

**A Floor Without a Ceiling:
Ethics and Strategy in Policy Design**

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Abstract

This paper uses a case study to examine the relationship between policy design and coalition building in urban redevelopment policy. The primary argument is that policy design can shape the moral disposition of interests and hence the structure of the policy arena. At one extreme, an issue may be narrowly defined, lack grounding in the core principles of the regime, and enhance the tension between efficiency and equality. Under such conditions the policy arena will contain few interests, each narrowly attached to a marginal ideal preference. At the other extreme, an issue may be broadly defined, grounded in a core principle of the regime, and ease the tension between efficiency and equality. Under such conditions, the policy arena will contain diverse interests clustered around a common center who are willing to compromise away from their ideal preferences. However, ethical considerations alone are insufficient to bring about such outcomes. This reveals the critical role of strategy.

Keywords: Policy Design, Coalition Formation, Urban politics, Regime theory, Housing

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On July 22, 1999 Governor John Engler signed into law the Michigan Urban Homestead Act. This ten bill package sought to aid urban areas in neighborhood redevelopment through two main features: The first reformed Michigan's tax reversion process, streamlining the way delinquent property taxes are collected and abandoned property reverts to the state for non-payment of taxes. The second created a process whereby abandoned houses and vacant land could be transferred to low- and moderate-income families at the cost of one dollar.

There was an air of jubilation at the signing ceremony. The Governor stated that "this legislation will bring the benefits of economic prosperity that much of Michigan has enjoyed for the past several years to our urban areas and the people who need it most." The legislature sent a bi-partisan delegation who spoke positively about the package. Mayors from many of the state's core cities attended along with representatives from interest groups as diverse as the Michigan Association of Realtors and the Michigan Poverty Law Center. Even before the signing, newspapers editorialized that the legislation marked a watershed in urban policy.¹ One might get the impression that the legislation enjoyed widespread support from its inception.

However, this was not the case. There was initial doubt among political pundits that the legislation would or should pass. During the planning stages, the Detroit *Free Press* was skeptical, albeit hopeful, criticizing the record of Governor Engler and the Republican majorities in both the state House and Senate on urban policy, musing that if

¹ See particularly the Oakland *Press* Editorial Page, April 8, 1998.

nothing else, this would be an opportunity for Detroit to “call Engler’s bluff.”² Elected officials were also doubtful. Lansing Mayor David Hollister, a veteran of the Michigan Legislature, stated “this is too revolutionary to get through the legislature in the foreseeable future.”³ Concerned interest groups hired lobbyists to track, and, if necessary, fight the legislation. Indeed, the odds should have been on the side of the skeptics: Similar packages had failed in the past, and other economic development programs passed by a slim and partisan majority only after lengthy and contentious battles.

Academic literature helps us to understand the problem. Redevelopment policy generally follows one of two strategies: redistribution of wealth or the attraction of capital through “supply side” methods. As Paul Peterson has pointed out, to the extent that policy involves redistribution of wealth, it will have a greater tendency to drive capital out of the city and invite opposition from business interests.⁴ Others have noted that the opposite approach—a free market strategy—leads to inequitable development: downtown regions prosper at the expense of neighborhoods where redevelopment is needed most.⁵ Consequently, the fault lines pit concern for efficiency against the desire to promote equality—a tension that seeps into policy design and shapes the pattern of interests attracted to a particular issue.

² Detroit *Free Press* Editorial Page, November 13, 1997.

³ Interview July 1998.

⁴ Paul Peterson, *City Limits* (Chicago: University of Chicago Press, 1981).

⁵ Dennis R. Judd and Susan S. Fainstein, *The Tourist City* (New Haven: Yale University Press, 1999).

The relationship between policy design and interests is of mutual concern for policy studies⁶ and urban politics—particularly regime theorists.⁷ The latter argue that the nature of the regime structures the policy arena, which in turn shapes policy outcomes. Synthesizing previous work, regime theorists examine the way interests interact within both formal and informal institutions, facing both political and economic constraints. As Bryan Jones and Lynn Bachelor have argued, these factors determine what ideas are available for consideration when it comes to a particular policy problem. The collection of viable alternatives, which they call the solution set, will be larger or smaller depending on the diversity of interests making up the regime. In a regime where fewer interests are attracted to the political arena—a problem the literature terms systematic bias—there will be fewer ideas and thus particularly anemic solution sets.⁸ Ultimately, since problem solving and social production are more likely when policy is crafted in an arena that includes a greater diversity of interests, the fundamental question for regime theorists is “how, in a world of limited and dispersed authority, actors work

⁶ Ann Larson Schneider and Helen Ingram, *Policy Design for Democracy* (Lawrence: University Press of Kansas, 1997).

⁷ Stephen L. Elkin, *City and Regime in the American Republic* (Chicago: University of Chicago Press, 1987). See also Clarence N. Stone, *Regime Politics: Governing Atlanta, 1946-1988* (Lawrence: University Press of Kansas, 1989).

⁸ Bryan D. Jones and Lynn W. Bachelor, *The Sustaining Hand: Community Leadership and Corporate Power* (Lawrence: University Press of Kansas, 1993), 15-19.

together across institutional lines to produce a capacity to govern and to bring about significant results.”⁹

Such a question lends itself not only to developing descriptive models of decision making, but also raises the possibility that political science can be used in a prescriptive capacity. That is, it can offer insight into developing a strategy to build socially productive coalitions.¹⁰ Such a strategy requires an understanding of the political arena from two perspectives—the empirical and the normative. The empirical perspective focuses on the question of who governs—the number of interests and the location and intensity of their preferences; the normative perspective focuses on the question of *how* they govern—whether the political arena allows interests to remain at irreconcilable odds with one another or whether it broadens their preferences and creates opportunity for them to discover mutual benefits.

