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## **AN ANARCHIST PATH TO THE LIBERATION OF ALTERNATIVE COMMUNITIES**

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“Let every village be small with few people. They would choose to live simply and in balance with nature. They would avoid means to speed things up or to move around quickly. Weaponry would just collect dust. They would not waste their lives in idle pursuits. They would choose their work to be traditional, their food to be wholesome, their clothing to be well cared for. Let them be content in their homes and joyful in their way of life.”  
—Lao Tzu, *Tao Te Ching*, LXXX, ca. 6<sup>th</sup> century BCE (trans. by L. Lushin)

### Abstract

This work describes and substantiates a cutting-edge new organizational path that avoids the corporate structures that are so detrimental for intentional communities. It uses a flexible and fitting LLC structure of a co-operative and nonprofit character. It relies upon two well-established rules of law which, when its operations are properly limited, produce an entity that is outside the jurisdiction of taxing authorities. Its unique organizational and tax status together permit an extraordinarily high level of community and personal autonomy. They also permit a broad restructuring of many general characteristics and operating features that tend to support a deepening of community, preserving its integrity, and enhancing its prospects for success. This path to an autonomous community is boldly innovative, legally sound, and eminently practical.

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### I. Non-corporate structure

I/A. **Corporations generally.** Real community is the source and only proper locus of property in land.<sup>2</sup> To own property a community must be a legal entity of a certain kind. The corporate structures that are routinely used by intentional communities are profoundly inappropriate and disadvantageous. They are complex, intrusive, and inflexible. They require a hierarchical structure and rigid and formalistic governance procedures. They are designed for the largest and richest organizations, and they never make adequate exceptions for smaller and less well-endowed organizations and seldom even try. To comply with such a statute would be demanding and disruptive, often extremely so. To ignore statutory requirements creates legal vulnerabilities from which serious problems can emerge in unexpected ways and at unexpected times.<sup>3</sup> All activities conducted within a corporate

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<sup>2</sup> Kropotkin, Peter, "In Russian and French Prisons" (1887) in Woodcock, George, Ed., *The Anarchist Reader* (HarperCollins, 1977), 363. Presumably to distinguish it from the fake communities that so commonly arise in capitalist culture, it is said that the core characteristics of a real community are: a relatively small and stable group, having shared values and beliefs, in which the participants have at least a rough equality of basic material conditions, where there is a relative density of communications, and the relationships are direct, many-sided and reciprocal such as to facilitate the development of friendships. Taylor, Michael, *Community, Anarchy & Liberty* (Cambridge Univ. Press, 1982), 2-4, 26-33.

<sup>3</sup> For example, if statutory requirements for conducting meetings and making decisions are not met, meetings thus affected are rendered invalid, and decisions made at such meetings are nullities. This creates enormous vulnerabilities with respect to persons who wish to break a contract, avoid an

structure are presumed to be taxable.<sup>4</sup> When the community is liquidated, any gain from the increase in value of the community's property would be taxed twice, first at the corporate level and again at the member level when liquidation proceeds are distributed.<sup>5</sup> The smaller and more unconventional a community is, the more inappropriate and disadvantageous a corporate structure is.

I/B. **Specific-purpose corporations.** Noam Chomsky has called the for-profit corporation "a devilish instrument...that is pathological by nature and by law."<sup>6</sup> It is fundamentally incompatible with alternative communities in every conceivable respect. Nonprofit corporations are only somewhat less inappropriate.<sup>7</sup> Cooperative corporations are typically no better than, often worse than, nonprofit statutes in that they often include quirky requirements. To a greater or lesser extent they impede genuine cooperative character, even as they sometimes grant their contrivances a monopoly on the use of the word cooperative.<sup>8</sup> Cooperative corporations usually also mandate applicability of other obligation, evade an unfavorable decision, or just cause trouble for a community. Such problems are unexpected because the character of corporate statutes is unrecognized. That these matters rarely emerge as real problems in small communities is just a matter of probabilities and luck.

<sup>4</sup> Except as to certain tax-exempt and foreign corporations, every corporation is required to file a corporate income tax return reporting all of its financial transactions without regard to the nature of its activities or the type or extent of its income. 26 U.S.C § 6012(a)(2); 26 C.F.R. § 1.6012-2(a)(1). 26 U.S.C is the Internal Revenue Code. 26 C.F.R. is the income tax regulations of the U.S. Treasury Department. Such regulations have the force and effect of law except where the decision is unreasonable. *Mayo Foundation v. U.S.*, 562 U.S. 44 (2011). The problem of taxability cannot be solved by breaking. Capital expenditures are not deductible, and depreciation is allowable only in the context of a trade or business or property held for the production of income. 26 U.S.C. § 167(a); 26 C.F.R. § 1.167(a)-1. A community should be doing neither of these things.

<sup>5</sup> When property is distributed upon complete liquidation a corporation is treated as if the distributed property was sold at fair market value to the distributee. 26 U.S.C. § 336(a). That a liquidation transaction could be included in patronage dividends is very problematical. And shareholders to whom the property was distributed would generally be taxed on the excess of the fair market value of the property received over the amount of their investment in the corporation's stock. 26 U.S.C. § 331(a). This double taxation differs dramatically from the situation in an autonomous community. See note 29, *infra*.

<sup>6</sup> Said in review of Bakun, Joel, *The Corporation: The Pathological Pursuit of Profit and Power* (Free Press, 2004). See also Korten, David C., *When Corporations Rule the World, 2<sup>nd</sup> Edition* (Kumarian Press & Berrett-Koehler Publishers, 2001); Danaher, Kevin, *Corporations are Gonna Get Your Mama: Globalization and the Downsizing of the American Dream* (Common Courage Press, 1996).

<sup>7</sup> Besides having all of the above-noted characteristics of corporations generally, nonprofit statutes typically impede ownership by rarely permitting the issuance of stock which is the hallmark of ownership in a corporation. This also frustrates the avoidance of taxation of capital receipts. Lushin, Laddie, "Avoiding Taxability of Capital Receipts in Consumer Cooperatives: The Case for Issuing Stock" (self-published, 1995).

<sup>8</sup> The law of cooperative associations is dominated by federal income tax law that controls the tax benefit of patronage dividends and by federal securities laws whose rules as to what is a security provide the basis for excluding cooperatives. But many states assume that they can control with

statutes, often for-profit statutes, with no means to avoid the inevitable detrimental provisions that arise in such secondary statutes.<sup>9</sup>

I/C. **The LLC alternative.** Limited liability companies are unincorporated entities that convey all of the advantages of corporations—limited liability in a recognized legal entity that has continuity of existence, can accommodate almost any kind of activities, and can own any kind of property—while they avoid all of the disadvantages of corporations. LLCs are designed primarily for smaller working groups operating in the manner of a partnership, and they are remarkably flexible.<sup>10</sup> They tend to have minimal required provisions, with the best having none at all, and to consist predominantly of default rules, with the best allowing all variations in the operating agreement (the LLC equivalent of bylaws).<sup>11</sup> An LLC is the only means by which a real community can function without externally imposed authority. LLC statutes naturally and easily accommodate an autonomous community.<sup>12</sup>

## II. No federal tax jurisdiction

II/A. **Not a partnership.** As a general rule an unincorporated entity that includes two or more persons is a partnership by default, but only if it carries on a trade, business, financial impunity what is a cooperative within their borders, even though their own income tax laws typically piggyback onto federal income tax law and even though state courts almost always accept the federal rules as to what is a security. What states actually control typically extends no further than regulating the superficial matter of the use of the word cooperative in organizational names within their borders

<sup>9</sup> See, e.g., cooperative statutes of Vermont and its three contiguous states, each of which invoke the state's for-profit corporation law. Vermont Cooperative Housing Ownership Act, 11 V.S.A. §§ 1584; Massachusetts cooperative law, M.G.L., Chap. 157, § 1 & 3; New York Cooperative Corporations Law, CL, Chap. 77, § 5; & New Hampshire Consumers' Cooperative Associations law, N.H.R.S.A. Chap. 301-A, § 3. Cooperative incorporation statutes may even make applicable two or more mutually incompatible statutes. Sometimes there are three applicable statutes. The all-time record was Texas law which, in a period of statutory transition, once had five statutes simultaneously applicable to each cooperative. Statutory approaches to reconciling this problem are almost always along the lines of making inapplicable the provisions of a secondary statute to the extent that it "conflicts with any provision of" the primary statute. But cooperative statutes are typically so lacking in substance as to almost never provide such a conflict.

<sup>10</sup> Hagendorf, Wayne A., *The Complete Guide to Limited Liability Companies* (Knowles Publishing, 2017), 1-3 & 12-2 – 12-3, respectively.

<sup>11</sup> Most default rules in the statutes can be resolved by language in the operating agreement, some require detailed analysis and careful draftsmanship to maneuver around them or minimize their effect, and possibly some mandatory provisions may preclude use of the statute by a community. This process requires a careful review of a proposed LLC statute. Such a review is no different than what should be done by any kind of alternative organization with any prospective governing statute of any kind in any jurisdiction, but which seems rarely to be done in practice.

<sup>12</sup> LLCs are typically usable for "any lawful purpose," including nonprofit purposes. *Id.*, 7-7. The broadness of purposes is further supported by LLC statutes being liberally construed so as to give maximum effect to the freedom of contract. *Id.*, 1-1.

operation, or venture and divides the profits therefrom.<sup>13</sup> This is equally true as to co-ownership of rental property, but the nebulosity of the trade-or-business aspect of the rule gets more apparent.<sup>14</sup> Thus, to definitively avoid being a partnership the autonomous community precludes any conduct of profit-making activities and prohibits any profit that might come to be realized from being distributed to, or used for the benefit of, its communitarians.<sup>15</sup> Without partnership status there are no other categories of taxable entities into which the autonomous community could possibly fit.<sup>16</sup>

**II/B. An expense-sharing arrangement.** There is another principle of federal income tax law that independently produces the same effect as not being a partnership. It is well established that "a joint undertaking merely to share expenses does not create a separate entity for federal tax purposes."<sup>17</sup> Such an undertaking is commonly called an "expense-

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<sup>13</sup> 26 C.F.R. §§ 1.761-1(a), 301.7701-1(a)(2), & 301.7701-3; *Com' r v. Culbertson*, 337 U.S. 733, 742 (1949); *Com' r v. Tower*, 327 U.S. 280, 287-288 (1946); *Luna v. Com' r*, 42 T.C. 1067, 1077-1078 (1964); *Marinos v. Com' r*, T.C.Memo 1989-492; Rev.Rul. 75-523, 1975-2 C.B. 257. This rule is not adversely affected by the default rule that, for purposes of federal income tax law, an LLC composed of two or more members has the status of a partnership. 26 C.F.R. § 301.7701-3(b)(1). The default rule applies only to an "eligible entity" which must be a business. 26 C.F.R. § 301.7701-3(a).

