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The Tower of David: Social Order in a Vertical Community

*Manuel A. Gómez**

INTRODUCTION

On April 9, 2012, a sting commando operation that involved more than one hundred National Guard troops, members of the anti-kidnapping Special Force Unit, and the local police stormed into *la Torre de David* (the “Tower of David” or “TOD”), an unfinished and abandoned skyscraper in downtown Caracas, Venezuela. The building, which had been occupied by squatters since 2007, was suspected of serving as the hideout of a criminal organization responsible for the kidnapping of a Costa Rican diplomat that occurred a few days before April 9. The operation came as no surprise to the general public because of the tower’s bad reputation as a crime-ridden place where drug trafficking and other dangerous activities were allegedly commonplace. After hours of searching the entire building and its surroundings, the police found no signs of the kidnapped diplomat or his captors.

Furthermore, the police did not find any evidence of criminal activities occurring in the building, nor any of the alleged widespread drug trafficking so widely rumored. The suspicion of TOD being a crime scene turned out to be unfounded. The true discovery was, instead, the existence of a reasonably well-organized community inside the otherwise derelict office building. Since its initial occupation five years earlier, TOD had become the residence—not of criminals, but instead—of several hundred displaced families, most of them who had lost their homes to natural disasters, or who relocated from the suburbs seeking better work opportunities in the heart of Caracas, the Venezuelan capital. Despite the precarious conditions of the abandoned building, which at the time of the initial occupation lacked electricity, sewage, running water, and most internal walls and windows; the first squatters made it their home, and gradually repurposed it and transformed it into a self-contained vertical community.¹

The generally negative connotation attributed to TOD, and its association with chaos, lawlessness, the criminal underworld, and other

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¹ ALFREDO BRILLEMBOURG & HUBERT KLUMPNER, TORRE DAVID: INFORMAL VERTICAL COMMUNITIES 33 (2013) [hereinafter *Brillembourg, Torre David*].

“urban ills”² seem to be more a product of media portrayal and commercial exploitation than reality. A number of recent films,³ TV shows,⁴ books,⁵ and even a sub-segment of the tourism industry,⁶ have contributed to highlight the upsurge of a *slum culture* and its alleged role in contributing to foster anti-social behavior, poverty, and unhealthy living conditions.⁷ In the particular case of TOD, the media depiction of the occupation has been generally consistent with this negative view.⁸ For example, an episode of the famous TV show *Homeland*, titled “Tower of David,” which aired on October of 2013, depicted TOD as a lawless place run by a group of mercenaries led by “El Niño,” which happens to be the same nickname of TOD’s main leader. The difference is that the real “El Niño” is not a mercenary but an evangelical pastor.

In the real TOD, within months of the initial occupations, the first residents worked toward adapting the interior of the building to accommodate their needs, and set the foundations for a permanent community that spread from the ground level to the twenty-eight floor. Soon thereafter, the otherwise inhabitable structure boasted a makeshift intricate plumbing system resembling a Rube-Goldberg contraption,⁹ but which provided running water to residents from the city main all the way into their apartments.¹⁰ The electrical power was initially taken from the city’s street poles via a web of rigged wires and switchbox. However, after

² GERALD D. SUTTLES, *THE SOCIAL ORDER OF THE SLUM: ETHNICITY AND TERRITORY IN THE INNER CITY 3* (U. Chicago Press 1968) [hereinafter *Gerald Suttles, Social Order of the Slum*].

³ See, e.g., *CITY OF GOD (Cidade de Deus)* (O2 Films, 2002), which depicts the crime-ridden slums (*favelas*) of Rio de Janeiro, or *SLUMDOG MILLIONAIRE* (Warner Brothers, 2008), which portrays the challenges of life in a Mumbai shantytown.

⁴ *Homeland*, Season 3, Episode 3, (Showtime, October 2013).

⁵ See, e.g., MIKE DAVIS, *PLANET OF SLUMS* (Verso, 2007), JANICE PERLMAN, *FAVELA: FOUR DECADES OF LIVING ON THE EDGE IN RIO DE JANEIRO* (Oxford University Press, 2011), TOBIAS HECHT, *AT HOME IN THE STREET: STREET CHILDREN OF NORTHEAST BRAZIL* (Cambridge University Press, 1998), ROBERT NEUWIRTH, *SHADOW CITIES: A BILLION SQUATTERS, A NEW URBAN WORLD* (Routledge, 2004), and, BRODWYN FISCHER, BRYAN MCCANN & JAVIER AUYERO, *CITIES FROM SCRATCH: POVERTY AND INFORMALITY IN URBAN LATIN AMERICA* (Duke University Press, 2014).

⁶ SLUM TOURISM RESEARCH NETWORK, <http://slumtourism.net/what-is-slum-tourism/> (last visited Aug. 18, 2015).

⁷ ANUPURNA RATHOR, *SLUM DWELERS: CURSE ON DEVELOPMENT* 14 (2003).

⁸ See, e.g., Maolis Castro, *Invasión: El crimen se refugia en la torre Confinanzas*, EL NACIONAL (CARACAS) April 11, 2012, available at: <http://www.reportero24.com/2012/04/invasion-el-crimen-se-refugia-en-la-torre-confinanzas/> (last visited Aug. 18, 2015).

⁹ Rube Goldberg was an American cartoonist, inventor and Pulitzer prize winner who became famous for his illustrations of makeshift machines that performed relatively simple tasks through very complicated over engineered mechanisms. Given the popularity of his inventions, Rube Goldberg became associated with any unnecessarily convoluted mechanism; hence the term “Rube Goldberg machine.” See RUBE GOLDBERG, <https://www.rubegoldberg.com/> (last visited Aug. 18, 2015); see also RUBE GOLDBERG MACHINE WIKI, https://en.wikipedia.org/wiki/Rube_Goldberg_machine (last visited Aug. 18, 2015).

¹⁰ *Brillembourg, Torre David*, at 216.

2009, when the community became formally organized with the creation of a cooperative association, electricity began to be supplied steadily from the street into the building through several lines that extended from a city trunk cable provided by the electricity company.¹¹ A crew of residents working around the clock was given the task to supervise the distribution of electricity and make the necessary repairs to ensure that the service remained uninterrupted.¹² TOD residents also built internal walls with cement, wood, and other construction materials in order to create “apartments” and other “private” spaces to which they brought in furniture, appliances, decorative objects, and even painted the walls with colorful tones, thus creating the imagery of a lively neighborhood.

Common areas were also delineated. As the TOD population grew, its residents sought ways to facilitate life in their vertical community and make it less dependent on the outside world by setting up small convenience stores, hair salons, a bakery, a homemade ice cream shop, an arcade, a gym, and even a nursery/childcare center. Given that TOD had no working elevators and no stairs, access to the building was only possible through a vehicular ramp that motorcycles working as taxis (known as “mototaxis” in Venezuela) used to shuttle residents up and down the building. Community leaders decided the allocation of apartments, or “spaces”—as TOD residents called them—based on different factors, including the age and physical condition of those in each family group. Given the difficult access to the building, the lower floors were reserved to the elderly and to families with small children.

Despite the seemingly private nature of certain spaces allocated to individual residents and their families, the transfer and negotiation of apartments was subject to approval by the “floor coordinator” or by a board member of the organization “Cooperativa de Vivienda Caciques de Venezuela” (“CCV”) established in 2009. In addition, TOD residents devised a set of norms governing the use of public and private spaces, collection and disposal of trash, use of electricity, water, internal transportation, and general maintenance. The residents, through the CCV, also set forth criteria for the admission of new occupants into the building, and created a special monthly fee payable by each member to defray the cost of common expenses. The community was divided into “floors,” each under the care of a coordinator. A poster containing a general code of conduct, a table with the allocation of tasks, and other relevant information has been placed on each floor for all residents to see.¹³

¹¹ *Id.* at 222.