Returning to the Michigan Urban Homestead Act we see why it was an outcome predicted by neither the academic literature nor the pundits: Given the assumedly inherent tension between efficiency and equality that defined the issue, it is unlikely that a regime coalition would form in support of the legislation. The program would not generally lie in the solution set of most regimes. Nevertheless, the package overcame initial skepticism. By the time it arrived in legislative committee, there was a broad and diverse coalition supporting it, driving it to eventual passage by overwhelming majorities in both chambers. The problem, according to Stone, is that even though “we know that relationships of civic engagement do develop and provide a capacity for ameliorating

⁹ Stone, *Regime Politics*, 8.

¹⁰ Elkin, *City and Regime*, ix; Stone, *Regime Politics*, 254-58.

social problems, we don't know much about the conditions under which they form or what gives them durability.”¹¹ The design strategy in the Michigan Urban Homestead Act, informed by both positive and normative political science, helps to answer this question, offering insight into principles of policy design more generally. Understanding this strategy requires a reconsideration of the relationship between efficiency and equality.

Efficiency vs. Equality: The Necessary Tradeoff?

In support of the notion that efficiency and equality are at odds, many cite the work of Arthur Okun. According to Okun, the tension is the result of “uneasy compromises” between market economics and liberal institutions. He elaborates: “to the extent that the system succeeds, it generates an efficient economy. But that pursuit of efficiency necessarily creates inequalities. And hence, society faces a tradeoff between equality and efficiency.”¹²

The tradeoff has serious implications for policy design. For example, if we seek to promote equality too directly through a process of wealth redistribution, we encounter not only political opposition from the wealthy, but we also affect their economic behavior in ways that actually harm the poor. In Okun's example, “measures that might soak the

¹¹ Clarence N. Stone, “The Dilemmas of Social Reform Revisited: Putting Civic Engagement in the Picture,” paper presented at the Annual Meeting of the American Political Science Association, Atlanta, GA, September 2-5, 1999, 24.

¹² Arthur Okun, *Equality and Efficiency: The Big Tradeoff*, (Washington, D.C.: Brookings Institution Press, 1975), 1. All parenthetical citations in the remainder of this section refer to this work.

rich so much as to destroy investment and hence impair the quality and quantity of jobs for the poor could worsen both efficiency and equality” (4). Put metaphorically, “any insistence on carving the pie into equal slices would shrink the size of the pie” (48). On the other hand, if we seek efficiency without qualification, we create other problems for equality and rights. Okun argues that the efficiency of an unencumbered market would lead the rich to get richer and the poor to get poorer. This, he contends, will allow the wealthy to purchase a greater share of rights either directly or indirectly (22). This raises that stakes of public decision making. Where equality and efficiency are in direct tension policy becomes a zero sum game where each side is encouraged to behave in a self-preservationist manner. Interests will, in the words of James Madison, be “more disposed to vex and oppress each other than to cooperate for their common good.”¹³

Still, the picture need not be so bleak. Okun does note that with careful policy design efficiency and equality could be jointly enhanced. He suggests that “techniques that improve the productivity and earnings potential of unskilled workers might benefit society with greater efficiency *and* greater equality” (4, emphasis in original). Elsewhere he offers two general strategies for easing the tension. First is what he calls “upside down economics”. The idea is to raise the cost of upper marginal growth so that the rich find it less worthwhile to increase their wealth. The second strategy he calls the “floor without a ceiling” approach. Here the idea is to tolerate upper marginal growth, but link it to lower marginal growth, so that if the rich desire to get richer, they incidentally raise the living standards of the poor along the way.

¹³ Alexander Hamilton, John Jay, and James Madison, *The Federalist*, ed. Edward Mead Earle (New York: The Modern Library, 1937), 56.

Okun does not endorse one of these strategies over the other. However, his tone suggests that the “floor without a ceiling” approach is superior—even though his policy recommendations seem to prefer “upside economics.” Okun recommends raising the top marginal income tax rate and increasing both the estate tax and the capital gains tax. This is strange given his assumptions about the behavioral effects of policy on self-interest. It is difficult to see how a series of tax increases on the rich will do anything other than discourage upper marginal growth. Okun as much as admits this himself in his playful musing on human nature that “high taxes are followed by attempts of ingenious men to beat them as surely as snow is followed by little boys on sleds” (97). What is more, his substantive recommendations seem to betray the principles found in his admission that “if the losers can still lead a decent life, prizes for the winners in the form of swimming pools and bigger houses seem especially innocuous in terms of their social impact” (49-50) and “the thousand dollar a day lawyer need not be a grave threat if adequate public defenders are available” (31). However, when it comes to offering substantive policy advice that follows the “floor without a ceiling” approach, Okun is silent. The reader is left to find another source for examples and, more importantly, for thinking about the kind of political arena that would be capable of making and implementing such policy. This brings us back to regime theory.

Applying the Social Production Model.

Although Clarence Stone acknowledges the tension between efficiency and equality, he takes more seriously than Arthur Okun the possibility of easing that tension. This is because Stone has a different understanding of the problem both empirically and normatively. Empirically, Stone argues that “effectiveness is itself a complex

phenomenon—too complex to constitute a simple tradeoff with equity.”¹⁴ While there is clearly some relationship between economics and human behavior, Stone doubts that it is linear. But even more important is that Stone’s empirical observations can not be divorced from his normative vision. He realizes that as long as we accept the tradeoff as inevitable, leaders will continue to embrace the politics of social control: In a sense, thinking it makes it so. This means that participation will be discouraged, rather than encouraged. As a result, regimes will refrain from progressive policymaking and permit systematic bias to continue. By allowing creative alternatives to go unexplored, policymakers fail to address the problems of the city as fully as possible. Quick fixes coupled with side payments to losers continue to be preferred over long term problem solving. This serves as the basis of his recommendation for applying the social production model: Frame issues so as to promote civic engagement.

According to Stone, social production is “the capacity to assemble and use needed resources for a policy initiative” which requires bringing more interests into the process and encouraging civic engagement.¹⁵ This means arranging the process in such a way that interests who once saw each other as natural adversaries now have incentive to talk to each other. As Stone puts it, “we should see reform as a more diffuse process of establishing an environment within which new relationships can take hold.”¹⁶ Ideally, goodwill forms among former adversaries, but in reality, mutually recognized, long term self-interest is sufficient. This concept is not unlike the advice Madison offered the new

¹⁴ Stone, *Regime Politics*, 201.

