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INTRODUCTION

GOVERNANCE: STRUCTURING OUR FUTURE

PETER J. HAMMER

What is governance? Why is governance important? We sometimes have to look abroad to identify and better understand issues at home. The phenomena of failed states has focused attention on the significance of good governance.¹ At the same time, institutional economists increasingly appreciate the role of effective “public” governance as a prerequisite for (not an obstacle to) the functioning of effective “private” markets.² That said, what good governance is and how it is constituted remain amorphous notions. Some insight can be gained from the development literature. At a basic level, governance can be defined as “the process of decision-making and the process by which decisions are implemented (or not implemented).”³ But who makes the decisions, who defines the processes and who watches the watchman?

This issue of *The Journal of Law in Society* provides a focused discussion on the question of governance as it affects topics as varied as congressional redistricting, the imposition of “Emergency Managers” for cities, the historic forces that have led to intensely fractured and racially segregated local governments in Southeast Michigan and the abject failure of systems of regional cooperation under the Southeast Michigan Council of Governments (SEMCOG) to provide effective systems of public transportation. When governance fails, people suffer. Individuals and minority groups can be denied their right to effective representation, state and national decision making processes (governance) can be corrupted by concentrated private interests, impoverished communities can be denied basic services, patterns of racial segregation can be perpetuated and entire public school systems can be threatened with collapse.

Good governance is essential, but what constitutes good governance? Again, the development literature provides helpful guidance.

1. See generally DARON ACEMOGLU & JAMES ROBINSON, WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY (2012).

2. See generally DOUGLASS C. NORTH, UNDERSTANDING THE PROCESS OF ECONOMIC CHANGE (2005).

3. *What Is Good Governance?*, U.N. ECON. & SOC. COUNCIL FOR ASIA & THE PAC. (UNESCAP), <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp> (last visited Mar. 27, 2012).

Good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making.⁴

It is easier to critically examine the shortcomings of other countries than it is to introspectively examine our own institutions; but we must critically examine our institutions. Governance has an infrastructure, some aspects of which are deeply embedded in culture, time and law. Other aspects of governance are more readily subject to change and manipulation. The lines determining congressional districts, for example, seem to be written in sand and are easily changed and frequently manipulated. Relatedly, what we condemn in Third World countries as bribery and corruption, we regulate in this country under the guise of laws governing campaign finance. The lines separating competition in public and private markets is porous with power and influence flowing in both directions. Predictably, however, the same groups seem to be disempowered in both the public and the private realms, typically the poor and other under-represented minorities

Good governance is critical to good policy and good results. The reader should keep in mind the above mentioned aspects of good governance when she reads the articles in this issue – particularly characteristics of participation, accountability, transparency, equity and inclusion. In “How Serpentine Districts Became Law: Michigan Redistricting in 2011,” Jocelyn Benson examines how easy it is to manipulate the geographic boundaries defining congressional districts for political purposes. Terry Ao Minnis explores how the same redistricting process affects the ability of Asian Americans to have an effective voice in government in “Asian Americans & Redistricting: The Emerging Voice.” Using principles drawn from the realm of private corporate governance, Samuel and Nathaniel Damren provide a persuasive critique of the often unquestioned (and unchanged) rules governing federal electoral processes – “Utilizing Corporate Compliance Methodology to Assess the Effectiveness of Elections.”

The last four articles examine a range of issues critical to the future of Southeast Michigan, but also prescient for the nation. For better or worse, Detroit and Southeast Michigan are on the vanguard of changes affecting the post-industrial city. Michigan’s Emergency Manger law,

4. *Id.*

which permits the governor to impose an emergency manager for cities suffering financial distress, has garnered nation-wide attention. John Philo examines this law from the perspective of the fundamental right to vote in “Local Government Fiscal Emergencies and the Disenfranchisement of Victims of the Global Recession.” Michigan has also been at the forefront of the charter school movement, with serious adverse consequences for urban centers afflicted with declining enrollments. In my contribution to this issue, I examine the implications of this movement for traditional public schools – “The Fate of the Detroit Public Schools: Governance, Finance and Competition.” While Michigan might be pushing the envelope on questions of emergency managers and competition for public schools, it is substantially behind the curve on questions of effective regional governance. Southeast Michigan remains one of the most economically and racially segregated metropolitan areas in the country. This is the real underlying cause of much of the financial distress facing Detroit and the region. There can be no economic integration without racial integration. Despite the importance of effective regional cooperation, the Southeast Michigan Council of Governments (SEMCOG) has largely failed in its task to plan growth and to provide meaningful regional transportation. Gary Benjamin details these shortcomings in “SEMCOG’s Business as Usual: A Failed Model.”

The issue concludes with what may be its most important contribution, David Rusk’s article on “Changing the ‘Rules of the Game’: Tools to Revive the Michigan’s Fractured Metropolitan Regions.” It is one thing to list the problems of Detroit and Southeast Michigan – racial segregation, financial distress, failing schools and ineffective regional cooperation. It is another thing entirely to be able to understand what causes these problems. Rusk helps elucidate the legal and political forces that have worked to fracture the region economically and racially. The key lies in State laws establishing the powers of local governments. Unlike the boundaries of congressional districts, which are written in sand, the geographic boundaries defining local governments in Michigan are etched in stone. The difficulties of annexation are so extreme and long-standing that Detroit has two local governments actually trapped inside its own boundaries – Hamtramck and Highland Park. Just as the process of drawing congressional districts can be strategically manipulated, so can the inviolability of lines designating local governments. In the 1920s through the 1950s, Detroit maintained numerous invisible lines defining racially segregated neighborhoods; lines that were violently defended. When these boundaries no longer held, white Detroiters moved out of the city. The new lines separating city from suburbs were easier to defend and proved much harder to transgress. Rusk details this process and reveals how the seeds of racial

segregation watered by the rigidities of local boundaries helped produced the economically distressed region we find today.

An understanding of physics is essential to the practice of engineering. An understanding of biology is essential to the practice of medicine. An understanding of governance is essential to the practice of good policy making. We need to improve the process of decision-making and the process by which decisions are implemented in Michigan and throughout the country. Ultimately, theories of public governance must be centered around people and facilitate active public engagement. The articles in this issue help chart more positive future directions.