

# UC Berkeley

## California Journal of Politics and Policy

### Title

What the Original Property Tax Revolutionaries Wanted (It Is Not What You Think): Review of The Permanent Tax Revolt: How the Property Tax Transformed American Politics

### Permalink

<https://escholarship.org/uc/item/8rt0d71f>

### Journal

California Journal of Politics and Policy, 1(1)

### Author

Shanske, Darien

### Publication Date

2009-04-28

### DOI

10.5070/P2PK6C

Peer reviewed

*The Permanent Tax Revolt: How the Property Tax Transformed American Politics*, Isaac William Martin, Stanford University Press, 2008

## What the Original Property Tax Revolutionaries Wanted (It Is Not What You Think)

Darien Shanske  
University of California Hastings College of Law

### I. Introduction

This important book convincingly demonstrates that the property tax revolt that culminated in California's Pro-

[www.bepress.com/cjpp](http://www.bepress.com/cjpp)

position 13 in 1978 originated to a large extent in a surprising, and heretofore unanalyzed phenomenon: the *modernization* of the collection of the property tax. The import of Proposition 13 is hard to overstate; by all accounts it marked the start of a tax revolt that swept through all levels of American politics. The effects of this revolt are still with us today, and a huge amount of scholarship has been generated seeking to explain the nature of this revolt.

Isaac Martin's book has the great merit of making an original contribution to a debate that many, myself included, thought was exhausted. Martin offers a new explanation for Proposition 13, one that directly contradicts conventional wisdom, especially in the legal academy. In this review, I will summarize Martin's argument and will elaborate on its important implications for local government theory and finance.

According to the now conventional wisdom as provided by economist William Fischel, the advent of Proposition 13 can only be understood as a response to the decision of the California Supreme Court to require the equalization of school district finances.<sup>1</sup> Voters only decided to

cut the property tax permanently when they were told by imperious courts that their local taxes could no longer be used to fund their local schools. In Fischel's story, public interest lawyers won a colossal pyrrhic victory in advancing school finance equality through the courts. Fischel's analysis has been influential not only because it is inherently plausible and because of the evidence he has adduced, but because it is so consonant with a powerful family of political and economic approaches to the law, especially local government law, which largely originate with the seminal article of economist Charles Tiebout.<sup>2</sup>

Martin, a sociologist, does not believe that there was any connection between school finance litigation and the property tax revolt. According to Martin, before a wave of modernization in the 1960s and 1970s, most American homeowners received an informal tax privilege in the form of the systemic undervaluation of residential property by local property assessors. This was a tax *privilege* because the formal rules of assessment required that property taxes (in most states) be paid as a uniform proportion of current market value, usually 100% (5),<sup>3</sup> and it was an *informal* privilege because it was not codified in the law (5–6). The great property tax revolt was caused, claims Martin, by the actual or threatened revocation of this privilege through reforming property tax collection so that the property tax collected from all property owners truly did reflect the market value of the property.

Martin backs this claim up in a number of ways, most persuasively with a series of qualitative studies demonstrating the intense awareness and anger that modernization of property tax assessment aroused. I, for one, had never understood why Proposition 13 doles out its tax benefit in proportion to the length of time that a homeowner has owned a property. If simply an antitax movement, then it would have seemed that Proposition 13 should have cut everyone's taxes equally, and so I thought that this feature of Proposition 13, supposedly to preserve "neighborhood stability," had been a cunning or accidental add-on. Martin has persuaded me that I had gotten it wrong. Proposition 13 was only partially the result of a generally antitax political movement. It was also the result of a movement to preserve a form of social insurance, and it was the inessential more politically "conservative" aspects of Proposition 13, such as making it more difficult for state and local governments to raise other taxes, that were, in fact, the add-ons (101–02).

The informal privilege worked as social insurance because the primary beneficiaries of the privilege were homeowners who did not have their homes assessed at market value. The longer one stayed in one's home, the less one's total property tax burden became relative to the home's true value. The privilege was therefore especially valuable to those with static or declining incomes, such as the elderly.

In explaining the informal tax privilege as a form of social insurance against the market, Martin undermines the very foundation of Fischel's approach. The heart of Fischel's explanation of Proposition 13 and local government finance is Tiebout's notion that the various local government entities compete with one another in a type of market. Homeowners benefit when local jurisdictions compete to provide them with the amenities and services that they want at the price that they want. Purchasing a home, in this model, is not essentially different from going to the mall and choosing where to buy a shirt. According to Fischel, the California Supreme Court severed the connection between the price homeowners paid for local services, the property tax, and the primary service provided, education, and thus, according to Fischel, the people of California revolted. Californians were not going to pay premium prices at the local level if they were not going to get premium services at the local level.

However, according to Martin the property tax was *not* acting as a local price for local services before Proposition 13; this was the whole point of the informal privilege. Proposition 13 was not a radical change, but a restoration of the status quo. In fact, the status quo was beloved specifically because homeowners did not want their property taxes to serve as a price. Martin's analysis does not fit as neatly into a broad theory of local government, but its implications

are no less rich than those that arise from Fischel's analysis, and I begin to explore them in Section III below.