¹² *Id.*

¹³ Javier Brassesco, *Una Mirada desde la Torre de David*, EL UNIVERSAL (CARACAS), Sept. 14, 2011, available at <http://www.eluniversal.com/caracas/120914/una-mirada-desde-la-torre-de-david>.

Such level of social order attained by TOD residents took the outside world by surprise. The emergence of a well-organized community under such adverse circumstances also caught the attention of social scientists, architects, and urban planners. The most salient example was a group called Urban Think Tank (“U-TT”), which devoted significant resources to develop a comprehensive plan to maximize the use of the building in a sustainable, socially responsible, and efficient manner.¹⁴ U-TT’s final proposal was entered into the prestigious International Architecture Exhibition *Bienale di Venezia* in 2012 and obtained the top prize, which helped bring international notoriety to TOD. U-TT proposed an innovative form of experimental intervention geared to take advantage of the collective efforts of TOD residents.¹⁵ The plan envisioned retrofitting TOD so it could generate its own power, the installation of an efficient water system, and other technologies that would improve the livelihood of TOD residents, and which U-TT hoped— could serve as a model of urban intervention to emulate.¹⁶ Unsurprisingly, U-TT’s proposed plan was met with great resistance in Venezuela, mostly because of the highly polarized political environment and the negative connotation attached to the occupation of TOD.

The occupation of TOD was obviously illegal because none of the residents had been authorized by FOGADE (the owner) to move into the building, and much less to modify it for a purpose so different from its intended original use. Notwithstanding, from a different standpoint, TOD became an example of a highly organized community with a functioning normative order that served its members better than the state or any other external system. The purpose of this article is precisely to explore the factors that promote social order and foster law-abiding behavior in communities like TOD, which emerge outside —or even against— the state and its legal institutions. Following this introduction, Section II of this article delves into a contextual explanation of the political and social environment in which the TOD community arose and thrived, its governance regime including the creation of internal norms, and the enforcement mechanisms used to materialize the obligations arising from those norms. Section III, shifts the attention of the paper to a broader discussion regarding the main factors that contribute to achieving social order in settings that emerge in apparent contradiction of the official legal system, such as the TOD community. This section also discusses the emergence of private norms in such context, their relationship with the official legal system, and the effectiveness of community-based

¹⁴ *Id.* at 33-34.

¹⁵ *Id.* at 334, et. seq.

¹⁶ *Id.*

enforcement mechanisms. The article concludes with a brief discussion of how the analysis presented here contributes to the literature on private ordering.

THE FALL OF A DREAM, AND THE RISE OF A COMMUNITY

1) IF ONLY DAVID KNEW: FROM RICHES TO RAGS

The moniker Tower of David was given to the skyscraper after banking mogul David Brillembourg, the CEO and owner of *Grupo Confinanzas* (“GC”), one of the most influential financial conglomerates in Venezuela during the decades of the eighties and early nineties. TOD was the tallest in a six-building complex that would form the Confinanzas Financial Center. When completed, TOD promised to be the eight tallest building in Latin America, and certainly one of the most modern. The all-glass covered building would have been crowned by a helipad, and the entire complex was supposed to offer ample commercial parking, a hotel, and retail space. The formidable ascent of Brillembourg in the local financial and banking sector during those years, and his business acumen and audacity, earned him the nickname King David, so it was obvious for the crown jewel of his ambitious real estate project to bear his name.

Most of Brillembourg’s fortune resulted from his involvement in construction and real estate transactions, mortgage and insurance, and later on, from his success in the Caracas stock market. Brillembourg’s financial audacity was admired in the local banking circles. He had successfully built and financed many commercial real estate projects in Venezuela, which gave him enough liquidity to purchase a bank, and other financial institutions. One of his most memorable transactions, which occurred in 1990 at the pinnacle of his financial career, was the hostile take-over of a local brewery through a savvy maneuver that reportedly earned him five hundred million dollars, a notable sum for the relatively small Caracas financial sector. That same year, the Caracas stock exchange closed with an all-time record figure of five billion dollars in transactions, which was remarkable for a market that the previous year did not even cross the twelve million dollar mark.

The construction of Centro Confinanzas began in 1990, but it was abruptly interrupted three years later, and never resumed. One of the main reasons was Brillembourg’s sudden illness and his untimely death due to cancer, which drove his personally controlled financial conglomerate to a downward spiral. Another contributing factor was political in nature. During those years, Venezuelan underwent a profound crisis as then-president Carlos Andrés Pérez endured widespread street protests in 1989, two frustrated coups d’état in 1992, and later succumbed to a scandalous allegation of mismanagement of a discretionary funds account, which

resulted in his impeachment, imprisonment, and fall into political disgrace. Although some analysts have attributed Perez's demise to a political vendetta, the existence of a general crisis was undeniable. After Perez's fall, the country's leadership went through a difficult transition until new general elections were held in 1994.

After an apparent return to political normalcy that resulted from the arrival of Rafael Caldera to the presidency, Venezuela was hit by an unprecedented financial crisis that caused most local banks to implode and be placed under a special receivership regime by government authorities. Many bank directors, including their lawyers, were indicted as a result of a judicial witch-hunt that sought to find the culprit for the alleged manipulation of the markets, including the false reporting by the leading local banks of their real credit portfolio to the regulatory agencies, and many other counts of fraud. The shakedown had implications on all sectors of the economy; it also eroded the stability of the government, and the public confidence on the country's legal institutions. Almost every financial institution operating in the country, including those that were part of GC were affected, and many of their directors were indicted, removed from their managerial duties, and their property seized.

The special receiver appointed by the government to manage the troubled banks was given the task to oversee the day-to-day activities, and to determine whether the institution should be recovered or liquidated. In the course of the receivership, the assets of many banks and related institutions were eventually transferred to the General Fund for the Guarantee of Deposits ("FOGADE") to further compensate the myriad of accountholders and other customers who suffered lost as a result of the crisis. Depending on each situation, some of the seized assets were disposed of through public actions—as a way to obtain liquidity and compensate the injured bank customers—while others remained in the hands of FOGADE or the government-controlled institutions. Numerous office buildings, some of which were located in the most exclusive areas of Caracas, and also in foreign cities such as Miami and New York, also succumbed to this fate. During the receivership, many construction projects were paralyzed and later abandoned due to lack of resources or management, and TOD was one of those.

THE ABANDONED TOWER AND THE BOLIVARIAN MISIONES

The barebones concrete structure of TOD partially covered in glass was boarded off and slowly fell into despair during the next several years after the government takeover. GC was eventually liquidated, and its assets—including TOD—were dispersed among different government controlled entities. In the case of TOD, it was transferred to FOGADE, which became

its legal owner. Despite a change in its legal status, TOD continued in the same state of abandonment. At least in one occasion, the government tried to sell the project for sixty million dollars, but no bidders showed interest.¹⁷ In 2014, there were rumors that a Chinese banking consortium had purchased the entire complex, but the government denied it.¹⁸ During all these years, TOD became a reminder of the golden years of the baking industry in Venezuela, and also turned into an eyesore in the skyline of an otherwise modern and prosperous city.

With the financial crisis apparently resolved, Venezuela entered into a new era. A radical change in the government occurred in 1998 with the victory of Hugo Chavez, a former military commander who had participated in the 1992 attempt to depose the government. Chavez vowed to lead a so-called political revolution that promoted a sweeping constitutional amendment, a transformation of the government to bring it closer to the people, and a radical departure from traditional Venezuelan politics. His initial term was faced with important challenges, including some corruption scandals related to the management of social funds, a natural disaster in late 1999 that left tens of thousands of victims homeless and in need of immediate government assistance, and a nationwide strike in 2003 that shut down the oil industry—Venezuela’s main economic engine—for almost two months and contributed to the accelerated crisis. On the other hand, oil prices soared and reached historical highs, which filled the government’s coffers almost overnight and gave the Chavista administration an enormous political and economic leverage both domestically and internationally.