<sup>14</sup> It is also well established that mere co-ownership of rental property (which is therefore presumptively income-producing) does not create a partnership for tax purposes; but co-owners may be partners if they or their agents carry on a requisite degree of business activity. E.g., *Appleby v. Com' r*, 41 B.T.A. 18, 20-21 (1940), affd. 123 F.2d 700 (2<sup>nd</sup> Cir. 1941) (mere renting to defray taxes not a partnership); *Guilford v. Com' r*, 201 F.2d 735, 736 (2<sup>nd</sup> Cir. 1953) (maintaining buildings in rental condition and supplying unstated services constituted a partnership); *Alvary v. U.S.*, 302 F.2d 790, 796-797 (2<sup>nd</sup> Cir. 1962) (becomes a partnership if it "engages in regular and continuous activity" in the sense that it "continuously operates the rental property without deviation from the planned use"); *Madison Gas & Electric Co.*, 633 F.2d 512, 514-515 (7<sup>th</sup> Cir. 1980) (must "carry on the requisite degree of business activities").

<sup>15</sup> The above-described test being so nebulous, it is not efficacious to avoid a partnership by limiting the business-activity element of the rule; it is more definitive to simply preclude the division-of-profits aspect of the rule. This approach to avoiding partnership status also definitively avoids securities laws. § III/G, *infra*, establishes that what triggers securities laws is not the realization of profit but the expectation of profit. Thus, an association cannot avoid securities laws simply by failing to realize profits; it must prohibit the possibility of profit.

<sup>16</sup> The only other categories are individual, estate, trust, and corporation. An autonomous community could elect to be treated as a corporation but it should never do so under any circumstances. It should not be surprising that being something of a particular character but treated as if it were something of a different character creates a rat's nest of potential and not well-understood problems.

<sup>17</sup> 26 C.F.R. § 301.7701-1(a)(2). This regulation was adopted in 1996. Fed. Tax Reg. 1997, vol. 5, 1224. It was derived from § 301.7701-3(a), which was a renumbering of § 1.761-1(a) and which stated that an expense-sharing arrangement of substantially the same character "is not a partnership." This predecessor dates back to 1960. Fed. Tax Reg. 1960, 784. Thus, this regulation is at this time 68 years old, during which time it was upgraded and expanded by changing it from an exception of limited scope to an exception of general scope.

sharing arrangement.” We refer to it as an ESA.<sup>18</sup> From a tax perspective, alternative communities are well-described as ESAs, with expenses for common lands and facilities being allocated among members by mutually agreed assessments.<sup>19</sup> There are not many substantive legal precedents.<sup>20</sup> But two of them suggest that alternative communities are appropriately described as ESAs.<sup>21</sup> There are also two requirements implied by the governing statement. First is that an ESA must employ procedures that are reasonably calculated to produce a sharing of expenses,<sup>22</sup> and second is that it must not be something more than or other than an expense sharing arrangement.<sup>23</sup> The latter clearly precludes an ESA from operating a business within the same entity as the community.<sup>24</sup> It also precludes profit-seeking leasing activities, which can be continued only under greatly modified premises.<sup>25</sup> Productive activities merely to meet community needs would be a means of sharing expenses

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<sup>18</sup> We refer to an expense-sharing arrangement as an ESA in the same way that a “cost sharing arrangement” described in 26 C.F.R. § 1.482-7 is therein referred to as a CSA. The cited regulation concerns the sharing of costs only with respect to the “development of one or more intangibles,” the participants being presumed to be business operations that are exploiting their interests. *Id.*, (a)(1), (b)(3). None of these conditions apply to the situation of an autonomous community. A CSA is not even logically necessary. An autonomous community is primarily an ESA because expense sharing is always an on-going and continuous process whereas cost sharing is typically only occasional and episodic. Cost sharing is also subsumed within the function of an ESA. See note 23, *infra*, re (ii).

<sup>19</sup> It has been held in another context that a joint undertaking is shown by parties coordinating their efforts, aiding each other, and taking action together. *U.S. v. Dallman*, 533 F.3d 755 (9<sup>th</sup> Cir. 2001). This is an adequate sociological description of what an autonomous community does or should do. We herein refer to assessments to cover operating expenses as “common charges.” We recommend that common charges be liberally determined, preferably by a budget whether formal or informal, and paid in on a regular periodic basis, usually monthly. They may and should include reserves for contingencies. We also recommend that both common charges and contributed capital be assessed in proportion to the number of persons in a resident-household who have an adequate livelihood or adequate financial resources. This would link financial responsibilities to ability to pay and do so in a minimally intrusive way. A close-knit community must certainly equitably accommodate an inability to make expected payments.

<sup>20</sup> Most of the precedents are private letter rulings that look like desperate attempts to save indefensible situations, which are predictably unsuccessful. The only significant commentary on ESAs is Federal Tax Coordinator, 2<sup>nd</sup> ed., ¶ B-1011. This is uncharacteristically superficial and not at all helpful for the present situation.

<sup>21</sup> 26 C.F.R. § 301.7701-1(a)(2) applies the ESA exception to the sharing of expenses related to the maintenance, repair, and leasing of co-owned property. “Maintenance” is a word of broad connotation, meaning “the care and work put into property to keep it operating and productive.” Garner, Bryan A., *Black’s Law Dictionary*, 2<sup>nd</sup> ed., s.v. “maintenance.” That the ESA is “leasing” the property, not subleasing it or merely managing occupancy, suggests that it owns the property. Such property is probably realty because the leasing of personal property would typically be a business operation. And the community/communitarian relationship is far closer to the spirit of expense sharing than is the landlord-tenant relationship that is typical of mere “leasing.” This example in the regulations thus says that the essential functions of any alternative community are consistent with the ESA exception, and it implies much more. The other precedent, G.C.M. 37658 (Aug. 31, 1978), 1978 WL 43558, concerned a revenue ruling that was proposed to rule that a condominium was an ESA. The proposal was overruled by this general counsel’s memorandum on the basis of a legal test that is now superseded. Under current law it would clearly have been a favorable ruling. Interestingly, a negative ruling was never

through labor efforts, while not constituting a proscribed business activity.

II/C. **Implications.** When properly organized and operated the autonomous community would be completely outside the jurisdiction of federal tax authorities.<sup>26</sup> The community should not even have any obligations to file information returns in the 1099 series.<sup>27</sup> In a reorganization from a corporation to an LLC there would be no need to qualify it as a tax-free reorganization.<sup>28</sup> Unlike a corporation where liquidation would result in double taxation, an ESA would result in single and limited tax effect on recipients.<sup>29</sup> This tax-free status may also hold true for state income tax purposes.<sup>30</sup> It should also be possible for property taxes and interest paid by the association to be available to communitarians as itemized

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issued, which suggests that the IRS may have been favorably disposed towards a venture in the direction of community building.

<sup>22</sup> The sharing of expenses should not be a haphazard effort. The association's expenses should be identified and allocated to participants in some mutually agreed manner, with the result that expenses are actually shared in some sensible manner.

<sup>23</sup> This principle derives from the governing phrase "merely to share expenses." This phrase might raise questions as to whether any of the following precludes ESA status: (i) operating as a vehicle for the co-ownership of realty; (ii) sharing capital expenditures; (iii) having a purpose to facilitate a vital community; (iv) having ecological, social, cultural, etc., purposes or policies; and (v) routinely renting facilities to non-members or to a related work collective. Items (i) & (ii) are implied in the precedents described in note 21, *supra*. Items (iii) & (iv) are in the nature of aims or goals rather than activities in a tax sense. And it is not a stretch to view item (iii) as enhancing sociability among the sharers of expenses and item (iv) as being standards under which the undertaking is to be managed. Ideally the purpose clause can be so constructed as to support these views. As to item (v), rents from non-members is a problem that is best resolved by the means described in note 25, *infra*. All of this is motivated by an abundance of caution in an area of the law that, despite many precedents, cannot be said to be well developed.

<sup>24</sup> G.C.M. 37644 (Aug. 15, 1978), 1978 WL 43556 (an ESA must lack an objective to operate a business and to divide the gains therefrom). It is not a coincidence that these are the characteristics that would cause the organization to be a partnership rather than a mere ESA.

<sup>25</sup> To avoid being something more or other than a mere expense-sharing arrangement, leasing activities must be structured in the same manner as common charges, i.e., with the lease fee figured as a fair share of operating expenses and with the occupants permitted and expected to participate in deliberations concerning common charges. Doing so additionally enhances the character of the community in several respects.

<sup>26</sup> 26 C.F.R. § 301.7701-1(b).

<sup>27</sup> In general, information returns are required only of persons who make certain types of payments in the course of their trade or business. 26 U.S.C. §§ 6041(a) & 6041A(a)(1). The autonomous community should never be engaged in a trade or business. The few exceptions are too bizarre to ever impact an autonomous community. See 26 U.S.C. §§ 6041-6050W.

<sup>28</sup> Although an LLC as an ESA is intuitively obvious, a corporation could also qualify. This is evident from the expansive 1996 amendment to the ESA regulation. See note 17, *supra*. Thus a reorganization

deductions.<sup>31</sup> Its accounting routine would be no more than what single-family homeowners need to do.<sup>32</sup> All of this is as it should be for something that, from the perspective of officialdom, is a mere group living arrangement with no business implications whatsoever. The resulting autonomy would facilitate the focusing of group attention and resources on preserving and enhancing the vitality of the community in a hostile environment.

### III. General organizational characteristics

III/A. **Reclaiming the traditional.** Cooperative living is the very oldest form of human social interactions<sup>33</sup> and the most basic of human aspirations.<sup>34</sup> Alternative communities make a surprisingly strong showing in U.S. history, being a regular and from a corporation to an LLC, where both operated as ESAs, would create no need of a tax-free reorganization because neither was a separate entity for tax purposes. A reorganization is still necessary to accomplish such a reorganization. Depending upon the vagaries of state law, this may be done as a simple conversion, a more complicated but still neat and tidy merger, or a more disquieting liquidation/distribution, but in all cases without any plan of reorganization or other tax complications.

<sup>29</sup> Not being a separate entity for tax purposes, the association would not be taxable on any actual or presumed sales in furtherance of liquidation. Having that status and not being considered a partnership, it would not have any obligation to allocate such amounts to communitarians. It seems clear upon general principles of taxation, however, that distributions in liquidation would be taxable to recipients to the extent that they would exceed the capital interests of associates. 26 U.S.C. § 61(a). This is the same situation that would obtain if the association were treated as a partnership. See 26 U.S.C. §§ 731(a), 731(c)(2) & 731(b). This tax regime contrasts sharply with the double taxation of corporate liquidations. See note 5, *supra*.