¹⁵ Stone, *Regime Politics*, 227.

¹⁶ Stone, “Dilemmas,” 4.

republic in *Federalist* #10: “extend the sphere and take in a variety of interests.” By increasing the number and the type of stakeholders politics need no longer simply pit one against the other. We transform a zero-sum game into a variable sum game, meaning that in every issue it becomes likely that no single interest wins, and no single interest loses.

Stone identifies the framing stage of the policy process as key to bringing about those conditions.¹⁷ In large measure this will involve framing the issue so that efficiency and equality appear to be less in tension. The implication is clear: the tension is in large part an artifact of poor policy framing, and as a result, a given issue appeals less broadly to groups, and does so in a manner that places them in an adversarial relationship. It is unlikely that framing can remove the tension entirely, and it is doubtful that it will work in all cases, but it should go a long way toward mending the rifts that are taken for granted under the politics of social control. This refines Okun’s key point: the underlying need to balance concern for equality against regard for efficiency still exists, but now the fulcrum upon which that balance is struck is politics rather than economics. This means that politics must be understood less as “who gets what” and more as “the art of the possible” which requires a greater degree of subtlety and insight. In Stone’s words, “effectiveness for a regime acting in the name of the whole community thus calls for broad comprehension of social change and awareness of a wide range of situations and

¹⁷ Clarence N. Stone, “The Atlanta Experience Re-examined: The Link between Agenda and Regime Change,” *International Journal of Urban and Regional Research* 25 (March 2001), 20-34.

potential consequences.”¹⁸ It is exactly this insight that guided the Michigan Urban Homestead Act.

The Changing Michigan Landscape

Economic development policy has had a controversial history in Michigan. It has also had varying degrees of success, related closely to mayoral leadership as Bryan Jones and Lynn Bachelor have demonstrated.¹⁹ However, there has been one consistent theme: Policies claiming to enhance economic development have often been used to veil programs that contribute to segregation and disinvestment.²⁰ This was certainly the case with urban renewal and the expansion of public housing which first created incentives for middle class whites to leave the city then subsidized their flight to the suburbs.²¹ More recently, programs such as tax increment financing and quasi-privatization schemes including principle shopping districts and business improvement districts allow business interests to insulate their wealth and recapture their tax dollars for their own use. At the same time, generous tax abatements coupled with Michigan’s variation of the enterprise

¹⁸ Stone, *Regime Politics*, 211.

¹⁹ Jones and Bachelor, *Sustaining Hand*.

²⁰ Joe T. Darden, *et. al*, *Detroit: Race and Uneven Development*. (Philadelphia: Temple University Press, 1987).

²¹ Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit*, (Princeton: Princeton University Press, 1996). Kenneth T. Jackson has shown that this problem is not local to Michigan, but rather is the dominant trend in most of America’s urban centers. See *Crabgrass Frontier: The Suburbanization of the United States*, (New York: Oxford University Press, 1985).

zone, called the renaissance zone, have shifted the burden of financing municipal services away from downtown and into the neighborhoods. For all of these reasons, it is not surprising that these proposals invite a great deal of contention in the legislature, often dividing sharply on party lines, but also along racial lines. Likewise, it is not surprising that new economic development programs face increasing amounts of suspicion. Nevertheless, contention was almost nonexistent in the case of the Michigan Urban Homestead Act.

The Michigan Urban Homestead Act

The initial plan of the Michigan Urban Homestead Act was to create a low- and moderate-income housing program that encouraged the rehabilitation of city owned vacant houses. However, early in the research stage it was discovered that the stock of houses available for homesteading was beyond mere disrepair; it was unsalvageable. Indeed, the cost of rehabilitation would far exceed the means of low- and moderate-income families. Furthermore, in nearly every case, city owned vacant houses suffered from clouded title, creating legal barriers to conveying the property to new owners. As a result, in many cities the volume of abandoned property grew to unmanageable levels.²² Investigation revealed that the same culprit was to blame for both the structural and legal obstacles: the tax reversion process. Therefore, a decision was made to connect the two

²² For example, officials from the City of Detroit acknowledged in testimony before the Michigan House Committee on Local Government and Urban Affairs that they had an estimated 40,000 parcels of abandoned property in 1999. This is consistent with the findings of a University of Michigan School of Public Policy study titled “Abandoned Commercial Property in Detroit” released April 25, 1998.

issues: Reforming tax reversion would improve the supply of houses available for urban homesteading, and an urban homesteading program would offer cities a new tool for disposing of reverted property.

The tax reversion process in Michigan is governed by the General Property Tax Act.²³ According to the statute, all real property taxes are due on January 1st for the preceding year and are considered delinquent on March 1st if they are not paid. Local units of government (cities, villages, and townships) compose a delinquent tax roll, which they turn over to their county treasurer who is the chief tax collecting agent. The county treasurer immediately reimburses municipalities and all other taxing jurisdictions (school districts, transit authorities, libraries, and park systems) out of a special revolving fund, so that they need not carry delinquent taxes as debt. County treasurers capitalize the revolving funds by selling delinquent tax anticipation notes, which they pay off as they collect taxes, interest, and penalties from property owners.²⁴

²³ The standard citation for the General Property Tax Act is M.C.L. 211.1. The delinquent collection process is specified in sections 55-131e. My summary is based on reading the legislation, but helpful commentaries can be found in Kevin T. Smith, “Foreclosure of Real Property Tax Liens,” *Michigan Bar Journal* (September 1996): 953-57. See also Albert A. Bogdan, “The Delinquent Property Tax Collection Process: How to Use it for Community Redevelopment and Why We Need to Replace it,” *Planning and Zoning News* (October 1997): 5-9.

²⁴ Interest accrues at 1.25% per month (15% APR), and several flat rate penalties attach to the tax bill at various stages in the process.