Starting in 2004, the Venezuelan government invested significant resources in an array of social programs that it called Misiones Bolivarianas (*Bolivarian Missions*).¹⁹ The stated objective of the Misiones was to provide immediate solutions to pressing issues such as health, housing, education, and food; but the government made no secret that it would also use the Misiones as political tools, and more concretely, to purchase votes.²⁰ Despite the generous allocation of funds to the Misiones, the government was unable to offer a systematic solution to the different problems that it sought to address through those social programs.²¹ One of the most critical problems was the lack of sufficient housing exacerbated by several factors.

¹⁷ *Brillembourg, Torre David* at 89.

¹⁸ *Desalojan a ocupantes de ‘Torre David’*, *El Universal*, (Caracas), July 22, 2014, available at <http://www.eluniversal.com.mx/el-mundo/2014/desalojan-torre-david-caracas-1025049.html>.

¹⁹ See generally Manuel A. Gómez, *Malleable Law: The (mis)Use of Legal Tools in the Pursuit of a Political Agenda*, 19 *ILSA J. Int’l & Comp. L.* 509 (2013) [hereinafter *Manuel A. Gómez, Malleable Law*].

²⁰ *Id.*

²¹ *Id.*

The main ones were the tens of thousands of Venezuelans who lost their homes to floods and other natural disasters, the ultra protectionist pro-tenant policies that deterred renters from leasing their property, the complete halt of the construction industry, and the growing demand caused by the migratory waves from rural areas to the major cities.

SQUATTERS: READY, SET, GO. . .

In order to appease an increasingly impatient populace, the government implemented certain protectionist policies such as a ban on residential evictions; it also froze rent prices, and ordered the suspension of all pending litigation involving tenants.²² Far from offering a permanent solution to the problem, these measures were just a temporary fix, and further contributed to the polarization between tenants and property owners thus incentivizing the latter to devise creative ways to bypass the regulatory limitations.²³ As the situation worsened and the government became more radicalized against the private sector, several high-ranking government officials, including President Chavez himself, began encouraging people to occupy any unused private land or building without fearing eviction or any similar action.²⁴ Squatting became rampant throughout the country,²⁵ and those engaged in it routinely brandished Venezuelan flags to insinuate that they had government support.²⁶

Once squatters occupied a building the only option left to the owner was to negotiate directly with them or to rely on other extralegal means, given that no effective legal remedies were available.²⁷ Although most of the affected property was privately owned, squatting also affected government-owned buildings and even public spaces.²⁸ The lack of basic

²² *Suspendidos en el país 40 mil juicios inmobiliarios*, CÁMARA INMOBILIARIA DE VENEZUELA, Jan. 26, 2011, available at <http://www.camarainmobiliaria.org.ve/articles/1535>; see also *Decreto con Rango y Fuerza de Ley contra el Desalojo y la Desocupación Arbitraria de Viviendas*, OFICIAL GAZETTE, May 5, 2011, No. 39,668.

²³ See, e.g., *Lorenzi and Martusciello v. AFIVEL*, Juzgado Primero del Municipio Iribarren de la Circunscripción Judicial del Estado Lara, Feb. 1, 2006 (finding a commodatum—gratuitious loan—contract to be a fraudulent tactic against the rights of the tenant).

²⁴ Teodoro Petkoff, *El discurso invasor*, TAL CUAL, Jan. 25, 2011; see also Valentina Lares Martiz, *Se desata ola de invasiones por ley de tierras en Venezuela*, EL TIEMPO, Feb. 5, 2005, available at <http://www.eltiempo.com/archivo/documento/MAM-1676976>.

²⁵ Felipe Benitez, *Por Un Pais de Propietarios: Estadísticas, casos de violaciones a la propiedad privada en Venezuela*, Noviembre 2005-11, Nov. 2011, available at http://paisdepropietarios.org/home/wp-content/uploads/2014/08/PDP_Estadisticas_Final11.pdf.

²⁶ Luis Alberto Perozo Padua, *Invasores de La Puera exigen que terrenos baldíos sean para la Misión Vivienda*, EL IMPULSO, Dec. 5, 2013, available at <http://elimpulso.com/articulo/invasores-de-la-puerta-exigen-que-terrenos-baldios-sean-para-la-mision-vivienda#>.

²⁷ Gerardo Blyde, *Invasiones Legalizadas*, EL UNIVERSAL, Dec. 16, 2011, available at <http://www.eluniversal.com/opinion/111216/invasiones-legalizadas>.

²⁸ See *Brillembourg, Torre David*, at 102; see also Rubén Bolívar Idrogo, *GNB impidió invasión*

services such as water, sewage, electricity, and a barebones structure that lacked windows, most walls and even stairs, made TOD an unlikely candidate for squatting at first glance. However, the building's location in the heart of downtown Caracas, and thus easily accessible by public transportation, lessened such drawback and made it attractive to squatters. The defining event that drove people to seek shelter inside TOD was a devastating rainstorm that affected some of the city's poorest neighborhoods and left numerous families homeless in September of 2007.²⁹ At first, the occupation, which was intended to be temporary, just affected the ground floor and it simply involved some tarps, tents, and other makeshift covers.

Progressively, as more people arrived, and the ground floor became insufficient to accommodate all the residents, squatters moved into more permanent quarters in the higher floors, and the community leaders disallowed the use of tents.³⁰ The residents started retrofitting and adapting parts of the building to their needs, including building walls, separating private from public areas, and organizing themselves as a self-sufficient community. One of the defining moments in the occupation of TOD was the arrival of an Pentecostal evangelical leader named Alexander Daza (aka El Niño, "The Kid") who established his church in the ground floor of the adjacent building (Torre B), and immediately became the de facto community leader.³¹ Daza was instrumental in organizing the occupants, who preferred to call themselves "neighbors,"³² instead of squatters, or trespassers, which is how the media has generally portrayed them.³³ The fact that many of the residents were also members of the same church strengthened the sense of social cohesion, which in turn facilitated the creation of norms, and fostered intra-community cooperation. Interestingly, some leaders of the increasingly popular Pentecostal evangelical church in Venezuela have been instrumental in the recent growth of shantytowns and the upsurge of squatting in that country.³⁴

a ocho edificios de Misión Vivienda, NOTITARDE, Dec. 9, 2013, available at <http://www.notitarde.com/Sucesos/GNB-impidio-invasion-a-ocho-edificios-de-Mision-Vivienda-2013/12/10/288017>

²⁹ There are some reports of a 2003 occupation, but if it occurred, it was only temporary and very negligible. See, John Lee Anderson, *Slumlord*, THE NEW YORKER, Jan. 28, 2013 [hereinafter, *Anderson, Slumlord*].

³⁰ *Brillembourg, Torre David*, at 138.

³¹ *Id.*

³² *Id.* at 70.

³³ See generally *Anderson, Slumlord*; Thomas Wagner, *Socialism in Skyscraper*, SPIEGEL ONLINE, May 30, 2012, <http://www.spiegel.de/fotostrecke/chavez-anhaenger-besetzen-in-caracas-wolkenkratzer-torre-de-david-fotostrecke-82563.html>; Javier Brassesco, *Torre de David se Blinda Ante la Incertidumbre*, EL UNIVERSAL, Feb. 20, 2013, available at <http://www.eluniversal.com/caracas/130220/torre-de-david-se-blinda-ante-la-incertidumbre>.