<sup>30</sup> One must first verify that the state income tax rules, if any, follow the federal tax rules. One must then determine whether any state modifications would make the autonomous community into a taxable entity for state tax purposes. Or a state may have its own rules for taxation of an LLC which would have to be examined in total as to its applicability to the autonomous community. E.g., in Vermont an autonomous community would have no tax filing or payment obligations. 32 V.S.A. §§ 5920, 5921 & 5862. But in some states an LLC is considered a corporation for state income tax purposes. Texas Tax Code § 171.001(a)(2); 15 Pa. Cons. Stat. § 8925.

<sup>31</sup> For an organization that is not recognized for federal tax purposes, the expenses it pays, the property it owns, and the liabilities it maintains should all be considered those of its owners for federal tax purposes. For ownership of anything to be unrecognized for federal tax purposes would seem to be an intolerable situation. The very words used to describe an ESA suggest this result—an “undertaking...to share expenses” implies that the expenses being shared are those of the persons making use of the undertaking for this purpose. This would make ratable portions of interest and taxes paid by the association into itemized tax deductions to communitarians under no more limitations than presumed reasonableness. That this kind of allocation in a corporation is strictly limited by 26 U.S.C. § 216 should not affect its treatment in a completely different kind of organization that did not even exist at the time this limitation was enacted. Since this is generally a benefit only to persons who are relatively well-off, we leave it to other professionals to work out its legitimacy.

<sup>32</sup> There would be no need for financial accounting formalities and no patronage dividends. As to the latter, see note 61 and related text, *infra*. There would not even be any depreciation of fixed assets which is permissible for federal income tax purposes only in the context of a trade or business or property held for the production of income. 26 U.S.C. § 167(a); 26 C.F.R. § 1.167(a)-1. Accounting

continuous, if small, theme in American life<sup>35</sup> beginning more than a century before the war for American independence.<sup>36</sup> Alternative communities typically have been, as they should be, human in scale.<sup>37</sup> The autonomous community follows many well-considered traditions of the American communities of the last 200 years. Even features which are innovative in terms of current practices often have antecedents in early communitarian theory and practice.<sup>38</sup> This includes the distinctive non-corporate structure which was pioneered at the inception of the modern cooperative movement.<sup>39</sup>

III/B. **Pervasive autonomy.** The utopian communities of the 19<sup>th</sup> century were so characteristically autonomous that one leading commentator described them as "the equivalent of tiny sovereign states."<sup>40</sup> Although certainly not to this extent, this community's

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procedures could be reduced to keeping track of property acquisitions and improvements and to whatever monitoring of cash flow that prudence would dictate.

<sup>33</sup> The earliest expression of communal living was that which characterized indigenous people on every continent from time immemorial. Mead, Margaret, Ed., *Cooperation and Competition Among Primitive Peoples* (Beacon Press, rev. 1961, orig. publ. 1937). The post neolithic period from its origins to the present day have been characterized by attempts to establish alternative communal living on an organic and non-coercive basis. Rexroth, Kenneth, *Communalism: From Its Origins to The Twentieth Century* (Seabury Press, 1974).

<sup>34</sup> Cooperative living is ancient and universal. Abrams, Philip & Andrew McCulloch, *Communes, Sociology and Society* (Cambridge Univ. Press, 1976), 1. It is also integral to human life. Kohn, Alfie, *No Contest: The Case Against Competition* (Houghton Mifflin Co., 1986), 18-19. And genuine community is the primary aspiration evidenced in all of history and pre-history. Buber, Martin, *Paths in Utopia* (Beacon Press, 1958, orig. publ. 1949), 135. The mythological record is clear that work was a much later development in human pre-history.

<sup>35</sup> Heinberg, Richard, *Memories and Visions of Paradise: Exploring the Universal Myth of a Lost Golden Age* (Jeremy P. Tarcher, 1989), 157-158 (experimental communities have been a quiet but potent historical force, with an influence that is far out of proportion to the numbers of people involved).

<sup>36</sup> The first alternative community of the colonizers in the U.S. was Swanendael, more commonly known as Plockhoy's Commonwealth, in 1663. It was to be a large commune to include a progressive school and agricultural and industrial operations. After only about a year British invaders plundered the community and carried off belongings "to a very naile." Miller, Timothy, "Peter Cornelius Plockhoy and the Beginnings of the American Communal Tradition" in Sakolsky, Ron & James Koehline, eds., *Gone to Croatan: Origins of North American Dropout Culture* (Autonomedia, 1993), 117-126; Bestor, Arthur, *Backwoods Utopias: The Sectarian Origins and the Owenite Phase of Communitarian Socialism in America, 1663-1829*, 2<sup>nd</sup> ed. (Univ. of Penn. Press, 1970), 26-27, 277.

<sup>37</sup> In general, a community that is too large becomes bureaucratic and impersonal, and if too small it is not communally viable. It is estimated that the minimum number is five to sustain a sufficient variety of relationships for the issue of mutuality to become both important and challenging and twenty-five to be the maximum number beyond which the diffusion of intense relationships among all members of a group ceases to be possible. Abrams & McCulloch, *supra* note 34, 39. A small size was Rousseau's first requirement for a true democracy, small enough for everyone to assemble readily and frequently in a town-meeting style and for everyone to know everyone else quite intimately. Rousseau, Jean-Jacques, *The First and Second Discourses* (St. Martin's Press, 1964), 113.

non-corporate structure and unique tax status allows it to exercise full and broad autonomy<sup>41</sup> as to both the community and its participants. It is recommended that, with respect to balancing relative interests, that the community respect the fullest possible individual freedoms while communitarians respect the vital interests of the community.<sup>42</sup> As for rules, this community uses the principle that less is better.<sup>43</sup> It is said that the “chief principle” of anarchism is not freedom but autonomy.<sup>44</sup> Autonomy is a co-operative<sup>45</sup> principle and the most essential term in the very definition of a co-operative.<sup>46</sup> Although virtually unknown, popular sovereignty, which is inclusive of autonomy, is a right of the people under the U.S. Constitution.<sup>47</sup> And Epicurus, who was probably the most prominent communitarian organizer/theoretician in world history, even considered community autonomy to be a

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<sup>38</sup> Plockhoy’s Commonwealth in 1663 was premised upon equality, service, individual freedom, and democratic governance. Miller, *supra* note 36, 117-126. Cornelius Blatchly’s *Essay on Common Wealth* (1822) emphasized freedom, “true democracy,” “natural equality,” small scale, encompassing farming and commercial operations, and emulating “pure communities” where collective good and cooperation would replace selfishness and competition. Curl, John., *For All the People: Uncovering the Hidden History of Cooperation, Cooperative Movements, and Communalism in America*, 2<sup>nd</sup> ed. (PM Press, 2009), 284-285. Blatchly’s adjectives are particularly noteworthy because they recognize that describing something that does not exist in one’s culture requires unique terminology. See note 49 and related text, *infra*. Insofar as they relate to structure and procedures, all of these precursors parallel features of the autonomous community.

<sup>39</sup> The modern co-operative movement originated before the middle of 19<sup>th</sup> century in England with co-operatives being formed as large partnerships. Jensen, A. Ladru, *et al.*, *Cooperative Corporate Association Law and Accounting* (Amer. Inst. Of Coop., 1950), 61. Over a hundred years later the underlying partnership character of cooperatives, most of which were incorporated, was still being stressed. Jensen *et al.*, *id.* 23, 48-49, 56, 61, 73, 91, 589, 593-594. The structure of the autonomous community is similar to a partnership but considerably more appropriate for a community.

<sup>40</sup> Mark Holloway in the introduction to Nordoff, Charles, *The Communistic Societies of the United States: From Personal Visit and Observation* (Dover Publications, 1966, orig. publ. 1875), vi. This autonomy seems to have been mainly attributable to the undeveloped character of the states and territories in which those communities resided. But it was certainly also due to the high value that those communities placed upon self-determination. *Id.*, 403.

<sup>41</sup> By autonomy we mean the first-stated dictionary definition: “self-governing; independent; subject to its own laws only.” *The American College Dictionary* (Random House, 1955), s.v. “autonomous.” Its intended meaning needs to be made explicit in view of the minimalist interpretations often accorded to autonomy. E.g., Prakash, Daman, “The Principles of Cooperation: A Look at the ICA Cooperative Identity Statement” (Pamda-Network International, 2003), 4 (defined as a co-operative being as independent as possible of government and private firms); Watkins, W.P., *Co-operative Principles: Today & Tomorrow* (Holyoake Books, 1986) (autonomy not even listed in the index); Baarda, James R., *Cooperative Principles and Statutes: Legal Descriptions of Unique Enterprises* (U.S.D.A., 1986) (autonomy not even mentioned); Bogardus, Emory S., *Principles of Cooperation* (The Cooperative League of the U.S.A., 1963), 28-38 (mostly emphasizes maintaining a distance from the political process).

<sup>42</sup> In 1927 Errico Malatesta expressed a similar sentiment—that to function effectively and to be in harmony with the principles of anarchism, an organization must “blend the free action of individuals with the necessity and the joy of cooperation.” “A Project of Anarchist Organisation” at

precondition to true happiness.<sup>48</sup> The uniqueness of the autonomous community calls for some distinctive terminology. We thus use “association” (rather than company) in reference to it as a legal entity, “associates” or “communitarians” (rather than members) in reference to its participants, and “community” (rather than membership) in reference to its underlying social reality.<sup>49</sup>

III/C. **Acknowledging influences.** Many traditional aspects of American Indian culture provide a startling array of precursors of concepts that inform the autonomous community. These concepts include land held in common, sustainable social structures, balancing the freedom of the individual with responsibilities to the community, living in harmony with nature, direct participatory governance, natural equality, and absence of

[http://dwardmac.pitzer.edu/anarchist\\_archives/malatesta/project.html](http://dwardmac.pitzer.edu/anarchist_archives/malatesta/project.html). History suggests that communities can too easily tend towards overreaching in limiting personal actions.

