted. Because of the increase in passers-by at night, mutual surveillance prevents violence. The Tenderloin CBD, who opposed gentrification at first, is trying right now to control the gentrification process in a more social and equitable direction.

4.4 The shift from dispersing to caring

Castro is the largest gay community in the world. Along the streets of Castro and Market, nightclubs, bars, restaurants, and shops have accumulated. To provide additional safety and cleaning services and to improve the streetscapes, the Castro CBD was formed along these

streets.

To express the identity of the gay community more vividly, the Castro CBD completed the Castro Street Improvement Project, extending the sidewalks, putting up signs to indicate the history of the neighborhood on the remodeled sidewalks, installing rainbow LED lightning, and painting the crosswalks in rainbow colors. In order to elaborate this streetscape plan, the Castro CBD organized many workshops, in which not only property or business owners but also many stakeholders and inhabitants were able to express their concerns and opinions. This improvement project made the community more solid and unique.

Like the Union Square BID, the Castro CBD has paid the San Francisco Police Department to enhance the presence of the 10B police and to enforce the sit-lie ordinance on homeless people. However, the Castro CBD recognized recently that homeless people who have no support network would return even if the ambassadors and 10B police had moved then on, having enforced the sit-lie ordinance. The Castro CBD therefore started a new program, Castro Care, in partnership with a non-profit organization that helps homeless people to have access to housing and social services. According to a social worker from one such non-profit organization, most homeless people, especially those who have a mental illness or physical disability, do not know how to access support. It is better to connect them to social services than leave them on the street. Working with a community organization enables social workers to provide more individualized treatment to the people who need help.

This inclusive project has just started. The interests differ: the Castro CBD does not want the homeless people to return to the area, while the social workers want to cure them or provide more radical solutions. However, such collaboration at the community-based level is much more valuable than the previous strategy, which simply aimed at moving them elsewhere on the basis of enforcing the sit-lie ordinance.

4. Conclusion

This paper attempted to examine how the polycentric urban governance promoted by BIDs works and how the law can provide democratic control over the governance of BIDs.

Criticizing Ostrom's theory, Harvey argued that the higher-order rule that governs

polycentric governance is so unclear that it is impossible to control the community-based organization democratically.

However, in comparing the cases of New York and San Francisco, it can be seen that the higher-order rules, that is, the state's laws and local ordinances related to the BIDs, have a great effect on their styles of governance.

In New York, the city officials exercise vertical control over the BIDs based on their discretion to refuse the renewal of administrative contracts with them. However, this vertical oversight deprives the BIDs of flexibility in the evolution of their operational rules, which, according to Ostrom's theory, is one of the major advantages of community-based management. In addition, because of the impossibility of local inhabitants and citizens participating in BID discussions, there is a tendency for conflicts between them and the BID to intensify.

By contrast, San Francisco City, which relies on the openness of its meetings under the state law and local ordinance, is trying to make the BID serve the community and be inclusive of stakeholders other than property owners. As the cases of the Tenderloin and Castro CBDs show, these organizations are seeking an alternative way that benefits both local businesses and vulnerable people. Moreover, the contents of the activities of the CBDs vary according to the communities and reflect their characteristics and historical contexts.

However, the openness of the meetings is not enough to guarantee a just city or to prevent the negative influence of narrow interests on the community-based organization. As the collaborative enforcement of the sit-lie ordinance between the Union Square BID and the San Francisco Police Department suggests, even in the most liberal city, maintaining a good image of the city for tourists prevails over respect for the human dignity of vulnerable people. Thus, the law should require more accountability from the BIDs and the city in their collaboration on safety programs and encourage them to take steps that are more inclusive.

As Lefebvre (1968) proposed, a Right to the City movement is necessary across a whole city or at the state level in order to realize a just city. Actually, the advocacy groups of the homeless in California are engaged in a campaign to legislate for the right to rest and to annul the sit-lie ordinances. If this campaign succeeds, the BIDs would have to shift their strategy from dispersing homeless people to giving them support, just as the Castro CBD has begun to.