## II. Summary

Martin's central thesis is that the careless abolition of a large and longstanding informal tax privilege triggered the great tax revolt that began in California with Proposition 13. Abolishing the privilege was part of modernizing the property tax system in order to make it more fair and efficient. There was no necessary connection between property tax modernization and generating increased revenue, though Martin suggests that the informal traditional system was inadequate to provide the many new services local governments were being asked to provide (12). However, Martin insists that there was no great increase in taxation of Americans in the 1970s, nor were Americans heavily taxed relative to other countries (4); these were not the causes of the revolt.

Martin attempts to estimate the size of the privilege at issue, and his estimated numbers are attention-grabbing. In 1971, this informal privilege was arguably worth \$39 billion, larger than every other social program in the country, with the exception of social security (9). Though Martin wisely does not insist that this estimate represents revenue that would or could have actually been collected,

he does, I believe, demonstrate the scale of the privilege and thus properly identifies it as a major hidden source of social insurance, or at least *perceived* social insurance.<sup>4</sup> It was the cavalier abolition of this privilege that triggered the voter revolt.

As I have already indicated, I find Martin's analysis, particularly his qualitative cross-state analysis of property tax revolts in the 1960s and 1970s, to be almost entirely convincing. Martin discusses little known aspects of the tax revolt in California, but also, very helpfully, provides similar details for other states, such as Illinois, Missouri, and Massachusetts (61–71).

Martin's story about California can be boiled down to four points/correctives (not all of them new). Events in California are particularly important not just as a paradigm of the tax revolt, but events in California (namely Proposition 13) affected the course of events in other states (i.e., Proposition 13-style reforms crowded out all others). First, Martin emphasizes the role of progressive tax reformers in the movement against the property tax (50–57, 75–79).<sup>5</sup> For instance, Martin highlights the role of the Citizens Action League, “an organization founded and led by veterans of the civil rights movement and the welfare rights movement who saw tax reform as a way to secure economic justice for all Americans” (51). Martin also discusses the civil rights organizer George Wiley who spoke of the “tax revolt” as a “populist rebellion against big business” (98).

According to Martin, in 1973, most Californians would have identified Wiley, not Howard Jarvis, who was then largely unknown, as the “true leader of the property tax rebels” (99). Obviously, by 1978, the story had changed, though progressive groups continued to be involved in the struggle to reform the property tax (98–108).

Second, Martin tells of an uneven march to modernize the tax system, where many local actors, such as county assessors, obstructed modernization precisely because they benefited from dispensing privileges under the old system (see, e.g., 37–41).<sup>6</sup> Third, Martin makes it clear that there was not only awareness of the value of the informal privilege among tax protesters, but among at least some elite actors in government—the warnings about the consequence of doing away with this privilege were brushed aside (25, 38–40, 91–92). On this point, somewhat like Fischel, Martin points to the courts as playing a central role. Faced with tax assessments that were plainly unfair and illegal (27–28), not to mention outright graft, the courts began to force local assessors to assess property professionally, in accordance with the law (44–48).

Fourth, other reform proposals were made, some of which were implemented, and many of which were more consonant with progressive tax reform. Chief among these reforms were circuit breakers (88–90) and classification (93–95). Circuit breakers work by tying the property tax to income, thus “breaking” the property tax when the bur-

den it imposes becomes too high relative to income. Classification divides property into types and allows different proportions of value to be used, depending on the type of property. In this way, for instance, a mechanism could be provided to preserve the relative privilege of residential property in contrast to commercial property. The benefit of these reforms, and especially the circuit breaker, is that they better connect the privilege to need. Aside from simply being arbitrary, the original informal privilege was over-inclusive in benefiting all homeowners, regardless of need. Proposition 13 is even more profligate, including even commercial property owners. Martin insists that the victory of Proposition 13-type reform was not necessary (100), another reform package could have succeeded in the sense of being passed and ending the so-called revolt (102–04, 107).

On this last point, I found Martin's qualitative argument stronger than his quantitative. Statistically, Martin shows that (1) other tax reform packages seem to mollify other voters (107–08) and (2) that, once passed, Proposition 13-style reform crowded out all others (111–13). There is certainly something to the data, but I do not think I would be as moved by this kind of analysis if not for the strong qualitative case. Without the qualitative argument, I do not know what I would think of the fact that states tended to tax limitation regimes after 1978; it could be precisely because there was general dissatisfaction with these

other kinds of reforms. Nevertheless, Martin is surely correct that Proposition 13 was a sensation and dominated the national consciousness, particularly elite consciousness (141–42).

Furthermore, along lines similar to arguments made by others, the victory of Proposition 13 was tragically unnecessary considering its impact. Not only had the advocates of Proposition 13 put together a stronger movement than ever before in support of this version of property tax reform, and there had already been several (more moderate) failed property tax reform initiatives, but this campaign in particular was aided by relative incompetence among elites opposing it and by happenstance. Martin focuses on the Los Angeles assessor's decision to send out property tax notices showing large reassessments earlier than he needed to and right before the Proposition 13 election (104–05). Unfortunately, Martin does not really discuss the other contingent factors that contributed to the passage of Proposition 13 that are emphasized by other authors, such as: the huge California state budget surplus, the high inflation of the 1970s, and the fact that Proposition 13 was voted on in an off-cycle election that featured a ballot likely to be of more interest to Republicans.