³⁴ See generally RAFAEL SÁNCHEZ, *SEIZED BY THE SPIRIT: THE MYSTICAL FOUNDATION OF*

THE ORDER WITHIN

In 2009, Daza led the community to adopt a formal governance structure through the establishment of the CCV, of which he also became the president. Members of Daza's inner circle undertook different roles, and were also vested with formal titles such as Secretary and Deputy Manager of Social Services and Finances, Security Coordinator, Electricity and Water Crew, and Floor Coordinator. In total, the cooperative employed approximately thirty-three people.³⁵ The formation of a cooperative was also an important way for the community to benefit from government programs, including loans, microcredits, and other forms of assistance offered by the Chavez administration to cooperatives.³⁶ Moreover, the CCV became the community's official representative regarding the defense of the rights of TOD's residents vis-à-vis the municipal and national governments, and other public and private entities. One example of this intermediation was the negotiation between CCV and the utility companies regarding the provision of water and electricity to the building.³⁷

The promotion of cooperatives and similar organizations became an important component of the government's social and economic agenda since the beginning of the Chavez administration.³⁸ The government vowed to create opportunities for disenfranchised citizens who had been traditionally excluded from economic opportunities and from political participation.³⁹ The support not only came in the form of political endorsement but also through the passage of special legislation regulating cooperative associations,⁴⁰ and the establishment of an administrative agency in charge of overseeing their activities.⁴¹

Given that many government benefits, especially those offered through the Misiones, were mostly accessible only to those who showed unconditional support for the Chavista regime, TOD residents were also pressured to join the ranks of the ruling political party (United Socialist

SQUATTING AMONG PENTECOSTALS IN CARACAS (VENEZUELA) TODAY, 267-305 (Public Culture) (2008); see also, *Brillembourg, Torre David*, at 141.

³⁵ *Brillembourg, Torre David*, at 212.

³⁶ Gustavo Silva, *Logros de la Revolución Bolivariana. Razones para votar por Chávez el 3 de Diciembre*, Nov. 14, 2006, available at: <http://www.aporrea.org/misiones/a27203.html>; see also, Betsy Bowman & Bob Stone, *Venezuela's Cooperative Revolution*, DOLLARS & SENSE (July/Aug. 2006), available at <http://www.dollarsandsense.org/archives/2006/0706bowmanstone.html>. [Hereinafter *Bowman & Stone, Cooperative Revolution*]

³⁷ *Brillembourg, Torre David*, at 216, 223.

³⁸ See *Bowman & Stone, Cooperative Revolution*.

³⁹ *Id.*

⁴⁰ See generally *Ley Especial de Asociaciones Cooperativas*, OFFICIAL GAZETTE No. 37,285, Sept. 18, 2001.

⁴¹ See *Superintendencia Nacional de Asociaciones Cooperativas (SUNACOOP)*, <http://www.mpcmunas.gob.ve/sunacoop/>.

Party of Venezuela, or “PSUV”).⁴² The use of the Misiones as voting purchasing strategies became one of Chavez’s most effective measures to engage ordinary citizens in political activism in exchange for tangible benefits, mostly in the form of cash transfers.⁴³ Because of the secrecy and informality that characterized the management of the Misiones and the discretion given to those in charge of the different programs, it is impossible to know with precision how much has been disbursed under each program, but the general perception is that in the heyday of the Misiones the total funds disbursed by the government through these social programs were about 4.5 percent of Venezuela’s GDP.⁴⁴ Regardless of whether TOD residents directly benefitted from the Misiones or other government programs, and how much they obtained from these sources; it is evident that they did not rely exclusively on that kind of assistance to support themselves.

As the TOD community became consolidated and grew in size, it also encouraged the entrepreneurial spirit of certain individuals who strived to meet the needs of their fast growing vertical neighborhood.⁴⁵ As a result, the community saw the emergence of small businesses, such as a few small grocery stores, a cafeteria, a school supply store, a beauty salon, a call center, a day care facility, a tailoring shop, and a video game arcade.⁴⁶ In addition, the residents built a church, a gym, a basketball court, and other recreational areas. The basketball court became a particularly important space and the subject of strict regulation by the cooperative, which enacted a code of conduct (e.g., no cursing in the court, no playing without uniform), sponsored a league, and appointed a sports coordinator to enforce the rules and organize the activities.⁴⁷

The cooperative kept tight control regarding the operation of any businesses established at TOD. Every stand or store that engaged in commercial activities had to be expressly authorized by the Board, which even regulated their prices and profit margins.⁴⁸ For example, those merchants operating from the ground to the 10th floor “must sell their goods at prices regulated by the government. Above the 10th floor, on the other hand, shop owners, are permitted to set their prices at one or *two*

⁴² See generally Manuel A. Gómez, *Malleable Law*.

⁴³ See, e.g., Decree No. 4.342, Mar. 5, 2006, Mision Madres del Barrio San Carlos Cojedes [*Mission Mothers of the Shanty Town San Carlos Cojedes*], art. 1.

⁴⁴ JAVIER CORRALES & MICHAEL PENFOLD-BECERRA, *DRAGON IN THE TROPICS: HUGO CHÁVEZ AND THE POLITICAL ECONOMY OF REVOLUTION IN VENEZUELA* 42 (Brookings Institution Press 2011) [hereinafter *Dragon in the Tropics*].

⁴⁵ *Brillembourg, Torre David*, at 210.

⁴⁶ *Id.* at 138, 210.

⁴⁷ *Id.* at 141.

⁴⁸ Interview with Pedro G. (TOD resident), Aug. 8, 2014, Caracas, Venezuela.

bolívares more than the government mandate, taking into account the costs and difficulty of transportation.”⁴⁹ Furthermore, some businesses such as the hairdresser on the 20th floor, operated out of “rented” space, which was also subject to approval and oversight by CCV. The cooperative also helped organize a transportation system to shuttle residents from the ground to the 10th floor through the ramps.⁵⁰ The system consisted of a fleet of dedicated mototaxis that served the community around the clock.⁵¹

Other services organized by the community were the provision of sewage and garbage disposal,⁵² clean water distribution,⁵³ and electricity.⁵⁴ Some of these services, such as waste management, required coordination with the municipality. The provision of utilities such as electricity and clean water were facilitated by the CCV through an intricate web of jury-rigged pipes, cables, and other connections; and were also possible through an agreement between the CCV and the local government.⁵⁵ In this sense, the CCV became an effective mediator between the neighbors and the outside world.

Internally, the CCV was at the top of a well-defined governance pyramid that comprised a President, a Secretary and Deputy Manager, a Board of Directors (“Junta Directiva”), Floor Coordinators, and also Water Distribution, Electricity, and Facility Cleaning Coordinators.⁵⁶ The ultimate decision-making authority of CCV rested on the President, who had “the absolute and final say on everything.”⁵⁷ The authority of the CCV President and his perceived legitimacy was enhanced by the fact that, as pastor of the community church, Mr. Daza was also the spiritual and moral leader of the community. His dual role as top administrator and spiritual advisor gave him clout and also strengthened his legitimacy both internally among his fellow residents, and externally in the eyes of government officials and any other actors that entered into a relationship with TOD. CCV’s board members were chosen from among Daza’s inner circle, which strengthened their own social network.

The most influential board member appeared to be Gladys Flores,⁵⁸ a

⁴⁹ *Id.* at 210.

⁵⁰ *De rascacielos a rancho vertical*, TAL CUAL DIGITAL, Aug. 20, 2012, available at <http://www.talcualdigital.com/Nota/visor.aspx?id=75548&tipo=AVA>.

⁵¹ Andrew Rosati, *Caracas is Finally Ending the ‘World’s Tallest Squat’*, PRI (Sept. 12, 2014), available at <http://www.pri.org/stories/2014-09-12/caracas-finally-ending-worlds-tallest-squat>.

⁵² *Brillembourg, Torre David*, at 214.

⁵³ *Id.* at 216.