<sup>43</sup> There have been and still are anarchists resisting all structure and rules with respect to alternative communities. Miller, Timothy, *The 60s Communes: Hippies and Beyond* (Syracuse Univ. Press, 1999), 166-169; Kanter, Rosabeth Moss, *Commitment and Community: Communes and Utopias in Sociological Perspective* (Harvard Univ. Press, 1972), 184-185. In 1928 anarchist communities were described as “places without rules” that were fully subject to “those laws and legal restraints which are the very things the anarchist wishes to escape.” Gide, Charles, *Communist and Co-operative Colonies* (AMS Press, 1974, orig. publ. 1928), 156-157. Gide found this so ironical as to compare it to the freedom of a caged bird—the freedom to flutter about, but without a way out of the cage. This is counter-productive and even tyrannical. Freeman, Joreen, *The Tyranny of Structurelessness*, [www.jofreeman.com](http://www.jofreeman.com). Anarchists who are unable to come together without invoking authority, or who assume that this is so, are simply not yet very good anarchists. Malatesta, Errico, “Anarchism and Organization” (1897), <https://www.marxists.org/archive/malatesta/1897/xx/anarchorg.htm>. As to an anarchist theory of social organization, see note 55 and related text, *infra*. The autonomous community turns this problem on its head. It uses a simple structure and minimalist rules to secure autonomy, avoid legal problems, and gain freedom from governmental intrusion. This kind of order furthers anarchist principles; it does not offend them.

<sup>44</sup> Goodman, Paul, “Freedom and Autonomy” in Stoer, Taylor, Ed., *Decentralizing Power: Paul Goodman’s Social Criticism* (Black Rose Books, 1994), 32.

<sup>45</sup> “Co-operative” with a hyphen is an older spelling of the word, but one that is still in use, especially in Europe and elsewhere around the world. This spelling is used herein mainly to distance the autonomous community from contemporary practices in this country and to associate it with traditional practices and those outside of this country with which it is more in accord. The use of a hyphenated spelling serves to readily distinguish references to this community from the numerous other uses herein of the word cooperative. It is also used when a cited authority uses this form of the word, as in this case.

<sup>46</sup> Autonomy is co-operative principle # 4 of the Statement on Co-operative Identity adopted by the General Assembly of the International Co-operative Alliance, 1995. And the term co-operative is defined as “an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned democratically-controlled enterprise.” Definition, Statement on Co-operative Identity, *id*. It is identically defined in Scope, Definition and Objectives # 2 of the Promotion of Cooperatives Recommendation of the International Labour Organization, 2002 (an agency of the United Nations). Curl, *supra* note 38, 456.

hierarchy and coercive authority.<sup>50</sup> Taoism was a significant influence in the development of the autonomous community. Its most significant premises in this regard are simplicity, gentleness, intuitiveness, letting go, spontaneously ordering one's life in accordance with natural harmony, a reverential attitude towards the natural world, and ultimately personal and communal liberation. Likewise, in a more specific way the autonomous community was profoundly influenced by the anarchist principles of autonomous groups,<sup>51</sup> mutual aid, decentralization, natural order,<sup>52</sup> harmony through complexity,<sup>53</sup> and avoiding the coercive power of government. These, along with the federalism principle,<sup>54</sup> form the basis of an anarchist theory of social organization.<sup>55</sup> And a very significant tradition within anarchism has long promoted genuine communities as centers of resistance, vehicles of social

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<sup>47</sup> Amar, Akhil Reed, *The Bill of Rights: Creation and Reconstruction* (Yale Univ. Press, 1998), 119-133 (clear language of the 9<sup>th</sup> and 10<sup>th</sup> amendments to the U.S. Constitution guarantees to the people the right and power of "popular sovereignty"). Sovereignty is autonomy brought to a higher state of perfection. *The American College Dictionary* (Random House, 1955), s.v. "sovereignty."

<sup>48</sup> Las Indias, *The Book of Community: A Practical Guide to Working and Living in Community*, 88.

<sup>49</sup> Common words evoke common notions, and there is little that is common about the autonomous community. "Association" has been and still is a commonly used term for a cooperative, E.g., all but one of the six New England states use association to refer to the subject organization of their general or consumer cooperative corporation laws. 11 V.S.A. § 991(2) [Vermont]; N.H.R.S. 81.020:4 [New Hampshire]; 13 M.R.S.A., Chap. 85, § 1501.1 [Maine]; C.G.S., Chap. 595 [Connecticut]; R.I.G.L. § 7-8-2(1) [Rhode Island]. The term is also closely associated with an unincorporated organization. Black's Law Dictionary, 2<sup>nd</sup> ed. (West Group, 1996), s.v. "association." This is a remarkably apt confluence of meanings. "Associates" would thus mean patron-owners of an unincorporated cooperative. Historically associates have also been taken to mean people who live together in fraternal agreement in the interest of the greatest good of all. Malatesta, Errico, "Anarchism and Organization" (1927) at [http://dwardmac.pitzer.edu/anarchist\\_archives/malatesta/project.html](http://dwardmac.pitzer.edu/anarchist_archives/malatesta/project.html). Another excellent self-designation is "communitarian." The word seems to have first been used in 1840 by Robert Owen, a father of co-operation, to refer to the participants in a co-operative community. This is still its meaning, with connotations of the community being small and collectivist. Merriam Webster's on-line dictionary, s.v. "communitarian." Along the same lines a commune might consider "communards," which means persons living in a commune. The American Heritage Dictionary, 2<sup>nd</sup> College Ed. (Houghton Mifflin Co., 1985), s.v. "communard."

<sup>50</sup> Morris, Glenn. "For the Next Seven Generations: Indigenous Americans and Communalism" ([www.ic.org](http://www.ic.org)).

<sup>51</sup> Anarchists of all persuasions tend to agree that the most fundamental unit of a free society would be the autonomous association. Marshall, Peter, *Demanding the Impossible: A History of Anarchism* (FontanaPress, 1993), 627-628.

<sup>52</sup> It is a basic premise of anarchism that, without the coercion of imposed authority, a natural order will emerge. Marshall, *supra* note 51, 14-17; Ward, Colin, *Anarchy in Action* (Harper & Row, 1973), 28-37, 389-393. A natural order is encouraged to emerge in an autonomous community by an operating agreement that strives to set forth only essential general principles, leaving the community to develop the specifics of its own process and order within a relatively broad framework. Interestingly, in a self-organizing system hierarchy and inflexibility are both said to be impermissible. McElwan, John D., "The Cybernetics of Self-organizing Systems" in Benello, C. George, & Dimitrios Roussopoulos,

regeneration, and prototypes of an ideal future society.<sup>56</sup> Such communitarian anarchism certainly did at the time of its formulation, and arguably will in the coming years, have revolutionary potential.<sup>57</sup>

III/D. **Co-operative character.** The autonomous community complies with the international Statement on Co-operative Identity, particularly the definition and principles.<sup>58</sup> These are world-wide standards, and, when taken seriously, they enhance the vitality of a community. In addition, the autonomous community complies extraordinarily well with what has been authoritatively called “the basic and distinguishing feature” of a co-operative association, i.e., that it “functions only as an instrumentality” for the benefit of its patron-

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eds., *The Case for Participatory Democracy: Some Prospects for a Radical Society* (Grossman Publ., 1971), 180-181. Hierarchy and inflexibility are both strictly avoided in the autonomous community.

<sup>53</sup> The anarchist principle of harmony through complexity is supported by scientific principles, particularly in ecology, cybernetics, and the anthropology of tribal societies. Ward, *supra* note 52, 44-52. What allows the autonomous community to be harmonious is a limited amount of complexity in the operating agreement that secures and preserves its unique status. Pierre-Joseph Proudhon, 1809-1865, considered a variation of this principle, “unity in diversity,” to be the basis for the anarchistic view of the natural order of a society without government. Hoffman, Robert A., *Revolutionary Justice: The Social and Political Theory of P.-J. Proudhon* (Univ. of Ill. Press, 1972), 169.

<sup>54</sup> Marshall, *supra* note 51, 252-253; Ward, Colin, *The Anarchist Sociology of Federalism in Autonomy, Solidarity, Possibility: Colin Ward Reader* (AK Press, 2011), 285-293; Ward, *supra* note 52, 53-58.

<sup>55</sup> Ward, Colin, “Anarchism as a Theory of Organization” in *Autonomy, Solidarity, Possibility: Colin Ward Reader* (AK Press, 2011), 47-54; Marshall, *supra* note 51, 625-629; Malatesta, Errico, “Anarchism, Individualism and Organization” (1907) at <https://libcom.org/library/errico-malatesta-anarchism-individualism-organization>; Malatesta, Errico, “Anarchism and Organization” (1897) at <https://theanarchistlibrary.org/library/errico-malatesta-anarchism-and-organization>.

<sup>56</sup> This tradition began in the early 1840s with Pierre-Joseph Proudhon, called the father of anarchism, who set off in a new direction from utopias that were in essence quirky social dogmas. In *Du Principe Fédératif* (1863) he described a system of confederated self-governing village communes where the highest level was merely a coordinating body that was strictly supervised. Hyams, Edward, *Pierre-Joseph Proudhon: His Revolutionary Life, Mind and Works* (Taplinger Publ. Co., 1979), 251-260; Buber, *supra* note 33, chap. IV. Mikhail Bakunin, 1814-1876, in his most fundamental theoretical work strongly emphasized autonomous communes aligned in free federation. Dolgoff, Sam, *Bakunin on Anarchy: Selected Works by the Activist-Founder of World Anarchism* (Alfred A. Knopf, 1972), 82-85. Peter Kropotkin, 1842-1921, promoted self-governing communities that combined agriculture and industry on a small scale. Buber, *id.*, Chap. V; Kropotkin, P., *Fields, Factories and Workshops or Industry Combined with Agriculture and Brain Work with Manual Work* (Benjamin Blom, 1968, orig. publ. 1913). Gustav Landauer, 1870-1919, was a theoretician who promoted real communities of a complex character, tied to the land, and based on spiritual awareness which, when freely federated, could displace the state and form a free society. Buber, *id.*, Chap. VI; Marshall, *supra* note 51, 410-415; Lunn, Eugene, *Prophet of Community: The Romantic Socialism of Gustav Landauer* (Univ. of Calif. Press, 1973), esp. Chap. 2 & 4. Paul Goodman, 1911-1972, was a polymath who called himself a “community anarchist,” advocated many ideas of relevance to the autonomous community, and was a major influence on the communal and collectivist movements of the 1960s and 1970s. Marshall, *supra* note 51, 597-601; Stoehr, *supra* note 44. Vinoba Bhave, 1895-1982, was the leader of a movement in

owners.<sup>59</sup> The autonomous community also accords well with the “core of economic cooperative theory” by impeccably meeting its requirements of subordination of capital and democratic control and by its ESA character serving the same purpose and producing the same effect as patronage dividends.<sup>60</sup> Indeed, it would appear that patronage dividends are not even legitimate in an autonomous community.<sup>61</sup> The autonomous community thus has a very high degree of co-operative character, much more so than any so-called cooperative corporation.<sup>62</sup>

III/E. **Nonprofit character.** The autonomous community is of a nonprofit character by design. It precludes engaging in any profit-seeking activity and, in case any profit were to be

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India for communal villages as a revolutionary program leading to complete moral and social transformation. Ostergaard, Geoffrey Nielson & Melville Currell, *Gentle Anarchists: A Study of the Leaders of the Sarvodaya Movement for Non-violent Revolution in India* (Oxford Univ. Press, 1971). The foregoing actually understates the significance of what is best described as communitarian anarchism. Kropotkin said that the realization that emerged after the Paris Commune that the free commune must be the engine of social revolution was the very impetus for the new ideal of anarchism. Baldwin, Roger N., *Kropotkin's Revolutionary Pamphlets: A Collection of Writings by Peter Kropotkin* (Dover Publications, 1970, first publ. 1927), 164. This tradition was dominant before the end of the 19<sup>th</sup> century when anarcho-syndicalism was nudged in over vociferous objection but has gradually waned since then. Bookchin, Murray, “The Ghost of Anarcho-Syndicalism”(1992) at <http://dwardmac.pitzer.edu>. Uniquely, communitarian anarchism addresses not just the issue of work, but the widest possible range of human endeavors.