Two years after receiving the delinquent taxes from the local unit of government, the county treasurer holds an auction selling a lien against the property to anyone willing to pay the outstanding taxes, interest, and penalties. Whoever buys the lien then assumes primary responsibility for collecting the debt; no legal interest in the property transfers at this time. If the taxes remain unpaid a year later, the lien converts to a deed and the deed holder is entitled to a penalty of 150% of the tax debt. If the penalty goes unpaid, the deed holder may seek foreclosure in the courts. The county treasurer transfers those parcels which fail to sell at the lien auction to the state Department of Treasury where they sit for another year, continuing to accrue interest and penalties.

If nobody redeems the taxes after the third year, the foreclosure process begins. The state orders a title search and attempts to notify all parties discovered to have a legal interest in the property. Within the next year, the Department of Treasury holds an administrative hearing, after which, if the taxes remain unpaid, a new title is issued in the name of the state. The Department of Treasury then transfers responsibility for all tax reverted property to the state Department of Natural Resources for final disposition. The Department of Natural Resources visits the property, assesses its value and either schedules it for auction or conveys it back to the local unit of government. In rare cases the Department of Natural Resources may elect to retain the property for public use—generally only when the property is contiguous to existing state land such as a park, forest, or other recreation or conservation area. Altogether, the process could take more than five years and involve complicated tradeoffs among municipal, county, and state officials, not to mention investors from the private sector.

There are several problems associated with the tax reversion process.²⁵ First, by most accounts, the rights of property owners were in peril. According to the United States Supreme Court, property owners facing adversarial action for non-payment of taxes are entitled to notice and a hearing wherein they may challenge the delinquency.²⁶ Proper notice requires that all persons with a legal interest in the property be discovered through a complete title search and a search of other relevant documents. Unfortunately, the large volume of delinquent parcels (more than 10,000 per year) requiring such treatment makes the cost of adequate discovery prohibitive. According to the Department of Treasury, the state was paying an average of \$20 per parcel for title work—far below the actual cost for reliable information. In the committee hearings real estate experts testified that the typical cost for a quality title search is \$150. As a result, cases arose with considerable frequency where property was foreclosed without all owners receiving notification. Each case led to a successful legal challenge which has caused the title insurance industry to balk at all tax reverted property; for them it is simply a bad risk. This means that before the property can be reused, whoever receives it from the state must perform new title work and sue for quiet title in circuit court. This drains valuable resources that might otherwise be used for rehabilitation.

²⁵ Many of these points were brought to light in testimony offered by the Hudson Institute before the Senate Committee on Economic Development and Regulatory Affairs on March 9, 1999 and before the House Committee on Local Government and Urban Affairs on March 18, 1999.

²⁶ See *Mennonite Board of Missions v. Adams*, 462 U.S. 791 and *Dow v. State of Michigan*, 396 Mich. 192.

A second problem is that the system exacerbates the financial hardships of poor families and creates opportunities for them to be taken advantage of. A five year redemption period seems generous, but it merely extends the time for interest and penalties to accrue. By the time a \$1,000 tax bill comes to the end of the process, a family would have to pay a minimum of \$2,100 to avoid foreclosure. To make matters worse, the law required that if the property was more than three years delinquent, an owner would have to bring all taxes up to date, not simply pay the oldest year's taxes. This means that in the most severe cases, where a family is chronically delinquent perhaps due to a job loss or the illness or death of a wage earner, it might have to come up with nearly ten thousand dollars to avoid foreclosure. In cases where the lien was sold at county auction, responsibility for collecting the debt shifts to private speculators. The people who purchased tax liens were seldom interested in the property itself, but only the potential of nearly doubling their money within two years.²⁷ When the legislature began hearings on reforming the process, a good deal of evidence was presented of lien buyers misrepresenting themselves as agents of the government, using intimidation tactics, and otherwise violating the spirit of the law at the expense of delinquent property owners.

The gravest problem stems from the length of time it takes for a parcel to pass completely through the system. While there are many responsible landlords in Michigan's cities, unfortunately, there are also plenty of slumlords. These people charge high rents for low quality houses, often in poor condition. In order to maximize their return, they often allow the taxes to go unpaid, knowing that it will take several years for

²⁷ The Michigan system was featured in television infomercials and web sites such as www.taxesales.com and www.taxforfeited.com making these very claims.

the system to catch up with them. In the meantime, they allow the house to fall further into disrepair. Ultimately, they allow the house to revert, apparently caring little about the devastating effects on families and neighborhoods. Even greater problems arise when the structure is unoccupied. Michigan's winters are cold and snowy. Five years can transform a vacant house into a pile of rubble. Aside from the structural damage, vacant houses wreak havoc on a neighborhood: They attract dumping, which is both an eyesore and harmful for the environment. Worse, these structures can provide cover for criminals and increase the risk of fires. The blighting effect of abandoned property ultimately spills over to damage other parts of neighborhoods. In the words of Mark Horrigan, City Councilman from Flint, "these abandoned houses are nothing more than billboards telling people to leave."²⁸

Abandoned property also imposes financial burdens on the community beyond lost tax revenue: Even though the procedural responsibility for these parcels has shifted to the county or to investors or to the state, the fact is that the structure itself remains in the city and in the neighborhood. If the windows are to be covered with boards in hopes of keeping vandals out, the cost is borne by the city. If the weeds are to be cut and

²⁸ Over several months in 1998 the House Committee on Urban Policy and Economic Development held hearings in central cities throughout the state. On November 24, 1998 it released a report summarizing the hearings. Councilman Horrigan's comments appear on page six of the report. The connection between tax reversion and blight is also made in a report issued by the Citizens Research Council of Michigan titled "Delinquent Property Taxes as an Impediment to Development in Michigan," Report Number 325, April 1999.