⁵⁴ *Id.* at 222.

⁵⁵ *Id.* at 216.

⁵⁶ *Id.* at 148.

⁵⁷ *Id.*

⁵⁸ Javier Brassesco, *Una Mirada desde la Torre de David*, EL UNIVERSAL (Sept. 14, 2012),

charismatic woman appointed Secretary and Deputy Manager of Social Services and Finances. Flores was also put in charge of overseeing “the third circle of leadership, the floor coordinators, who are charged with organizing space and ensuring that the building systems on his or her respective floors are maintained.”⁵⁹ The remaining board members were given the task of coordinating core activities such as water services, electricity, cleaning, and the oversight of the security personnel deployed at the main gate and other access points to TOD. Although the most critical decisions were made at the highest level, CCV representatives held numerous general meetings to which all residents were invited.⁶⁰ The board used these meetings to gauge the interest of the community on certain issues, and to assess the legitimacy of the decisions made by the President and his inner circle. What resulted from this was a hybrid governance system of bottom-up democratic discussion and authoritarian decision-making by Daza and his aides.⁶¹

The CCV Secretary and the Board of Directors handled most collective and individual grievances.⁶² Depending on the type of issue at stake, the norm allegedly breached, the parties, and the potential impact on the community, the Secretary could act as a mediator by attempting to bring the parties to an agreement, or simply exercise her authority and adjudicate the dispute in a binding manner.⁶³ Floor coordinators also played a limited role by repressing violations that occurred within their floor, and sports coordinators did the same regarding disputes that arose in their territory. Some examples of violations included the sale, lease, or transfer of rights over “private” spaces without authorization; the use of public areas in a manner contrary to the interest of the community, littering, and trespassing. Most rules and regulations were posted on a board affixed to the wall in each floor, which also mentioned the threat of sanctions that varied between a fine, and eviction from the floor or the community.

The existence of a detailed system of community rules and the corresponding enforcement mechanisms reveals that the TOD is neither a “cultural island”⁶⁴ with norms and traditions radically different from the ones that exist in the outside world, nor a disorganized society that rejects traditional values. To the contrary, the social structure and the normative system developed at TOD are aligned and consistent with the values of the

available at <http://www.eluniversal.com/caracas/120914/una-mirada-desde-la-torre-de-david>.

⁵⁹ *Id.*

⁶⁰ Interview with Irma R. (TOD resident), Aug. 8, 2014, Caracas, Venezuela.

⁶¹ *Brillembourg, Tower of David*, at 148.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Gerald Suttles, Social Order of the Slum*, at 3.

larger society, and its official legal system. One clear example of this alignment can be found in the adoption by TOD residents of a legally-formed cooperative as the backbone of their administrative apparatus, and a leadership vested with formal roles. In this sense, one can affirm that the governance regime in place at TOD mimics the larger society, and even relies on it to exist despite the negative perception of TOD as an environment where societal values are subverted and illegality is the norm. In the following section we will delve more into this concept.

THE SKY(SCRAPER) IS NOT THE LIMIT: SOCIAL ORDER
BEYOND THE OFFICIAL LEGAL SYSTEM
PRIVATE GOVERNANCE REDUX

One of the most critical puzzles that has caught the attention of the private ordering literature is the interplay between intra-group cooperation and law-abiding behavior. That is, whether and to what extent cooperation determines compliance with legal rules. A related query deals with the relationship between legitimacy and authority; more specifically on whether cooperation or willingness to follow rules is enhanced by the presence of an authority, and whether the perceived legitimacy of such authority affects behavior in any way. In the case of close-knit communities that operate outside the state apparatus and the official legal system, the interaction is conditioned by the existence of an internal social hierarchy, which in turn facilitated compliance with the indigenous order.⁶⁵ Moreover, high-ranked or well-regarded members of the community are vested with adjudicative or decision-making roles that facilitate the enforcement of this private normative system.⁶⁶ In the specific case of the TOD community, for example, such is the role performed by pastor Daza, and CCV's Board members.

The landscape of private ordering settings is ample,⁶⁷ and the situations reported by the socio-legal literature tend to underscore the perceived efficiency of these environments vis-à-vis the shortcomings of the official legal system.⁶⁸ The significance of those indigenous orderings⁶⁹

⁶⁵ See Marc Galanter, *Indigenous Law and Official Law in the Contemporary United States* 1, Symposium in Bellagio, Italy: State Institutions and Their Use of Folk Law: Theoretical and Practical Issues (Sept. 21-25, 1981) (unpublished manuscript) (on file with author). Following Galanter, "by indigenous law [we] refer not to some diffuse folk consciousness, but to concrete patterns of social ordering to be found in a variety of institutional settings" at 2.

⁶⁶ See Tehila Sagy, *What's so Private About Private Ordering?*, 45 LAW & SOC'Y REV. 923, 926 (2011).

⁶⁷ See ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* 131 (Harvard U. Press 1994) [hereinafter ELLICKSON, *ORDER WITHOUT LAW*].

⁶⁸ See, e.g., Robert C. Ellickson, *A Hypothesis of Wealth-Maximizing Norms: Evidence from the Whaling Industry*, 5 J.L. ECON. & ORG. 83, 83 (1989) [hereinafter Ellickson, *Whaling*]; Lisa Bernstein,

is believed to rest, among other things, on the long-standing multiplex relationships that bind the members of a given community or social group, and whose behavior is generally influenced by their adherence to a shared set of –internal– norms. Voluntary compliance with indigenous norms tends to be high basically because group members view them as legitimate, and this legitimacy extends to those in position of authority within the community. Furthermore, in those—rare—cases when community members do not follow these norms voluntarily, there tends to be an internal enforcement mechanism whereby effective sanctions are applied against the deviants, and the status quo ex ante is restored.⁷⁰

Most of the examples of private ordering found in the law and society literature feature thick descriptions of close-knit communities whose members are related to each other via intricate social ties based on ethnic, political, economic, and even religious reasons. Such are the cases of the Hasidic diamond dealers of 47th street in New York City,⁷¹ the Palanpuri Jains based in Mumbai and Antwerp who now dominate the same industry at a global scale,⁷² the cotton merchants of Tennessee,⁷³ the cattle ranchers of Northern California,⁷⁴ or the Sumo wrestlers of Japan.⁷⁵ To varying degrees these groups rely on their own extralegal contractual regimes. The dispute processing mechanisms utilized by these communities are also diverse, and range from private arbitration to consensus building and conciliation. However, one frequent attribute among these systems is the use of reputation-based sanctions as a catalyst for compliance. There, the observance of norms and internal rulings is not necessarily determined by

Opting out of the Legal System: Extra-Legal Contractual Relations in the Diamond Industry, 21 J. LEGAL STUD. 115 (1992) [hereinafter Bernstein, *Diamonds*].

⁶⁹ See Galanter, *Indigenous Law*, *supra* note 65, at 2-3.

⁷⁰ A distinct, albeit related, issue here is peoples' cooperation with the authorities in charge of enforcing the norms or laws. See Tom R. Tyler, *Legitimacy and Cooperation Why do People Help the Police Fight Crime in Their Communities*, 6 OHIO ST. J. CRIM. L. 231, 249 (2008), at 249 ("Compliance and cooperation appear to be largely distinct from one another, suggesting that the reasons why people obey the law may differ from why they may actively engage with police in the social regulation of crime.").

⁷¹ See Bernstein, *Diamonds*, *supra* note 61, at 115; Barak D. Richman, *How Community Institutions Create Economic Advantage: Jewish Diamond Merchants in New York*, 31 LAW & SOC. INQUIRY 383 (2006).