<sup>57</sup> Autonomous village communities had been important primary units of governance in Europe from medieval times to the early 19<sup>th</sup> century. They regulated collective life in accordance with commonly accepted custom. This usually involved economic activity in the form of management and use of common lands. Thus, when communitarian anarchism arose in the early 1840s (which was also a time of revolutionary fervor in Europe), autonomous village communities were very much in the memory of living persons. Similar expressions of agrarian communism existed in Asia, India, and Central and South America. Blum, Jerome, “The European Village as Community: Origins and Functions” (*Agricultural History*, Vol. 45, No. 3, July 1971), 157-178. As later more fully formulated, such genuine communities would be relatively small groupings, proceeding from a community spirit inherent in the human species, committed to a proper relationship to the land, inwardly bound together by a common life and common work, and united in free federation. Such communities would have to withdraw support from the state and the capitalist system while coming to a real communal life as free men and women. Buber, *supra* note 33, 80-81. The information described in note 70, *infra*, establishes that there is no future for industry of even a moderate scale. This would be the death-knell for an already moribund anarcho-syndicalism. There is thus no other, much less better, means than communitarian anarchism by which a state can be displaced without resulting in the creation of another state.

<sup>58</sup> Adopted by the 1995 Congress and General Assembly of the International Co-operative Alliance held in Manchester, England. Since 1895 the ICA has been the final authority for defining co-operatives and elaborating the principles upon which they should be based. Prakash, *supra* note 41, 2. This community cannot, of course, be said to be categorically in accord with elements of identity that relate to operations rather than to structure. This includes most of the co-operative values.

<sup>59</sup> *Puget Sound Plywood, Inc. v. Com'r.*, 44 T.C. 305, 309 (1965), *acq.*, 1966-1 C.B. 3. This was a *per curiam* decision assented to by all of the judges of the U.S. Tax Court without dissent, acquiesced to by the IRS, and has unquestionably become the leading tax case on the law of cooperative associations. Functioning as a mere instrumentality for anyone, much less for its patrons, is fundamentally

realized, it prohibits it from being distributed to communitarians or used to subsidize common charges. Any realized profit would instead be required to be distributed for local community support, co-operative development, or other social purposes as determined at a meeting of communitarians. Any genuine co-operative must necessarily be nonprofit in character.<sup>63</sup> Being of a nonprofit character is of enormous consequence in that it assures the inapplicability of both income tax and securities laws—the twin Achilles heels of alternative communities.

III/F. **Accommodating a comprehensive form.** The autonomous community is encouraged to enhance its vitality and self-sufficiency with associated farming and/or inconsistent with the well-established character of a corporation.

<sup>60</sup> Subordination of capital as regards control over the cooperative undertaking and ownership of the resulting pecuniary benefits is secured by contributed capital being fundamentally unrelated to participation rights and being entitled to no return on capital. Democratic control by patron-members is described as being “effected by having the [patron]-members themselves periodically assemble in democratically conducted meetings” where “[patrons] there deal personally with all problems affecting the conduct of the cooperative. *Id.*, 308. This is exactly the procedure used in the autonomous community and the very opposite of what is required under corporate statutes, including cooperative statutes. The third requirement of operating on a cooperative basis consists of a legal obligation to allocate patronage dividends. *Id.*, 309. This assures operation at cost by allocating to patrons “the excess of the operating revenues over the costs incurred in generating those revenues.” *Id.* In this community operation at cost is assured more simply and directly by the association controlling its receipts so as to cover its expenditures, any excess or deficit being of modest amount if the process is properly done and being carried over to the next year usually with the same patron-owners or certainly with very little differences.

<sup>61</sup> Most of the receipts of an autonomous community should be assessments to cover expenses. Other receipts should be little more than occasional reimbursements or offsets of expense items. Such receipts would not appear to be income. It is inconceivable that ESAs would ever have been established if its receipts were considered to constitute income. Only a business can have net income, and net income is the starting point for patronage dividends under both the statutory and common law rules. More certainly on this question would require a serious research project.

<sup>62</sup> A careful review of state cooperative incorporation statutes leads one to conclude in almost all cases that states are under the impression that they have absolute discretion as to standards for cooperatives within their jurisdiction. In other words they seem to have no knowledge of federal or international standards regarding co-operatives. Thus their statutes often significantly impede real cooperative character. This impulse goes so far as some states actually presuming that they can make up their own rules for patronage dividends, as if they had the authority to alter the requirements of federal income tax law. As for LLCs, we now have a uniform state LLC statute that purports to be cooperative and that insinuates outside investors into the fabric of a purported cooperative and gives such investors surreptitious control advantages. That supposed cooperative leaders are okay with this is evidenced by their degrading our exposé and burying it in irrelevant happy-talk. See Lushin, Laddie, “The Uniform Limited Cooperative Association Act: A Trojan Horse in our Midst,” *Cooperative Grocer* #151 (Nov.-Dec. 2010). And it is only organizations that comply with such statutes as these that are permitted to use the “cooperative” name in such states. For this and many other reasons the “cooperative brand” has come to be not highly valued, and it is becoming more and more likely that real co-operatives are indifferent to, or even antagonistic to, having cooperative in their organizational names.

commercial operations. This combination of production with consumption functions has been termed a comprehensive communal form.<sup>64</sup> It has an extraordinary history. It was advocated by the most prominent community leaders in history.<sup>65</sup> It was a feature of the first documented communes in the world and has characterized intentional communities through the 19<sup>th</sup> century and beyond,<sup>66</sup> including anarchist communities.<sup>67</sup> The comprehensive communal form have long been considered a necessary component of a vital community.<sup>68</sup> The failure of the comprehensive communal form to take hold in Europe and its gradual dying off in this country is said to have resulted in the progressive “de-souling” of the cooperative sector and the loss of its characteristic social solidarity.<sup>69</sup> The association of productive activities with the autonomous community will become increasingly important

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<sup>63</sup> In the early 1800s Robert Owen and Charles Fourier, both being called fathers of cooperation, independently proposed service instead of profit being the aim of a co-operative association. Lambert, Paul, *Studies in the Social Philosophy of Co-operation*, trans. by Joseph Létargez (Co-operative Union, Co-operative League of the USA, Société Générale Coopérative, 1963), 51. As to contemporary commentators, Schaars, M.A., *Cooperatives, Principles and Practices* (Univ. of Wisc. Coop. Extension Programs, 1980), 7, 9 (being essentially a nonprofit enterprise is a distinguishing feature of a true cooperative); Lambert, *id.*, 35, 41, 240-241 (its aim being service to its members and its community, a cooperative puts aside profit and condemns it besides); Packel, Israel, “Cooperatives and the Income Tax,” *Univ. of Penn. L. Rev.* (Dec., 1941) (a fundamental principle applicable to all cooperatives is the avoidance of entrepreneur profit).

<sup>64</sup> Buber, *supra* note 33, 59, 64.

<sup>65</sup> In the 4<sup>th</sup> century BCE, Epicurus listed first in his essential elements of community “productive autonomy.” Las Indias, *supra* note 48, 89-91. Both men who were called fathers of co-operation in Europe, Robert Owen and Charles Fourier, envisioned rural villages composed of farms and small-scale industry operated co-operatively by the residents that lived together communally and were provided collective self-employment opportunities. Zeuli, Kimberly A. & Robert Cropp, *Cooperatives: Principles and Practices in the 21<sup>st</sup> Century* (UW Extension, undated), 5. And the prominent co-operative leaders William King, 1786–1865, and Louis Blanc, 1811-1882, explicitly advocated the comprehensive communal form. Buber, *supra* note 33, 64-66, 69.

<sup>66</sup> As noted above, productive activities were an integral part of the Epicurean communes of the 4<sup>th</sup> century BCE. Agricultural and commercial operations have always characterized the American communal movement. Kanter, *supra* note 43, 150; Nordhoff, *supra* note 40, 385, 389-390. Most of the communes of the 1960s-1970s had gardens or farms and small craft production though it seldom produced an adequate and reliable source of income. Curl, *supra* note 38, 325. It continues to manifest itself at a diminished level.

<sup>67</sup> The very first anarchist community was founded in 1833 in the Tuscarawas River valley. It was explicitly intended to be a small, self-sufficient community that passively ignored any institutions of the state that did not respect individual sovereignty and voluntary cooperation. It included a steam saw mill operated on a cooperative basis. Martin, James J., *Men Against the State: The Expositors of Individualist Anarchism in America, 1827-1908* (R. Myles Publisher, 1970, orig. publ. 1953), 36-38. The inclusion of industrial, commercial, and agricultural projects characterized anarchist communities throughout much of the 19<sup>th</sup> century. *Id.*, 57-59, 62-63, 80. Kropotkin was of the opinion that the form that the social revolution must take would be anarcho-communist communes, wherein consumption and production was communalized, associated in free federation. Baldwin, *supra* note 56, 162-165.

as social, political, economic, and environmental conditions continue to deteriorate.<sup>70</sup>

III/G. **Production activities separate.** Productive activity to provide a community-centered means of livelihood would be most advantageously structured within an LLC as a work collective operated on a co-operative basis.<sup>71</sup> For numerous reasons this must be done in a separate entity.<sup>72</sup> That entity cannot be directly owned by the community because, being a co-operative, it must be owned and controlled by its patrons, in this case its workers.<sup>73</sup> It can and it should, however, be associated in substantive ways.<sup>74</sup> But production merely to meet community needs could and should be an integral part of the community.