rubbish hauled away, the cost is borne by the city. When the time comes for the structure to be demolished, that cost, too, is borne by the city. Finally, because the same process governs the reversion of abandoned vacant land, cities face considerable difficulty in assembling parcels for major redevelopment projects. In House and Senate testimony, developers were quick to catalogue the number of projects that fell through or were relocated to outlying areas due to this problem. Altogether, the tax reversion facilitated slumlording, imposed both social and financial costs on local government, and discouraged neighborhood reinvestment; it is the key component of a circuit of blight. For this reason, the General Property Tax Act was redrafted, the goal being to make the process shorter, simpler, and more certain.²⁹

The entire process was shortened: County Treasurers would no longer hold the delinquent tax roll for two years before taking action to collect. The additional year following the lien sale was also eliminated, meaning title work begins on delinquent parcels fourteen months after delinquency. Therefore, the length of time from initial delinquency to foreclosure would now be two years and final disposal of reversions would take only an additional four to nine months. A process that used to grind on for more than five years would essentially be cut in half. No longer would the tax reversion system serve as an invitation to absentee landlords to milk property of its value while

²⁹ The summary that follows is based on a reading of PA 123 of 1999 as well as a Citizens Research Council of Michigan Memorandum titled “Changes to the Property Tax Delinquency and Reversion Process in Michigan,” Memorandum #1052 (January 2000).

shirking the obligation to maintain their property. The circuit of blight would be disconnected.

The new process was also to be simpler. The decision was made to reduce the number of complicated tradeoffs and the number of hands involved in the process. To accomplish this, the new reform would eliminate the county lien sale. The sale served a useful purpose in 1896 when the General Property Tax Act was first drafted and Michigan's economy was chiefly agricultural. It did give an infusion of cash to local treasuries in the first part of the 20th century. However, with the creation of county delinquent tax revolving funds in the 1970s, the lien buyer's role became obsolete. It was not even needed to reimburse the revolving funds, as collected interest and penalties took care of that. The new system would also allow the county treasurers to administer the entire process, including the title work and sale of the property—tasks that had heretofore been handled by the state Department of Treasury and the Department of Natural Resources. Fewer hands involved in the process would make it easier for taxpayers to know how to redeem their debt and preserve their ownership rights. It would also leave fewer opportunities for unscrupulous people to take advantage of others.

Finally, steps would be taken to insure that the process led to a more certain result. Over the course of the second year, collecting agents would perform a complete title search and send a series of notices to the property and all discovered interests. They would also place a notice in the local newspaper, and even visit the property serving personal notice on the occupants. If these attempts to collect the delinquent taxes went unanswered, the collecting agent would file a petition with the circuit court seeking foreclosure. This provided much needed oversight and also won the support of the title

insurance industry. As long as a judge was convinced that every effort was made to collect the debt and all interested parties received notice and had an opportunity to be heard, he or she would order foreclosure and issue a quiet title. All prior interests in the property and all other encumbrances other than utility rights of way and special assessments were canceled. The new owners would be ready to restore the property to productive use immediately.

Coupled with the new tax reversion process was a statewide urban homestead program.³⁰ This would be entirely new to Michigan. The program can be administered either by a local non-profit agency or by a department inside the municipal government. Whoever administers the program is responsible for screening eligible families and monitoring their progress during the homestead period. Eligibility requirements called for families to be below median income, have at least one adult family member employed, and all children in the household attending school. The head of the household also must have no felony convictions for the previous five years and demonstrate that he or she is drug free. Once an eligible family is coupled with an available house, the homestead period begins. The family must continue to meet all eligibility requirements, perform all necessary repairs to the satisfaction of the administrator, and pay a modest rent determined by the administrator for five years. The rent is used to pay administrative costs of the program and is also pooled with other money to create a loan fund out of

³⁰ This summary is based on a reading of PA127 of 1999, which created the new program, along with testimony before the Senate Committee on Economic Development and Regulatory Affairs on March 2, 1999.

which homesteaders may borrow to aid in their repairs.³¹ At the end of the homestead period, the family takes clear title to the house at the cost of one dollar. The family is free to continue living in the house, or it may sell the house at any time following transfer, retaining the entire resale profit (under the assumption that whatever value exists in the house was created by the family).

Building a New Coalition

The politics of social control thwarted previous attempts at tax reversion reform.³² Legislative records reveal that in every case the conditions were similar: A proposal was offered and interest groups would either support or oppose the plan. The principal stakeholders would be the Michigan Association of County Treasurers on one side and the Michigan Tax Certificate Association (an organization of people who purchase tax liens at the county sales) on the other side. The Treasurers would argue that the county

³¹ The interest rate on these loans is capped, not to exceed the rate for Federal Housing Administration home improvement loans under Title I of the National Housing Act.

³² In 1990 the Michigan House considered a bill (HB4670) that would have slightly shortened the process. In 1993 the legislature enacted a measure designed to accelerate the foreclosure of abandoned residential property, but it required that all taxing units forego reimbursement from the county revolving fund; therefore it has never been used. In 1997 three bills were introduced related to tax reversion: HB5353, HB5354, and SB791. According to Scott Schragger, then Senior Legislative Director for the Michigan Municipal League and a former staff member of the Michigan House, the issue of tax reversion was also taken up several times in the 70s and 80s all without consequence.

lien sale was obsolete and brought unnecessary administrative burdens. The Tax Certificate Association would retort that they did a better job collecting debt than treasurers did. They also cast themselves as family businesses and argued that the service they provided was similar to privatization—which appealed especially to the Republicans. The entire debate was framed solely in terms of efficient debt collection. There was no serious discussion of shortening the process or of correcting the title problems. Actually, both sides had some incentive to preserve the lengthy and complicated process since it allowed greater revenue in terms of interest and penalties.

Given the narrow terms of the debate, there was little room for the voices of community groups, affordable housing advocates and good government organizations. For this reason the political arena was constrained. It gave the appearance that there were only two interests involved in the issue and that the distance between them was not great—confined to a single technical matter (See Figure 1). However, each side wanted a policy change that was unacceptable to the other; there was no room for compromise. Additionally, each side won the sympathy of roughly half the members of the relevant legislative committee creating a veto over any proposal. The legislature, forced to choose between the two, chose instead to preserve the status quo.