The advantage of polycentric governance consists in the fact that each community tries to govern its own area with its own policies. This policy diversity enables more innovations than monocentric governance does, if the successful experiences are shared among communities. The law should also serve to promote communication between communities to facilitate this.

References

- Baer, Susan E. (2008) "Private Governments: A Polycentric Perspective." In: Morçol, Goktug et al. ed, *Business Improvement Districts –Research, Theories and Controversies*, CRC Press, pp.51-70.
- Becker, Carol (2012) "Democratic Accountability and Business Improvement Districts", *Public Performance & Management Review*, Vol.36, No.2, pp.187-202.
- Becker, Carol, Seth, Grossman and Dos Santos, Brenda (2011). *2010 BID census report*, International Downtown Association.
- Blomley, Nicholas, Delaney, David and Ford, Richard T. ed.(2001) *The legal geographies reader*, Blackwell.
- Briffault, Richard (1999) "A Government for Our Time?: Business Improvement Districts and Urban Governance" *Columbia Law Rev.* Vol.99, pp.365–477.
- Eisenberg, Arthur (2012) "Some Unresolved Constitutional Questions", Bell, Shiffman, Elizabeth, Brown and Venkataraman, Fisyak(ed.) *Beyond Zuccotti Park : Freedom of Assembly and the Occupation of Public Space*, New village Press.
- Ellickson, Robert (1998) "New Institutions for Old Neighborhoods" *Duke Law Journal*, Vol.48, pp.75-110.
- Frug, Gerald, Ford, Richard and Barron, David (2010) *Local Government Law: Cases and Materials*, Fifth Edition, West.
- Harvey, David (2012) *Rebel Cities: From the Right to the City to the Urban Revolution*, Verso Books.
- Jacobs, Jane (1961) *The Death and Life of Great American Cities*, Random House
- Kayden, Jerold S. (2000) *Privately Owned Public Space: The New York City Experience*, John Wiley & Sons, Inc.
- Lefebvre, Henri (1968) *Le droit à la ville*, Anthropos.
- Loukaitou-Sideris, Anastasia & Ehrenfeucht, Renia (2011) *Sidewalks: Conflict and Negotiation over Public Space*, The MIT Press.

- MacDonald, John, Stokes, Robert J., Grunwald, Ben and Bluthenthal, Ricky (2013) “The Privatization of Public Safety in Urban Neighborhoods: Do Business Improvement Districts Reduce Violent Crime Among Adolescents?” *Law & Society Review*, Vol.47, Issue 3, pp.621–652.
- Madden, David J (2010) “Revisiting the End of Public Space: Assembling the Public in an Urban Park” *City and Community*, Vol.9, No.2, pp.187-207.
- Novak, William J.(1996) *The People's Welfare: Law and Regulation in Nineteenth-Century America*, The University of North Carolina Press.
- Office of Economic and Workplace Development (2012) *Impact Analysis of San Francisco's Property & Business Improvement Districts (CBDs/BIDs)*, San Francisco City.
- Ostrom, Elinor et al. (1973) *Community Organization and the Provision of Police services*. Beverly Hills.
- Ostrom, Elinor (1990) *Governing the Commons*, Cambridge University Press
- Ostrom,Elinor (2010) ”Beyond Markets and States: Polycentric Governance of Complex Economic System”, *American Economic Review*, vol.100, no.3, pp.641-672.
- Ostrom, Vincent (1999) “Polycentricity (Part1)” in: McGinnis, Michael D.ed, *Polycentricity and Local Public Economies*, The University of Michigan Press, pp.52-74.
- Shaw, Randy (2015) *The Tenderloin: Sex, Crime, and Resistance in the Heart of San Francisco*, Urban Reality Press.
- Warner, E.Mildred (2011) “Club Goods and Local Government: Questions for Planners” *Journal of the American Planning Association*, Vol. 77, No. 2, pp.155-166.
- Wilson, James and Kelling, George (1982) "Broken Windows: The police and neighborhood safety", *The Atlantic Monthly*, Volume 249, No. 3, pp.29-38.
- Zukin, Sharon (2009) *Naked City: The Death and Life of Authentic Urban Places*, Oxford University Press.