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<sup>68</sup> The great cooperator of the 19<sup>th</sup> century, William King, said that only this form was worthy to be called "a Community." Buber, *supra* note 33, 61. We speculate that organizationally narrowing the focus of human activity to a single activity, especially one as superficial and idiosyncratic as consumption, is unnatural and unsound.

<sup>69</sup> Buber, *supra* note 33, 65.

<sup>70</sup> The coming crisis in oil production, as one of several emerging and related problems of existential implications, will result in the production of the necessities of life, particularly food, becoming a problem of supreme urgency. Kunstler, James Howard, *The Long Emergency: Surviving the Converging Catastrophes of the Twenty-First Century* (Atlantic Monthly Press, 2005), esp. 235-307; Heinberg, Richard, *Peak Everything: Waking Up to the Century of Declines* (New Society Publishers, 2007). At the end of cheap oil the scale of all human enterprises will contract with the energy supply. Human enterprises will rapidly become small in scale, simple in character, and local in scope. The best approach to such a crisis is an autonomous community of a comprehensive communal form, focused primarily on agricultural production. Ideally it would utilize community property in equipment and other means of production, collective consumption, distribution on the basis of "all is for all" with careful attention to needful situations, and an internal economy without money. This has long been called communist anarchism. Arising out of necessity, this was the character of alternative communities before the onset of the consumer society; it will again emerge by necessity upon the demise of the consumer society.

<sup>71</sup> A significant problem throughout the history of alternative communities has been that the forms of organization thought to be functional for productive business operations conflicted with the values of an alternative community. Kanter, *supra* note 43, 150. There is indeed an insoluble conflict with respect to large-scale production because a factory is not, and cannot be, an autonomous social organism. Bookchin, Murray, *Post-Scarcity Anarchism* (Ramparts Press, 1971), 153. But, for projects of a more human scale, an appropriate and remarkably beneficial structure is now available. Lushin, Laddie, "An Anarchist Path to the Liberation of Work Relations" (forthcoming).

<sup>72</sup> Keeping the community outside of federal tax jurisdiction requires any business activity to be housed in a separate entity. See notes 15 & 24 and related texts, *supra*. Not doing so would also greatly complicate the avoidance of securities laws. See § III/G, *infra*. Also as a practical matter, keeping commercial activities separate from the community is always desirable. A community and a productive venture for livelihood are entirely different types of organizations (consumer v. worker), and they are based upon differing operational and tax premises (non-partnership/ESA v. co-operative association). Putting them into the same entity would create huge technical complications. It would also put the association's land base at risk for liabilities associated with commercial activities. Insurance is never a completely reliable solution to a liability issue.

III/H. **Securities laws avoided.** Capital interests in an LLC are securities if they meet the definition of an “investment contract.”<sup>75</sup> An investment contract is: (i) an investment of money; (ii) in a common enterprise; (iii) with an expectation of profits; (iv) to come from the entrepreneurial or managerial efforts of others.<sup>76</sup> Note that the critical element of profit depends not on the realization of profit but only on an expectation of profit. Thus, a community cannot avoid securities laws simply by failing to realize profits; it must prohibit the possibility of profit. Each of these criteria must be met for a financial interest to be deemed a security.<sup>77</sup> Intentional communities typically tend to make themselves vulnerable on each element of this definition.<sup>78</sup> The autonomous community avoids not just one but three out of four elements of the definition,<sup>79</sup> with the result that security status is definitively avoided. Non-security status under federal law would normally extend to state securities

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<sup>73</sup> See note 60 and related text, *supra*.

<sup>74</sup> Productive activity would be associated with the community in that the two would be owned and controlled by a significant overlap of personnel because most, if not all, workers would be communitarians. And, in the typical situation where it was operating on community land, the community would have a significant measure of control as to common charges, noise, traffic, disruption, etc. To avoid jeopardizing the ESA status of the community, a related work collective should either be provided associate status or should be treated as a lessee paying common charges and participating in deliberations as to carrying charges. The former is the better option because it better solidifies the interrelatedness of a work collective with the community.

<sup>75</sup> *U.S. v. Leonard*, 529 F.3d 83 (2<sup>nd</sup> Cir. 2008); *Great Lakes Chem. Corp. v. Monsanto Co.*, 96 F.Supp.2d 376 (D.Del. 2000).

<sup>76</sup> *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 851-852 (1975) (in the context of a nonprofit housing cooperative, but a corporation).

<sup>77</sup> *United Housing Foundation, Inc. v. Forman* (U.S. 1975), *id.*, 852 (describing the four criteria as “essential attributes”); *Keith v. Black Diamond Advisors, Inc.*, 48 F.Supp.2d 326, 332 (S.D.N.Y. 1999) (same holding in the context of an LLC).

<sup>78</sup> As to (i), intentional communities often call their contributed capital an “investment,” not realizing that an investment is the hallmark of a security. As to (ii), a community is, of course, a common enterprise. As to (iii), it is not unusual for intentional communities to reduce common charges by any available means, like renting facilities and logging for profit. Even distributing windfalls is not unheard of. As to (iv), corporate communities either accommodate themselves to a board of directors, which is a mechanism to centralize management authority, or they assume the vulnerabilities described in note 4, *supra*.

<sup>79</sup> As to (i), the “investment” factor is avoided by the obvious consumer/self-help motive of acquiring a residence and the absence of anything to support an investment motive. *United Housing Foundation, Inc. v. Forman* (U.S. 1975), *supra* note 76, 851-854; *Grenadier v. Spitz*, 537 F.2d 812 (2<sup>nd</sup> Cir. 1976) (shares in a housing cooperative were not securities because the economic reality was that the motive for housing was predominant over any investment motive). As to (ii), this association cannot, of course, avoid being a “common enterprise.” As to (iii), the “expectation of profits” factor, profit is broadly construed to include participation in earnings, including any fixed interest or capital appreciation. *Id.*, 854-855; *SEC v. Edwards*, 540 U.S. 389, 394-395 (2004). In the autonomous community capital interests are entitled to no monetary return, and there is not even any “earnings” from which profits could arise. As to (iv), the “efforts of others” factor is avoided if the contributor of

laws as well.<sup>80</sup>

#### IV. Proposed operational features

IV/A. **Eutopian purposes and practices.** Any alternative community worthy of the name should have a mission or vision statement that articulates aims and goals that are collectively shared and strongly held.<sup>81</sup> Such a mission or vision will necessarily be of a eutopian character.<sup>82</sup> The mission or vision should always be focused on enhancing the vitality of the community and furthering the personal well-being and self-improvement of communitarians. It should never be focused on anything external to the community because that would cede autonomy.<sup>83</sup> Nor should community itself ever be elevated to the level of an abstract principle.<sup>84</sup> A couple of noteworthy possibilities for a communitarian mission, both having strong historical precedents, are a specific purpose of "social regeneration," which essentially means finding and reclaiming our basic human nature and our innate capacity to

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capital participates in management unless his/her efforts are nominal or limited or of little effect. *Fredericksen v. Poloway*, 637 F.2d 1147, 1153 (7<sup>th</sup> Cir. 1981), *cert. denied*, 451 U.S. 1017 (1981). In the autonomous community all communitarians are expected to regularly and meaningfully participate in management of the community. § IV/E, *infra*. And the only gain that may be realized in the autonomous community—liquidation proceeds attributable to inflation and general appreciation in real estate values—does not arise from the efforts of anyone. § IV/I, *infra*.

<sup>80</sup> Except in unusual situations state courts will follow decisions of federal courts as to the meaning of a "security" in state securities laws. *Securities Regulation* § 483, 79A C.J.S.

<sup>81</sup> Taylor, *supra* note 12, 26-27 (the first and most basic core characteristic of a community is that its members have beliefs and values in common, often strongly held, but not necessarily ideological, mythical or religious); Holloway, Mark, *Heavens on Earth: Utopian Communities in America 1680-1880* (Dover Publications, 1966), 227 (in a utopian community it is certain that there must be some fundamental belief to which all members subscribe and which is capable of sustaining them through dissension).

<sup>82</sup> Historically, utopian thinking in 19<sup>th</sup> century alternative communities followed from a deep-seated dissatisfaction with society, the phenomenon being so widespread that it was called "a mutiny against society." Nordhoff, *supra* note 40, 408. In a society that is now at least as pathological as it was then we need a vision of a new society as much as ever. The proposition that utopian thinking is fanciful or impractical and worthy of denigration originated with Marx and Engels who used utopian as a term of abuse to hurl at their opponents while it was their "scientific" socialism that had the features of classic authoritarian dystopias. Berneri, Marie Louise, *Journey Through Utopia* (Schocken Books, 1971, first published 1950), x, 207-209; Buber, *supra* note 33, 80-98. Prospectively, we prefer "eutopian" because it means "a good place" rather than "utopian" which means "no place."

<sup>83</sup> This is not to say that particular communitarians, or even all communitarians, should not be involved with various causes, or even the same cause, only that such causes should not be made the mission of the community.

<sup>84</sup> Buber, *supra* note 33, 134. Buber elucidates this point: "a community...should always satisfy a situation rather than an abstraction. The realization of community, like the realization of any idea, cannot occur once and for all time: always it must be the moment's answer to the moment's question, and nothing more." *Id.*

live together rightly,<sup>85</sup> or a more general purpose of shared development of knowledge, which Epicurus called the ultimate objective of community.<sup>86</sup> As important as having a mission or vision statement is applying it in collective practice. Doing so enhances the community's prospects for success.<sup>87</sup>

IV/B. **Diligence in admittance.** A community should strive for diversity and inclusiveness—otherwise it would be a mere clique. But to sustain its integrity over the long-term it must be and remain a group of like-minded people as to its purposes and mission. Keeping the community a group of like-minded people requires careful attentiveness to eligibility standards.<sup>88</sup> The less mainstream its vision, the more attentive the community must

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<sup>85</sup> Social regeneration implies reacquiring the long-lost ways of thinking and acting that are in accord with our essential nature. We would begin this inquiry with classical Taoism, which addresses this theme in a profound and comprehensive way. Actually, there is nothing to rival it in this respect. The pursuit of social regeneration broadly characterized the utopian communities of the 19<sup>th</sup> century under the theme of seeking the "natural man [sic]." This aim is said to have perfectly aligned with the success of such communities. Holloway, *supra* note 122, 22. Nothing resulting from their efforts seems to have survived. Social regeneration was also the essence of what Gustav Landauer in the late 19<sup>th</sup> century called the "rebirth of the human spirit" as the animating force of communitarian anarchism. Lunn, *supra* note 56, 91. He sought it in the uncongenial German idealist tradition. To neither the utopian communities or Landauer was classical Taoism available at their times and places. If it had been available the historical course of communitarian anarchism might have been radically different—and perhaps it still may be. Notwithstanding that it dates to centuries before the current era, the classic Taoist masters have long been considered sophisticated purveyors of anarchist thought. Marshall, *supra* note 51, 53-60; Clark, John, *The Anarchist Moment* (Black Rose Books, 1984), 165-190; Josh, "Anarchism and Taoism" at <http://theanarchistlibrary.org/library/josh-anarchism-and-taoism>. Indeed, anarchism provides an important aid to the understanding of Taoism. Morris, Brian, "Lao Tzu and Anarchism," *Freedom Anarchist Review*, Vol. 42, No. 17 (22 August 1981), 10-15, available at <https://freedomnews.org.uk/wp-content/uploads/2017/10/Freedom-1981-08-22.pdf>. Likewise Taoism adds important dimensions to anarchist theory—principally, as a naturalistic way of being that greatly enhances the constructive and directional aspects of anarchism. And a good measure of both Taoist and anarchist sensibilities would add much to the prospects of an autonomous community. Although it seems hardly ever to be recognized, a significant reason for the failure of communities is that they were encroached upon by ways of thinking and acting normalized by capitalist culture which gradually undermined their communal resolve. Erasmus, Charles J., *In Search of the Common Good: Utopian Experiments Past and Future* (The Free Press, 1977), 167. The best way to avoid this would be a collective commitment to social regeneration.