[Figure 1 About Here]

The 1999 proposal was different. Following a lengthy study conducted by the Hudson Institute, tax delinquency was understood not merely as a revenue issue. Because the reversion process was connected to urban blight, exploitation of the poor, and neighborhood marketability, the new proposal was framed much more broadly. Consequently, a greater variety of interest groups entered the debate. This introduced

new challenges as each interest group weighed in with particular concerns. The Michigan Association of Realtors and the Michigan Home Builders, while voicing interest in restoring the market viability of inner city neighborhoods, expressed fear that property rights might be trampled in the rush to foreclose on delinquent owners. Anti-poverty groups such as the Michigan Poverty Law Center and Michigan Legal Services agreed that the lengthy process allowed landlords to exploit renters, but they also worried that shortening the process might jeopardize the tenancy of low-income homeowners and displace renters whose landlords were delinquent. Local government officials agreed that the process could be simplified, but feared that they would incur greater liability as their role in the process increased. They also noted that the improved title search, notification, and hearing requirements would be costly and cited the Headlee Amendment to the Michigan Constitution, which forbade the state from imposing unfunded mandates on local units of government.³³ The Michigan Environmental Action Council approved of the strategy insofar as it would reduce dumping in urban neighborhoods, but also called for caution noting that a fair amount of abandoned commercial and industrial property suffered from contamination and would not be attractive to the market. The fear was that releasing it to a new owner without a plan for cleanup would hasten another wave of abandonment. Finally, members of the private sector, specifically the Michigan Tax Certificate Association argued furiously that the new legislation would eliminate their livelihood and drive business out of Michigan, turning a private sector function over to bigger government.

³³ Michigan Constitution, Article IX, Section 25.

The most important decision facilitating social production came prior to any legislative action. In October 1997 the Engler administration and state Senator Bill Schuette invited the Hudson Institute, a national think tank, to help develop an urban homeownership strategy. Hudson Institute would begin by conducting a year long study of the issue. Members of the Hudson team would also assist in drafting the legislation and play an active role in the ensuing debates. This is significant, for as regime theorists argue, social production requires that the policy process stimulate civic engagement by getting a greater diversity of interests involved. To this end, Stone notes that “an institutionalized policy research capacity independent of the governing coalition” can be quite useful.³⁴ While Hudson Institute was an invited guest to the proceedings, it was entirely funded by private dollars, giving it vital independence.

During the study phase, members of the Hudson Institute research team met with people in several of Michigan’s core cities. They met with elected officials and local administrators, hearing first hand about the policy challenges to homeownership and neighborhood redevelopment. They also spoke with business leaders where they learned of the burden tax reversion imposed for land assembly. Finally, they toured neighborhoods and spoke with civic organizations and families about the devastating effect abandoned houses have on property values, not to mention morale. Through such extensive contact, the Hudson Institute researchers identified many interests who had not been part of the process in the past. This proved very useful during the policy framing phase as it encouraged all involved to understand the issue in broader terms than it had been before. For the first time, tax reversion would not simply be about collecting

³⁴ Stone, *Regime Politics*, 149.

revenue, but rather it would be connected to the larger problem of abandoned property, land assembly, and urban blight.

The decision to frame the issue more broadly was a maneuver worthy of William Riker's *Art of Political Manipulation*.³⁵ In that work the author demonstrates the utility of certain heresthetic devices in the service of coalition building (ix). One of these is the "redefinition of the political situation so that formerly unsympathetic competitors wish to stand with the erstwhile disadvantaged" (35). Importantly, Riker teaches that "redefinition depends in part on the invention of a new viewpoint, but it also requires rhetorical success in persuading indifferent people to accept the novelty" (ibid). The broader frame made the issue attractive to a larger number of interests and those interests moved the debate in a new direction, making previously impossible outcomes now possible. In Riker's words, "the creativity itself seems to consist of recombining the world ... making an alliance of strange bedfellows" (51).

Such a strategy proved to be a boon to social production. Many groups had met individually with Hudson Institute, but few had spoken directly to each other. During markup sessions and committee hearings, the legislature relied on Hudson Institute to act as a conduit, bringing groups together and fostering a cooperative atmosphere. When disagreements arose, they gave top priority to getting the interests to talk with each other. In some cases this helped to shape preferences—led to compromises that settled the disagreement. Those concerned with the rights of both property owners and poor families realized that the dangers were far greater under the old system than the new

³⁵ William H. Riker, *The Art of Political Manipulation* (New Haven: Yale University Press, 1986). Subsequent parenthetical citations refer to this work.

system. Both agreed in the end that the key to protecting families, wealthy and poor alike, is not giving them a long time to pay the debt (and in turn accrue interest) but rather to make the system as transparent as possible.³⁶ In other cases, where a change in the legislation could not be avoided, Hudson Institute helped to make the change in a way that satisfied the concerned interest, remained consistent with the policy objectives, and did not give way to new concerns from another interest. In the end organizations that had been fierce opponents in the past found themselves working toward a common goal.

This broad coalition of interests gave new shape to the political arena (See Figure 2). The expanded political arena revealed something startling: Whereas the Treasurers and lien buyers appeared to occupy the center of the original, constrained arena, it was now clear that they were in the margins. The new center was composed of a coalition of groups that agreed to a common end—devising a tax reversion process that would promote homeownership and no longer contribute to the disintegration of urban neighborhoods. They only disagreed over the best means of accomplishing that end.