⁷² See Barak D. Richman, *Ethnic Networks, Extralegal Certainty, and Globalisation: Peering into the Diamond Industry*, in LEGAL CERTAINTY BEYOND THE STATE: EMPIRICAL STUDIES AND THEORIES OF CHANGE (Volkmar Gessner ed., 2013); Manuel A. Gómez, *Precious Resolution: The use of intra-Community Arbitration by Jain Diamond Merchants*, 2 BELGIAN REVIEW OF ARBITRATION, B-ARBITRA 119 (2013) [hereinafter, Gómez, *Precious Resolution*].

⁷³ See Lisa Bernstein, *Private Commercial Law in the Cotton Industry: Creating Cooperation Through Rules, Norms, and Institutions*, 99 MICH. L. REV. 1724 (2001).

⁷⁴ See ROBERT ELLICKSON, *ORDER WITHOUT LAW*, *supra* note 60.

⁷⁵ See Mark D. West, *Legal Rules and Social Norms in Japan's Secret World of Sumo*, 26 J. LEGAL STUD. 165 (1997).

the fear of a physical or economic sanction, but rather on the possibility of losing one's good name in the eyes of the community, or being snubbed from one's social circles. The effectiveness of these types of sanctions is such that in some cases "being shunned or blackballed by the community is tantamount to a death sentence."⁷⁶

Other examples of self-contained indigenous orders that deserve a special comment here are Utopian communities. Historians have documented around three thousand cases of communes and other utopian experiments,⁷⁷ many of which have taken place in the United States.⁷⁸ Utopias vary along a broad spectrum with regard to ideology, membership, governance, internal stratification, and economic model. Their overall goal, however, is to basically propose an ideal social order radically different—and hopefully better—from the society where their promoters came from. Utopian societies are generally associated with the idea of a new beginning, a fresh start, or the return to *Gemeinschaft*.⁷⁹ In this respect, utopian societies tend to be idealistic, or as Sargent has said, "social dreams."⁸⁰ In order to achieve their purpose, most utopian experiments vow to reject mainstream society. They tend to view any external force as competition or as an impediment to the attainment of their idealistic utopian goal. As a result, utopian societies refuse most of the external norms prevalent in mainstream society, while at the same time promote their own legal order, which is also why some utopian communities may be perceived as countercultural.⁸¹

It is precisely because of its apparent rejection of mainstream society and the idealistic ethos of the community that some people have suggested that temporary communities such as the one that hosts the Burning Man event be considered a type of utopia.⁸² But, when looking more carefully into Burning Man, one quickly realizes that the community's departure

⁷⁶ See Gómez, *supra* note 72, at 130.

⁷⁷ Richard Sosis, *Religion and Intragroup Cooperation: Preliminary Results of a Comparative Analysis of Utopian Communities*, 34 CROSS-CULTURAL RES. 70, 73 (2000).

⁷⁸ For a comprehensive list of communal utopias in the United States, see DONALD E. PITZER, AMERICA'S COMMUNAL UTOPIAS 449 (Donald E. Pitzer, ed., 1997). See also William L. Smith, *Intentional Communities 1990-2000: A Portrait*, 16 MICH. SOC. REV. 107, 112 (2002).

⁷⁹ See FERDINAND TÖNNIES, COMMUNITY AND CIVIL SOCIETY 66 (Jose Harris ed., 2001).

⁸⁰ See Lyman Tower Sargent, *The Three Faces of Utopianism Revisited*, 5 UTOPIAN STUD. 1, 3 (1994).

⁸¹ But see Bennett M. Berger, *Utopia and its Environment*, 25 SOCIETY 37, 38 (1988) (suggesting a distinction between counterculture and utopia).

⁸² See, e.g., Rachel Bowditch, *The Somatic City: Rehearsing Utopia at the Burning Man Festival*, UC DAVIS UNIV. LIBRARY, <http://people.lib.ucdavis.edu/~davidm/xcpUrbanFeel/bowditch.html> (last visited Aug. 10, 2015). For an in-depth analysis of law abiding behavior at Burning Man, see Manuel A. Gómez, *Order in the Desert: Law Abiding Behavior at Burning Man*, 2013 MO. J. DISP. RESOL. 349 (2013).

from the ordinary and its seemingly utopian reaction against the order of high culture is only superficial, and in any case temporary.⁸³ The carnivalesque trait of Burning Man creates a liminal space for transgression, license, and excess.⁸⁴ Such atmosphere, however, is not promoted to undermine the external legal order, but rather to re-legitimize positive social values. This is achieved by energizing the community to participate in a shared venture (the building of a temporary city), and to experiment with different forms of innovation in a controlled environment.⁸⁵

Members of the Burning Man community affirm their allegiance—at least for the duration of the event—to a list of Ten Principles.⁸⁶ Most of these principles⁸⁷ are neither indigenous to Burning Man nor opposed to mainstream society, but rather aligned with the external social values of what burners call the “real” world. That is, the values of industrialized, western, and liberal societies. Furthermore, in the particular case of the “leave no trace” principle, it was even expressed in an official US government policy before the Burning Man community embraced it.⁸⁸

Another key characteristic of utopian societies that is lacking in the Burning Man community is the physical commitment of their members and even their seclusion from the outside world. Although some members of the Burning Man community may remain in contact year-round, their physical commitment to the community only lasts one week.⁸⁹ It could still be argued, however, that the utopian element of the Burning Man community does not necessarily rest on its rejection of external social order or its transient membership, but rather on its proposal of an idealized model of society devoid of conflict and inequality, and which focuses on promoting individual and communal artistic self-expression and inclusion. Unlike Burning Man, utopias routinely demand their members not only to

⁸³ See Gómez, *supra* note 82.

⁸⁴ See Chris C. Rojek, *Disney Culture*, 12 LEISURE STUDIES 121, 121-35 (1993).

⁸⁵ See Gómez, *supra* note 82.

⁸⁶ *Id.*

⁸⁷ Perhaps with the exception of decommodification, self-reliance, and self-expression. *Id.*

⁸⁸ That is the case of the “leave no trace” principle, which was promoted as part of an effort during the 1970s to educate the general public to assist in minimizing the environmental degradation that resulted from a surge on outdoors activities in the United States. See Jeffrey L. Marion & Scott E. Reid, Development of the U.S. Leave No Trace Program: An Historical Perspective (Jan. 2001) (unpublished manuscript) (on file with author).

⁸⁹ The issue of permanency has been long debated among members of the Burning Man community. Some view Burning Man as a long-standing social movement that goes well beyond the annual summer gathering. See *Press/Media*, BURNING MAN, <http://www.burningman.com/press/myths.html> (last visited Feb. 7, 2014). Moreover, the organization’s efforts to boost its regional network, the multiplication of Burning Man regional events, the myriad of community-oriented outreach programs, and even the rise of a virtual Burning Man community in online platforms such as Second Life, are signs of that. See BURN2, <http://www.burn2.org/> (last visited Aug. 10, 2015).

“commit”⁹⁰ with their physical presence, to observe a strict code of conduct, and embrace a distinctive set of values, but also to expressly reject or disavow any external order. Through this idea of commitment, utopian societies ensure their continuity, the cohesion of their members, and also guarantee that they behave in accordance with an internal normative order. Commitment demands that members show their unconditional loyalty to the community, endure certain sacrifices, and renounce to any outside influences.⁹¹

Members of most utopian communities are also expected to relinquish or at least share their possessions, and sometimes even their own bodies for the benefit of the common welfare. Although some utopian experiments have espoused an anarchic approach to social organization by rejecting not only external rules, but basically all rules,⁹² other models feature a clear normative structure and a complex stratification⁹³ The communities included in this latter group also tend to require their members to endure various forms of mortification as punishment for their deviant behavior, and surrender themselves to the jurisdiction of the internal authorities. This presupposes the existence of social and political hierarchies whereby one or several leaders, high priests, or elders take on the role of authorities while the rest remain as their subordinates.