<sup>86</sup> Underlying the commitment of Epicurus to the shared development of knowledge was the belief that understanding the nature of things and our role in them makes us better, happier and more autonomous. Las Indias, *supra* note 48, 90.

<sup>87</sup> The usual measures of success of intentional communities are problematical at best. Bigness tends toward hierarchy and bureaucracy, and longevity toward a vested interest in the continuation of community. Ward, *supra* note 52, 387. It is said simply and wisely that the basic criterion for success of a community is that its members feel proud of belonging to it and that they don't want to be somewhere else or doing something else. Las Indias, *supra* note 48, 29.

<sup>88</sup> A useful starting point may be the following: that the applicant be in accord with the purpose and mission of the community, have a strong commitment to community living, have the temperament for co-operative social interactions, will always act in good faith with respect to the community, and is

be in controlling admissions. LLC statutes provide a noteworthy advantage by explicitly permitting an association to determine its own rules as to admission.<sup>89</sup>

IV/C. **Diligence in transfers.** A necessary corollary to controlling admittance is limiting transfers of interests. Restricting transfer by sale or gift calls for special zeal because it brings with it a legal standard of conduct—that the community must act reasonably and not unduly restrain transfer.<sup>90</sup> Fortuitously, that standard has been favorably interpreted in the contexts of organizations somewhat similar to the autonomous community.<sup>91</sup> But, the process can still be more or less contentious if the first prospective buyer is not approved by the association. To minimize problems, the community should undertake an obligation to seek an acceptable buyer while the sellers would presumably also be doing so.<sup>92</sup> Also, because there are no on-point legal precedents, diligence and caution are called for. It would thus be imprudent to overlay restraints necessary to secure the integrity of the community with another set of formidable transfer restrictions in the interests of enhancing affordability of housing.<sup>93</sup> Being twice restrictive would imperil both purposes. This issue is of the highest

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approved for admission at a meeting of communitarians. The more explicit and rigorous the eligibility standards of the community the more focused and tranquil the admittance process tends to become. For an additional compelling reason for carefully considered eligibility standards see note 90, *infra*.

<sup>89</sup> LLC statutes typically allow control over all aspects of how members are admitted. Hagendorf, *supra* note 10, 7-19.

<sup>90</sup> The legal requirements are that: (i) any required consent to a transfer may not be “unreasonably withheld;” and (ii) the process may not “unduly restrain” a person’s right to transfer his or her property. *Property* § 35, 63c Am.Jur.2d. These restrictions apply to all types of transfers of real property interests, including deeds and leases of real property. *Restatement of the Law Third, Property*, Vol. 1, § 3.4. In the autonomous community the consent to transfer actually consists of approval of the proposed transferee for admission to the community. The criteria for admission involve personal characteristics that have nothing to do with the usual measures of the fitness of a buyer. Having well-considered eligibility standards thus takes on special importance because without such standards a denial of admission would appear to be arbitrary.

<sup>91</sup> Especially noteworthy in the *Restatement, id.*, is subsection c that acknowledges the reasonableness of controlling entry into communities and requiring that eligibility requirements be met and subsection d that acknowledges residential cooperative arrangements as an example of a sufficiently strong justification for such restraint. These legal precedents accommodate the three essential elements by which the autonomous community can properly manage the transfer process—a workable standard of reasonable conduct, due consideration for its special needs in securing a compatible group of communitarians, and the absence of burdensome time limits for the process.

<sup>92</sup> The community cannot reject one after another prospective buyers. Rather quickly this would be unreasonable and would unduly restrain the owners’ right to transfer.

<sup>93</sup> The impulse to enhance affordability of housing is certainly admirable, but it necessitates formidable restrictions on transfer both as to selling price and eligible transferees. This procedure arose and developed in organizations having almost no pretensions of developing any real community. It thus acquired acceptance as a stand-alone set of transfer restrictions. Pastel, S.J., “Community Land Trusts: A Promising Alternative for Affordable Housing,” 6 J. Land Use & Envtl. L. 293. When those restrictions are overlaid onto restraints necessary to protect the integrity of the community, the result is a serious

priority because controlling admittance and transfers of interests is what would hold the community together in the long run.<sup>94</sup>

IV/D. **Favorably restricted capital interests.** LLC statutes provide enormous latitude for an association to make its own rules regarding its financing.<sup>95</sup> While capital interests are credited to capital accounts in the names of communitarians, they are limited so as to make them “collective capital,” i.e., more like permanent additions to the capital base of the association.<sup>96</sup> Interest or dividend on capital interests is prohibited because it is an unnecessary capitalist ritual that would serve only to invoke securities laws. While capital interests would normally be recouped only by sale to persons admitted to associate status, an association may occasionally wish to redeem capital interests, and policies should be in place to accommodate this.<sup>97</sup> Raising of capital funds from outside parties is not precluded but should be done only after careful consideration of securities laws.<sup>98</sup> strain on the limits of permissible transfer restrictions—a situation that no community should tolerate.

<sup>94</sup> Transfer restrictions come more to the fore in a land co-operative wherein communitarians own their own homes situated on land owned by the association. Transfer restrictions would be contained a proprietary ground lease agreement. The restrictions essential to sustaining a vital community would be that the property may be transferred only to persons who have been accepted for admission to the association and that the transferees are required to maintain admission in good standing at all times, including payment of common charges and capital assessments that are identified as consideration for the lease.

<sup>95</sup> The general rule is that an LLC can in its organizing documents specify in detail the type of and the procedures governing its financing. Hagendorf, *supra* note 10, p. 9-1. This premise is further aided by LLC statutes being liberally construed so as to give maximum effect to the freedom of contract. *Id.*, p. 1-1.

<sup>96</sup> Collective capital is so commonplace in cooperatives that it is acknowledged in co-operative principles wherein it is stated that at least part of the contributed capital of members “is usually the common property of the co-operative.” Principles of Co-operation, Third. Collective capital is particularly important in an intentional community where contributed capital is typically so heavily invested in realty that it is unavailable for redemption or any other usage.

<sup>97</sup> The typical situation in which redemption of capital funds would be necessary is a commune where no individuals own realty or in a land co-operative when the dissociating persons are not to be replaced, such as when their residence is a movable structure or when the leased house they occupy is to become a common structure of the association. When a capital interest is authorized to be redeemed, the recommended rule is that it will be redeemed as agreed to by the parties or otherwise as the association is reasonably able to do so taking into account the availability of capital assessments and voluntary contributions. The rule thus puts the responsibility to arrange funding on the community, but under the limitation of reasonableness, and it encourages agreement even if the terms are not ideal for the dissociating persons.

<sup>98</sup> Raising of capital from outside parties should be done only after fully addressing the securities law implications of doing so. Raising funds with the offering of any incentive, monetary or otherwise, should be presumed to be a security. Compliance with federal and state securities laws is not a matter with which a community should trifle. Potential consequences of noncompliance with securities laws include civil enforcement actions, personal liability of responsible persons notwithstanding the limited liability protection provided by the LLC structure, and even criminal

**IV/E. Direct participatory governance.** The centralizing principle that capitalist culture insinuates everywhere must be rejected by any community that wishes to be autonomous. It cannot be avoided under corporate statutes. LLC statutes are quite to the contrary. Being designed to accommodate smaller working groups in the nature of a partnership, LLC statutes easily and naturally accommodate direct participatory governance.<sup>99</sup> The autonomous community is thus radically democratic, profoundly participatory, and completely non-hierarchical. All significant matters for decision would be made at plenary meetings of communitarians, and all communitarians would be expected to regularly and meaningfully participate.<sup>100</sup> Whatever leadership is helpful can emerge naturally, and it should be informal, consensual, and easily altered.<sup>101</sup> That direct participatory governance has long been a legal requirement for “operating on a cooperative basis” under federal income tax law is a well-kept secret.<sup>102</sup> Direct participatory governance is also a factor in organizational success or failure.<sup>103</sup>

**IV/F. Consensus decision making.** The absolute power of a majority that typifies corporate statutes is intolerable in a vital community. Unlike all corporate statutes, LLC statutes tend to permit governance in the manner chosen by its members. In the autonomous community consensus decision making is recommended. Consensus is a process through which decisions are reached by common consent, with differing points of sanctions. And the threat is not just from governmental agencies overburdened with large-scale scams. Even raising funds from friendly parties can turn sour if that person’s interest comes into the hands of a hostile executor, inheritor, conservator, etc.

<sup>99</sup> There is no small amount of irony in the fact that partners and LLC members are accorded free choice in matters of internal affairs, while under corporate statutes cooperators have imposed on them structures that are hierarchical, procedures that are formalistic and mandatory, and an internal order that is procrustean. And, most surprising is that cooperators are almost never heard to complain about this situation. It is also a paradox of social life that even groups that rebel against the established order often duplicate that very order in their own internal structures. Kanter, *supra* note 43, 129-130.

<sup>100</sup> This does not preclude something like a steering committee where this is considered necessary or appropriate. It is recommended, however, that such a committee be subject to principles quite unlike a board of directors, i.e., that the committee have limited and specified powers, that it function with full transparency, and that its members be subject to instant recall without cause. The community may, of course, appoint individuals to have specified duties and responsibilities or even limited powers.