[Figure 2 About Here]

Whereas Riker presents heresthetic as a tool of positive political science, in this case it also reflects the *normative* teaching of another master of political strategy, James Madison. Madison's *Federalist* #10 offers an ethical basis for extending the sphere of the regime: the larger political arena, composed of a greater number of interests, will

³⁶ As evidence that a shorter process was not incompatible with a fair process, it was noted that under the new legislation the owner of a parcel facing foreclosure for a \$1,000 tax debt would need only pay \$1,365 to avoid foreclosure whereas he or she would have to pay more than \$2,100 under the unreformed system.

encourage a decision making process that promotes a stable republic without diminishing liberty. Madison warns that the greatest threat to liberty in a republic comes from factions—groups of people “united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.”³⁷ The danger is that factions use popular access to the policy process in a republic to serve their narrow self-interest at the expense of others. The effect is a “prevailing and increasing distrust of public engagement” (ibid.). Simply put, as people see decisions that advantage some over others, they grow more and more cynical about government’s ability to serve the public good and less and less confident in the value of their own participation. Over time, they raise an “alarm for private rights” and withdraw from the public sphere altogether. Thus, controlling the effects of factions means structuring the political arena such that one group can not use public policy to advance its narrow interests at the expense of others. By bringing in a diversity of interests, no single interest can dominate a given decision. Therefore, groups must compromise and form broad coalitions.

A further consideration of *Federalist* #10 suggests that the Madisonian republic requires not merely an enlarged political arena in the empirical sense of increasing the number of interests, but it also requires an enlarged arena in the sense of broadening the moral disposition among those interests. Madison teaches that participation in the political arena ought to broaden self-interest, turning mere selfishness into what

³⁷ Madison, *Federalist* #10, 54.

Tocqueville would later call self-interest properly understood.³⁸ This should have two salutary effects on citizens: They ought to discover certain common principles that they agree upon, and they ought to become less rigidly attached to their ideal preferences. As Madison writes, it is the task of the regime to “refine and enlarge the public views.”³⁹ In refining public views, the regime draws interests toward the center. This is best accomplished when an issue is framed around some commonly accepted general principle where groups disagree only regarding the means. In enlarging public views, the regime broadens the horizon of self-interest so that people are willing to accept outcomes that are not exactly their ideal preferences. Reframing the issue so as to ease the tension between efficiency and equality relaxes the posture of the competing interests, and encourages groups to look to what Madison called “indirect and remote considerations” meaning their long term interests over their immediate interests.⁴⁰ This creates room for compromise, and makes possible a decision that is acceptable to all. In sum, *Federalist* #10 implies that even as we need a diversity of interests involved in the process, they must not differ so radically as to render common ground impossible.

In the present case we saw that reframing the issue followed the teaching of both Riker and Madison. It attracted diverse interests, clustered them around a new center, and eased their hold on narrow preferences. Treasurers would be able to collect taxes more efficiently, and they would benefit from getting property back into productive,

³⁸ Alexis de Tocqueville, *Democracy in America*, trans. George Lawrence ed. J.P. Mayer (New York: Harper and Row, 1966), 510.

³⁹ Madison, *Federalist* #10, 59.

⁴⁰ Madison, *Federalist* #10, 57.

revenue generating use. At the same time, local activists saw that the new legislation would provide neighborhood leaders and local development officials with a new tool to preserve value in distressed areas and promote homeownership among people who have been traditionally left out of the American dream. In this regard, the legislation would improve the living conditions of those most in need—that is, it would promote equality. Real estate organizations were quick to note that this also stimulated the marketability of urban neighborhoods, making more business for their members. Those who feared that ending the county lien sales would destroy business opportunity were disproved: In fact, investment in tax debt was still possible through the purchase of delinquent tax anticipation notes, issued by each of the counties every year, paying a generous rate, and backed by the full faith and credit of the government. Furthermore, investors were still free to approach individual taxpayers with an offer to extend personal credit to cover tax debt. Finally, as the legislation was coming up for a committee vote, there was evidence that the reformed system would actually *stimulate new business* as vendors offered services to counties to assist in the title work and notification process required for due diligence. This won over most of the private sector, earning the endorsement of the Michigan Chamber of Commerce.

The process had an important effect on the two original interests (See Figure 3): The Michigan Association of County Treasurers revised their position, moving to the center and ultimately championing the new legislation. On the other hand, the Michigan Tax Certificate Association refused to compromise. This exposed them as a marginal interest with the illiberal goal of using public policy to advance their immediate, narrow benefit at the expense of others and the common good—Madison’s exact definition of a

faction. As a result, the organization lost its ability to influence the outcome. By the time the legislation arrived on the floor of the House and Senate everyone other than the lien buyers agreed that the hazards were greater under the unreformed collection process than they would be under the new procedure. This translated to legislative success. The main tax reversion bill passed the House on June 1, 1999 by a margin of 101-7. It unanimously passed the Senate on June 9, 1999. The primary urban homestead bill passed the House on June 10, 1999 with an 82-17 vote, and it passed the Senate on June 9, 1999 with only one dissenting vote. In the end consensus emerged because the legislation followed the strategy Arthur Okun outlined but then neglected: It ties upper marginal growth to lower marginal growth in that wealthy developers who want access to land for major projects became advocates for a process that also enhances neighborhood redevelopment along the way. This is the true idea of creating a floor without a ceiling.

[Figure 3 About Here]

Conclusion

We see that framing can affect three characteristics related to the political arena of any policy decision: The number of interests involved, the location of each interest's position relative to the center, and the intensity with which each interest is committed to its initial position. First, the initial framing artificially constrained the political arena. It narrowly defined the problem so that few interests took notice although in reality the problem effected many. Second, the initial framing lacked a firm grounding in a core principle of the regime, so the two interests that did enter the decision making process held marginal positions and desired outcomes that were adverse to the rights of others. Finally, because the initial framing intensified the tension between equality and

efficiency, the two marginal interests were firmly attached to their positions and therefore unwilling to compromise.

The Michigan Urban Homestead Act quite literally changed the nature of the regime—the various actors who play a role in a political decision—by strategically reframing the basic issue. First, the issue was now framed much more broadly, which drew a much more diverse set of interests to the process. Second, the reframed issue was firmly grounded in a core principle of the regime, which helped to keep the interests spatially located near enough to allow compromise provided they were softened in their preferences and willing to depart slightly from their ideal positions. This softening was facilitated by taking care in the reframing to ease the tension between efficiency and equality. As long as each interest noted that there was room for it to improve its own position even as its rivals improved their positions, interests were willing to compromise. Bearing these three principles in mind makes the Michigan Urban Homestead Act not only an interesting case study, but a more general set of principles that could inform future policy design for other issues.