The best way to illustrate this is with religious utopias, where the community is organized around a set of spiritual dogmas that contain values and norms revealed to a few chosen individuals who are in charge of keeping order and promoting member cooperation. As Sosis found out after conducting an empirical study of nineteenth century utopian communes, Sosis concluded the fact that religious beliefs “often entail a host of rituals and obligations and expected behavioral patterns”⁹⁴ heightens the level of commitment and loyalty among members, thus promoting intra-community cooperation and therefore ensuring the survival of the community⁹⁵ This is believed to be the main reason why “religious communities are more likely than secular communes to survive at every stage of their life course.”⁹⁶ It could be added that law-abiding behavior

⁹⁰ See Rosabeth Moss Kanter, *Commitment and Social Organization: A Study of Commitment Mechanisms in Utopian Communities*, 33 AM. SOC. REV. 499-517 (1968).

⁹¹ For a thorough discussion of commitment in the context of utopian communities, see *id.*

⁹² This is the case, for example, of the anarchistic or retreat communes described by Moss. See Rosabeth MOSS KANTER, *COMMITMENT AND COMMUNITY: COMMUNES AND UTOPIAS IN SOCIOLOGICAL PERSPECTIVE* (1972).

⁹³ See Miguel Angel Ramiro Avilés, *The Law-Based Utopia*, in *THE PHILOSOPHY OF UTOPIA* 225, 234 (Barbara Goodwin ed., 2001).

⁹⁴ See Sosis, *supra* note 77, at 70, 72.

⁹⁵ *Id.*

⁹⁶ *Id.* at 70.

within these religious communities stems from the belief among community members that the internal norms and the authorities called upon to communicate and enforce those norms are legitimate. That legitimacy may result from tradition passed onto younger community members by previous generations, or from emotional or affectual attitudes toward the spiritual dogmas upheld by the community.⁹⁷

Although the ultimate objective of utopian communities might be unattainable in practical terms, their members are not immune from having to cope with everyday issues, including disputes with other members over the interpretation and enforcement of legal rights. The former demands the establishment of a governance system equipped, among other things, with mechanisms of internal social control. These mechanisms may take diverse forms, such as the court-like Judicial Committee entrusted with dispute resolution functions in the context of *moshavim* communities, to the informal control system personified by the general assembly of the *kibbutzim*.⁹⁸ While most internal disputes are contained within the boundaries of the community's own institutions, there have been cases where disgruntled members have sought the assistance of outside laws and official courts to help them interpret or enforce intra-community agreements,⁹⁹ redefine their relationships, and even to recapture their utopian values¹⁰⁰ The use of official courts—although exceptionally—by members of a community whose main goal is precisely to distance themselves from the *Gesellschaft* or larger society, may seem ironic. It is, however, an indication that indigenous orders not only coexist with the official legal system, but the operation of both is intertwined and interdependent.¹⁰¹

Moreover, there are instances where the use of officially sponsored courts for processing intra-community disputes is not the exception but the rule. One example is the law-bound Tuna Court described by Feldman in

⁹⁷ See Martin E. Spencer, *Weber on Legitimate Norms and Authority*, 21 BRIT. J. SOC., 123, 124 (1970).

⁹⁸ See Allan E. Shapiro, *Law in the Kibbutz: A Reappraisal*, 10 LAW & SOC'Y REV. 415 (1976); Richard D. Schwartz, *Social Factors in the Development of Legal Control: A Case Study of Two Israeli Settlements*, 63 YALE L. J. 471 (1954); Richard D. Schwartz, *Law in the Kibbutz: A Response to Professor Shapiro*, 10 LAW & SOC'Y REV. 439 (1976). For a general description of the general structure and features of the Kibbutzim, see MELFORD E. SPIRO, *KIBBUTZ, VENTURE IN UTOPIA* (1956); Melford E. Spiro, *Utopia and Its Discontents: The Kibbutz and Its Historical Vicissitudes*, 106 AM. ANTHROPOLOGIST 556 (2004).

⁹⁹ See, for example, the litigation involving the Shakers, the Harmonists, the Zoarites, and members of the Oneida community in US courts during the nineteenth century. Carol Weisbrod, *Utopia and the Legal System*, 25 SOCIETY 62, 63 (1988).

¹⁰⁰ See D.H. Meyer, Review, 16 WINTERTHUR PORTFOLIO 101 (1981) (reviewing CAROL WEISBROD, *THE BOUNDARIES OF UTOPIA* (1980)).

¹⁰¹ See Galanter, *Indigenous Law*, *supra* note 65, at 5.

his study of Tokyo's tuna merchants.¹⁰² There, members of a close-knit community of buyers and sellers of tuna transacting in the world's premier fish market process their grievances through a state-sponsored specialized adjudicatory body, and not through unofficial mechanisms. The Tuna Court did not stem from local custom or informal practices but from an ordinance issued by Tokyo's Metropolitan Government, thus showing that under certain circumstances "formal law can outperform informal norms by satisfying the business needs of close-knit merchants while simultaneously contributing to the shared values that ensure the success of their future transactions."¹⁰³

NORMS WITHOUT GOVERNMENT ON THE WAY TO "SEE THE ELEPHANT"¹⁰⁴

In each of the examples that we just described, the idea of social order rests on a prearranged system of norms that binds all members of a community. There, law-abiding behavior is boosted by a sense of normative legitimacy, and further ensured by internal enforcement mechanisms comprised of effective reputation-based sanctions. While in most cases the relevant norms are produced and applied independently from the state, there are also examples where private actors choose to rely instead on official rules and public institutions. Notwithstanding their usefulness for describing the rationale behind private ordering in the context of close-knit communities, none of the aforementioned situations shed light on what happens when community and state-sponsored institutions are absent or inoperative. In other words, one is still left wondering what could promote law-abiding behavior and cooperation in an environment like that of TOD, one devoid of any direct form of external social control or government authority.

This is precisely the question that John Phillip Reid and others tried to answer with their studies on property rights, crime, law enforcement, and social behavior on America's overland trail between 1849 and 1890.¹⁰⁵ During that period, the western territories of the United States not only

¹⁰² See Eric A. Feldman, *The Tuna Court: Law and Norms in the World's Premier Fish Market*, 94 CALIF. L. REV. 313 (2006).

¹⁰³ *Id.*

¹⁰⁴ As Burns points out, "the phrase 'seeing the Elephant' was frequently used during the California Gold Rush by western sojourners to describe their encounters with strange and alien situations or exotic and enlivening experiences—something as unique as actually seeing an elephant was at that time." JOHN F. BURNS, Introduction, in *TAMING THE ELEPHANT: POLITICS, GOVERNMENT, AND LAW IN PIONEER CALIFORNIA I* (John F. Burns & Richard Orsi, eds., 2003).