<sup>101</sup> Ward, *supra* note 52, 38-43; Marshall, *supra* note 51, 42-45.

<sup>102</sup> This has been the standard for operating on a cooperative basis for over fifty years. See note 60, *supra*. But its plain language continues to be ignored by the cooperative sector generally.

<sup>103</sup> Craig, John G., *The Nature of Cooperation* (Black Rose Books, 1993), 119 (participation is a central aspect of comprehensive co-operative communities, and research into their success and failure makes this fact abundantly clear); Christian, Diana Leafe, *Creating a Life Together: Practical Tools to Grow Ecovillages and Intentional Communities* (New Society Publishers, 2003), 7-8 (a fair participatory decision-making process listed second among the ways to reduce the structural conflict that results in failed communities); Heinberg, *supra* note 35, 157 (leadership and decision making the first listed of the essential issues that make a community thrive or decline).

view being reconciled to the satisfaction of all. Effective use of consensus requires training or study. It is demanding,<sup>104</sup> but it pays off in better decisions, shared commitment to joint efforts, and group solidarity. Consensus has a long and admirable history.<sup>105</sup> Along with direct participatory decision-making, consensus permits a natural equality to emerge within the autonomous community.<sup>106</sup>

IV/G. **Explicit rights of communitarians.** Intentional communities tend to ignore the matter of rights of members, as if any disruption of initial harmony was unthinkable. The autonomous community addresses the issue directly. In addition to rights related to governance, the recommended rights of communitarians in the autonomous community are: (i) unfettered access to operational and financial information of the community; (ii) the right to mediation in matters that cannot be amicably resolved; and (iii) the rights guaranteed in the Universal Declaration of Human Rights of the United Nations, insofar as they relate to an alternative community. The latter encompasses a very wide range of rights and freedoms.<sup>107</sup> All of this follows underlying impulses of anarchism to establish rights, to protect freedoms,

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<sup>104</sup> It is said that consensus requires participants to be emotionally present and engaged, frank in a mutually respectful manner, sensitive to each other, selfless, dispassionate, and possessing a paradoxical awareness of the preciousness of both people and time. Peck, M. Scott. *A World Waiting to be Born* (Arrow, 1994), 347. This is a tall order. Striving towards these characteristics would bode well for any community.

<sup>105</sup> Consensus and approximations of it have always been a common feature of alternative communities, particularly those of a modest size and a secular character. Consensus-like procedures or actual unanimity were in common usage among the marvelously sustainable first cultures around the world from time immemorial. Curl, *supra* note 38, 16-17; Estes, Caroline, "Consensus" in Ehrlich, Howard J., Ed., *Reinventing Anarchy, Again* (AK Press, 1996), 368. There is even impressive evidence of the use of consensus-like behavior in the natural world. Seeley, Thomas D., *Honeybee Democracy* (Princeton U. Press, 2010).

<sup>106</sup> Natural equality is that which is found among all people solely by the constitution of their nature, which exists by reason of natural law, and which is the principle and foundation of freedom. Jaucourt, Louis, chevalier de, *The Encyclopedia of Diderot & d'Alembert Collaborative Translation Project*, tr. Stephen J. Gendzier (Michigan Publishing, 2009), s.v. "natural equality." Conventional approaches to equality attempt to impose equality in a system that is inherently unequal. Equality used to be commonly recognized as a cooperative characteristic. Hulbert, L.S., *Legal Phases of Cooperative Associations* U.S. Dept. of Agriculture, 1942), 169-171. There is now a surprising dearth of contemporary commentary on the subject of equality within intentional communities. This is likely due to American culture normalizing inequality. A notable exception, probably because it emerges from Spanish culture, is Las Indias, *supra* note 48, 30 (equality is the first-listed of the "ways of doing things and living" that make communities feel successful). The autonomous community radically opposes this trend. It uses a natural structure and congenial policies that are inherently harmonious with equality. In this respect it is much like the Taoist ideal of a natural society wherein both equality and inequality would have no meaning. Clark, John, *The Anarchist Moment* (Black Rose Books, 1984), 189.

<sup>107</sup> The relevant rights proclaimed therein are rights to equal protection, privacy, personal convictions and conscience, opinion and expression, political and religious views, association, property, freedom from arbitrary discrimination, freedom from attacks upon honor or reputation, an effective remedy for violations of rights, and a fair hearing in the determination of rights and obligations. This Declaration was adopted by the United Nations General Assembly in Paris on 10 December 1948.

and to solve disputes.<sup>108</sup>

**IV/H. Ties to outside communities.** “Concern for community” is a co-operative principle. Strong ties with the surrounding community tend to enhance resilience and reduce internal conflicts.<sup>109</sup> Community ties become increasingly important the more unconventional is the community.<sup>110</sup> Additionally, the definition of community includes a community of common interests,<sup>111</sup> which naturally suggests a federation of communities—itsself another co-operative principle. As to its importance, Kropotkin saw in the isolation of the 19<sup>th</sup> century utopian communities from one another and from the rest of society the efficient causes of their failure.<sup>112</sup> It is said that a federation would have to operate under the same principles as, be closely connected with, and exert an attractive and educative influence on society as a whole on behalf of, its constituent communities in order for any social success to be realized.<sup>113</sup> Nothing like this seems even remotely possible with existing federations. Autonomous communities will probably find it necessary eventually to form their own federation.

**IV/I. Foresighted dissolution policies.** The time to resolve dissolution policies is long before the need arises. It is recommended upon dissolution, after payment of all liabilities and expenses of dissolution, that capital interests of outsiders be redeemed first, then those of communitarians to the extent that their contributions exceed capital contributions required of communitarians generally.<sup>114</sup> It is recommended further that the portion of remaining assets attributable to land speculation or development activity<sup>115</sup> be treated as profit, i.e., distributed for local community support, co-operative development, or other social purposes

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<sup>108</sup> Marshall, *supra* note 51, 640.

<sup>109</sup> Sale, Kirkpatrick, *Human Scale* (Coward, McCann & Geoghegan, 1980), 381.

<sup>110</sup> This principle is well illustrated by an extreme example. There was an anarchist colony in the turn of the 20<sup>th</sup> century so remotely situated that it could reasonably be approached only by ferry boat. Then President McKinley was assassinated by a self-proclaimed anarchist. The big-city press viciously whipped up hatred against the colony without a shred of evidence. Because of their remote location the colony’s circle of community was few and far-between, but among them was the captain of the ferry. Although the events are uncertain, in the story told by a descendant of the colony’s founders, an armed raiding party boarded the ferry in Tacoma. Having heard their fiery speeches, the captain faked a mechanical breakdown. The boat languished in the water for hours until the angry party cooled down, and then they were returned to Tacoma and refunded their fares. Having the wind knocked out of their sales, the raiding party never re-formed. Wadland, Justin, *Trying Home: The Rise and Fall of an Anarchist Utopia on Puget Sound* (Oregon St. Univ. Press, 2014), 30-38.

<sup>111</sup> The American Heritage Dictionary, *supra* note 49, s.v. “community.”

<sup>112</sup> Buber, *supra* note 33, 141. Kropotkin was well known to have studied carefully the history of alternative communities, especially in the U.S.

<sup>113</sup> Buber, *supra* note 33, 140-141.

<sup>114</sup> Since excess capital interests would be voluntary, uncompensated, and to the benefit of all communitarians, they should not be risk capital in the same way as required capital interests.

agreed to by communitarians. Selectively precluding the distribution of gain of such a rude character follows co-operative tradition,<sup>116</sup> serves to avoid a monetary incentive to dissolve the community, and is the right thing to do. Other gain on the community's real property—presumably being attributable to inflation and general appreciation in real estate values—is recommended to be distributed to communitarians in proportion to the number of years they have lived in the community.<sup>117</sup> These and other recommended policies serve to minimize any incentive to “sharing out” by liquidating the association.<sup>118</sup>

## Conclusions

This path to community is simple to understand and operate, remarkably advantageous, and requires no legal, tax or accounting services. Its cutting-edge character may make a potential user group somewhat apprehensive. But its underlying legal premises are soundly based on impeccable and long-standing legal credentials. Its novelty lies only in being unknown to the intentional community sector. What existing or intended communities should genuinely be apprehensive about is the complexities, rigidities, costs, and vulnerabilities of

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<sup>115</sup> Gain attributable to land speculation or development activity, if it existed, should be a matter of common knowledge in the area. A reasonable estimate of the magnitude of such gain can often be acquired from an experienced local realtor. A community should not feel the necessity to secure an appraisal. An appraisal is an extravagant waste of money. An autonomous community can certainly come to a collectively agreed estimate of speculative gain.

<sup>116</sup> That remaining assets upon liquidation would go to charitable or public purposes was in the first amended bylaws (1854) of the Rochdale Pioneers that laid out the framework of co-operative principles. These first amended bylaws included the first statement of the principle of the educational fund. Lambert, *supra* note 63, 81-82. The proposition thus has credentials equal to those of co-operative principles. In addition, disinterested distribution on dissolution was advocated by such historical figures as Robert Owen, Philippe Buchez, Ernest Poisson, and Dr. Georges Fauquet and such contemporary figures as Antoine Antoni and Emory Bogardus.

<sup>117</sup> To a greater or lesser extent inflationary gain merely serves to recoup the purchasing power of communitarians' original capital contribution that has been lost due to monetary inflation. It is thus not a gain at all, only a breaking even. But realizing that so-called gain would be unlikely when the land was “burdened” by long-term ground leases because that is looked upon as commercially impractical. If any gain were to be realized, it is recommended that it be distributed on the basis of length of residence in the community. This is reasonable because inflationary gain accrues over time, not by reason of any economic transactions consummated on the land. Doing so also promotes equity because it puts communitarians who have paid lesser common charges (which should only be because of financial need) on the same footing as everyone else. This gain would be too speculative and remote to invoke securities laws. *International Brotherhood of Teamsters v. Daniel*, 439 U.S. 551, 562 (1979); *United Housing Foundation, Inc. v. Forman* (U.S. 1975), *supra* note 76, 855-856.

<sup>118</sup> “Sharing out” is a phrase applied to the situation where a less-committed successor generation forces liquidation to realize the value in association property. It is particularly likely to happen when the rule in place is that remaining assets upon liquidation are to be shared equally among current members. The incentive for sharing out is much reduced in the autonomous community by capital interests being properly accounted for and being inheritable, by gain attributable to land speculation or development activity being precluded from distribution, and by remaining assets being distributed in proportion to the number of years of residence in the community.

corporate structures. As to this path being unknown, perhaps its principled approach, remarkable features, and obvious advantages may attract and motivate some people who care—or not.