There would be little reason to expect the socially productive results we saw in the case of the Michigan Urban Homestead Act if we relied on the typical tools of analysis. This suggests something important about the limitations of those tools and possibly about certain kinds of political science more generally: Most research is either positive or normative as if the two were in strict opposition. The current analysis raises doubts about such a disconnect. Policy research should be positive in that it must dispassionately assess the empirical situation. However, to be useful in not merely informing actors of the best way to achieve their narrowly desired outcomes, but rather to

be used as a tool for fostering the best possible outcomes for the regime as a whole (social production), analysis must go on to be weighed against the normative principles of the regime. Thus, from the perspective of regime theory, positivist tools such as heresthetic are not amoral; they exist for a purpose and must be used in accordance with a normative guide. At the same time, norms alone are not enough to govern a regime; they require the support of strategic thinking.

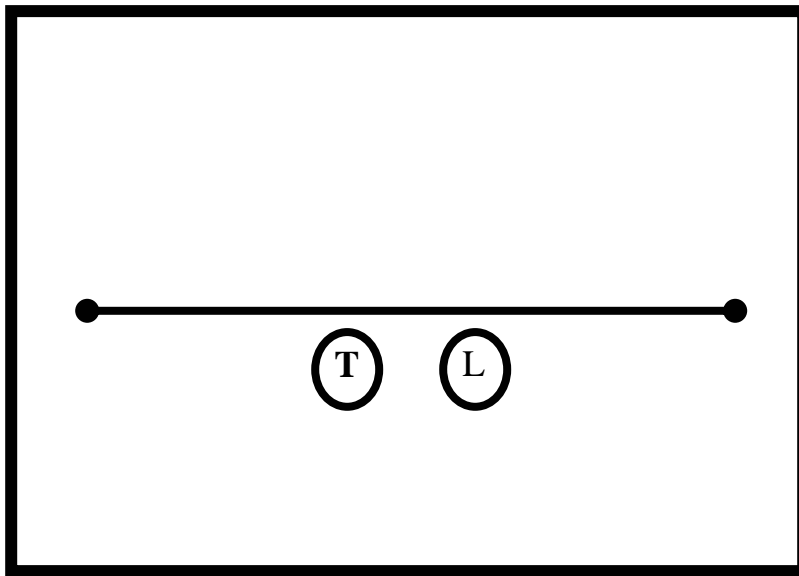


Figure 1: Positions of Treasurers (T) and Lien Buyers (L) in the Constrained Political Arena.

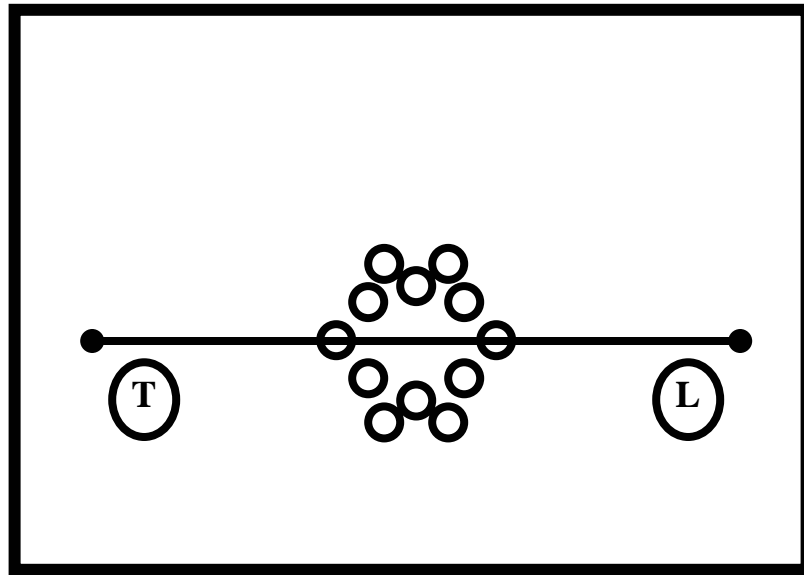


Figure 2: Diversity of Positions in Extended Political Arena.

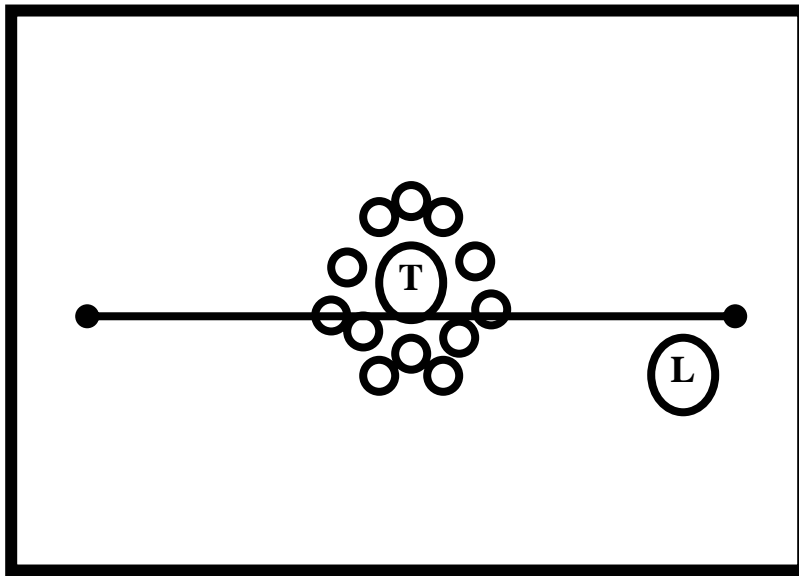


Figure 3: Adjusted Treasurers' Position and Marginalized Lien Buyers' Position.