¹⁰⁵ See JOHN PHILLIP REID, *LAW FOR THE ELEPHANT* (1980); JOHN PHILLIP REID, *POLICING THE ELEPHANT: CRIME, PUNISHMENT, AND SOCIAL BEHAVIOR ON THE OVERLAND TRAIL* (1997); TERRY L. ANDERSON & PETER J. HILL, *THE NOT SO WILD, WILD WEST: PROPERTY RIGHTS ON THE FRONTIER* (2004); RODMAN WILSON PAUL, *MINING FRONTIERS OF THE FAR FAR WEST, 1848-1880* (2001).

lacked a central government but any form of government.¹⁰⁶ Many among the thousands of emigrant explorers who embarked on the conquest of the west had barely anything in common, except for the fact that they were all headed to see the Elephant, to find fortune, and to start a new life. People from all walks of life and from different parts of the world left everything behind and rushed to the newly discovered California gold fields, or to the farmlands of the Oregon territory. Popular assumptions were rife that violence, anarchy, and disregard for property¹⁰⁷ reigned during those times “with no one group having a monopoly on mayhem”¹⁰⁸ It turns out, however, that the seemingly Hobbesian¹⁰⁹ environment of *bellum omnium contra omnes*¹¹⁰ in the American West was not really lawless, “but one where people were aware of some notion of social and legal order and respected it.”¹¹¹

After examining a considerable amount of historical records from the California Gold Rush period, Reid and others concluded that the forty-niners¹¹² and their successors understood and respected property rights. The explorers also established an effective system of governance where court-like institutions were vested with authority to adjudicate local disputes, applying their own substantive norms and procedural rules.¹¹³ The anticipated hardships and uncertainty that laid ahead for the emigrants incentivized them to develop rules of collective action and to forge partnerships of economic, social and political nature. Their governance devices spanned from constitutions adopted by relatively small groups of individuals sharing a wagon train¹¹⁴ to enforcement mechanisms resulting from the cooperative efforts of their members. These emerging communities also develop myriads of miners’ codes¹¹⁵ that regulated the fast-growing mining activity and the courts established throughout the West

¹⁰⁶ BURNS, *supra* note 104, at 6; REID, LAW FOR THE ELEPHANT, at 4.

¹⁰⁷ REID, LAW FOR THE ELEPHANT, *supra* note 105, at 3.

¹⁰⁸ ROGER D. MCGRATH, A Violent Birth: Disorder, Crime and Law Enforcement, 1849-1890, in TAMING THE ELEPHANT: POLITICS, GOVERNMENT, AND LAW IN PIONEER CALIFORNIA 27 (PIONEER CALIFORNIA, John F. Burns & Richard Orsi, eds., 2003).

¹⁰⁹ TERRY L. ANDERSON & PETER J. HILL, The Institutions That Tamed the West, in THE NOT SO WILD, WILD WEST: PROPERTY RIGHTS ON THE FRONTIER 9 (2004).

¹¹⁰ Thomas Hobbes, Hobbes, De Cive: the Latin version, critical edition by Howard Warrender, Oxford University Press, 1983, pp. 40ff.

¹¹¹ See REID, LAW FOR THE ELEPHANT, *supra* note 105, at 5.

¹¹² The term “forty-niners” is a reference to the gold-seekers who immigrated to California from 1849 onward. It is believed that almost four hundred thousand people had flocked to California by 1860. See RODMAN WILSON PAUL, MINING FRONTIERS OF THE FAR FAR WEST, 1848-1880 15 (Elliot West, ed., 2d ed., rev., 2001).

¹¹³ See REID, POLICING THE ELEPHANT, *supra* note 105, at 117.

¹¹⁴ ANDERSON & HILL, *supra* note 105, at 125.

¹¹⁵ BURNS, *supra* note 104, at 6.

to decide mining-related claims¹¹⁶ It is true that some groups of pioneers had a common ethnical origin, religious belief, socio-economic status, and customs. Not surprisingly, the members of these groups remained bound to the same social values and cultural identities of their places of origin.¹¹⁷ But those values and cultural identities were far from being homogenous across the entire population of explorers.

The hundreds of thousands of individuals who rushed to the West during those four decades encompassed very diverse groups, many of which had little or nothing in common, but nonetheless managed to organize themselves in communities that promoted cooperation and maintained a desirable level of social order. Some of those communities, such as the ones formed by wagon train mates during the two thousand mile journey across the Great Plains, were temporary. Others, on the other hand, acquired permanency and eventually contributed to the development of towns and cities, which in turn were folded into the political divisions of the newly-formed states. What is truly remarkable is not how or why the clusters of émigrés sharing the same value system held it together amongst themselves after having left their hometowns, but rather how such a disparate array of different social groups was able to coexist throughout the Overland Trail and maintain a reasonable level of social order.

One could argue that the Overland Trail communities thrived and attained order not only because of the cultural predisposition of their individual members toward law, their legal habits, or the customs, traditions, and values that they brought from home.¹¹⁸ More importantly, they were motivated to cooperate with their fellow adventurers, which in turn may have helped them achieve an acceptable level of social order. On one hand, the émigrés were incentivized by the possibility of obtaining material gains for their efforts, and thus fought to reduce any potential sources of social friction that could obstruct their path to prosperity.¹¹⁹ As a result, they defined individual and communal rights, established mechanisms to foster cooperation that contributed to reduce transaction costs and maximized their gains, and also pushed for the creation of institutions to enforce those rights.¹²⁰ On the other hand, as the communities across the newly populated territories attained stability and their members strengthened their social ties, their incentives to cooperate expanded beyond the idea of minimizing transaction costs and maximizing personal gain.

¹¹⁶ LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 366 (Rev. ed., 2010).

¹¹⁷ ANDERSON & HILL, *supra* note 105, at 16.

¹¹⁸ See REID, POLICING THE ELEPHANT, *supra* note 105, at 231, 360.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 17.

FROM THE OVERLAND TRAIL ALL THE WAY TO THE VERTICAL COMMUNITY

There are obviously many historical and contextual differences between the mining camps of the 1800s in the western United States and the community that recently formed at TOD. Notwithstanding, both examples also have important traits in common. First, both the forty-niners and the TOD squatters rushed to a new life in a physical space full of challenges and hardships. Second, the anticipation of these difficulties acted as an incentive for group members to develop their own rules of collective action, and to forge efficient collaborations of economic, social and political nature. Third, the presence of a pre-existent set of values, religious or otherwise, among certain members of the community, facilitated social cohesion, cooperation, and the promotion of law-abiding behavior. This can be found—in the case of TOD—in the fact that most community members belong to and are active members of the same evangelical church, which also appears to have an important influence on the community at large. Finally, the indigenous system that emerged as a result of these interactions was aligned with the values of the larger society, despite the perception that these communities symbolize a rejection of the official order.

CONCLUSION

The TOD community is far from perfect, and is certainly not an ideal social setting. As described earlier, the initial occupation was motivated by extreme necessity and not by free choice. TOD residents are conscious of their illegal status, and also acknowledge that their presence in the building might have occurred in contravention of the official legal system. To them, however, occupying the building was the lesser of two evils, and a desperate measure in light of their dire living conditions. Given the relative seclusion of the TOD community from the outside world and its inaccessibility from the jurisdictional reach of official authorities, outsiders assumed that TOD was just occupied by criminals who lived in a state of violent chaos. The opposite was true. TOD inhabitants were mostly desperate, struggling people who seized the opportunity of living in the heart of the capital city instead of the inaccessible and dangerous suburban shantytowns. Others arrived to TOD after losing their homes and being left with no other viable housing options. Some had small children or elderly relatives, so living near their workplace was obviously desirable.

Upon moving into TOD, the residents faced incredible hardship and formed a community that has worked reasonably well. Far from the image offered by the media and the popular culture depicting TOD as a dangerous slum, the community has attained a level of social order aligned with the values of the wider society. It is precisely because of the distinctive

features of TOD that some have even denied its characterization as a slum. TOD residents are sheltered against the elements and have sufficient space to live in, access to safe water, and functioning toilets. They are not, however, guaranteed against forced evictions, which is the only characteristic that TOD shares with slums. Slum or not, the TOD community has shown that it is not a chaotic place that promotes the anti-law. To the contrary, not only has the TOD community developed its own normative system, but also its residents have even embraced the official legal system by adopting the legal personality of a cooperative association, which has in turn allowed its members to interact with the government and other private actors.

The squatting of abandoned buildings should not be encouraged or romanticized for it entails many dangers, including the personal safety and health of the occupants. Governments should make an effort to assist their disenfranchised citizens in obtaining adequate housing and to realize their aspirations of living in decent conditions without having to face undue hardships; but examples such as the TOD community show that in absence of adequate policies and government support, citizens are still able to organize privately and efficiently to improve the communal life.