Martin finds many of the attributes of the California tax revolt in other American states at that time, as well as abroad in roughly similar countries and even in very different countries. The short and unsurprising conclusion

is that taxpayers do not like income shocks, and the more traditional the taxpayer and less elastic his or her income, the more angry he or she is going to get.<sup>7</sup>

Despite the brevity of the book, Martin also lays out a follow-on argument, namely that politicians, particularly Republican politicians, drew the wrong lesson from Proposition 13 and concluded that a doctrinaire assault against all taxes was what the public wanted (131). Martin makes a good case, though it is perhaps overstated given that this lesson has been associated with a great deal of electoral success. It is certainly intriguing that Ronald Reagan himself only embraced Proposition 13 and radical tax cuts *after* the passage of Proposition 13. Until then, the focus of conservative politicians had been on cutting spending, not on cutting revenue. This makes sense, because, as Reagan believed, if the government were spending the money, then it would find a way to raise the revenue (128–29). Now, among people like Grover Norquist, who came of age with Proposition 13 and the age of tax cuts, the priorities have been reversed (132–34). There are systematic and pervasive ideas for cutting revenue on the theory that somehow spending will fall too, though precise thinking and consensus building on cutting expenditures is always deferred. Again, Martin bolsters his strong qualitative argument with quantitative support showing an antitax drift among Republican politicians (134–42). Here too, I am uncertain that the statistics add very much, but I am on the whole

convinced as to the general post-Proposition 13 drift in American politics.

### **III. Discussion**

As I indicated above, from the perspective of those who study local government law and finance, Martin's argument is rather important, but not for obvious reasons. In this section I explain why Martin's argument is important.

#### **A. Martin's Argument in Context**

The dominant model for both justifying and explaining the operation of local governments in the United States is the Tiebout model.<sup>8</sup> As noted above, the Tiebout model analogizes the choice of where to live with a shopping trip and purports to demonstrate that competition among jurisdictions for citizen-consumers can ensure that the right quantity of local public goods is produced at the right price. A functioning Tiebout dynamic provides the benefit of the efficient use of resources because everyone is getting the amenities they want at the price that they want, but it is also desirable because the property tax in such a scenario is essentially acting as part of the price for a bundle of local goods and services.<sup>9</sup> The economic (and political) intuition is simple and seemingly irrefutable: If I want a town with particularly nice parks, and I am willing to pay for them

(along with my neighbors), then the local government system should allow that to happen without requiring that the project be doled out from some central authority. By the same token, if I do not want to pay for nice parks, I should be able to find a jurisdiction that allows for that too.

Opponents of this model challenge both its explanatory power and its normative basis. A typical argument about the details of the model would be to note that many important local amenities, e.g., access to public transportation or a clean environment, are likely not within the control of local communities and thus they can only be impounded in the home prices of a particular jurisdiction in an attenuated way.<sup>10</sup> The motley collection of actual local government entities in this country dramatizes the attenuation—a homeowner likely pays money to her local town, county, elementary school district, high school district, park district, utility district, regional transportation district, etc. Homebuyers might also be buying proximity to other communities, particularly cities, over which they have no political control at all.<sup>11</sup> This problem with the actual landscape measuring up to reality is not just an issue of homeowners' perceptions (and that of local government officials), but of the related problem of whether there are enough jurisdictions of the correct type to engage in meaningful competition whatever the understanding of the participants. This counter-intuition can be summed up as asking whether any

local government landscape we are familiar with does resemble a shopping mall.

The central normative critique in brief is to complain that Tiebout-theorists reduce homeowners to mere consumers, denying, indeed undermining, their opportunity to be *citizens*, to rule and be ruled.<sup>12</sup> This opportunity to engage in political deliberation is the political justification for a multitude of local governments. This counter-intuition can be summed up as asking whether we would want to treat the provision of local services, such as education, like the provision of shirts. From this perspective, the ascendance of Tiebout-type reasoning is especially unfortunate because the competing political participatory justification for our fragmented local government landscape is more potent than a Tiebout-type economic justification. It is a hard question, even at the level of theory, whether jurisdictional competition, i.e., the Tiebout model, is more efficient, and it is even harder to assess whether any efficiency gained is worth it in terms of other values (such as fairness). It is a much easier question, again at the level of theory, whether providing a meaningful opportunity to engage in local politics is essential to the civic education of democratic citizens. As Alexis de Tocqueville noted, there can be no civic education without devolving real responsibility, and this can only be done through a vibrant sphere of local self-government.<sup>13</sup> Tocqueville thought, of course, that such civic spirit actually characterized American local democracy.



From either of these perspectives on local government law (i.e., economic or political), and most especially from the perspective of the pro-Tiebout theorists, the advent of property tax revolts such as Proposition 13 is perplexing.<sup>14</sup> If property taxes are prices that home voters are willingly paying for local goods and services, why revolt against them? If one's particular city's taxes are perceived as too high, then why not elect new political leaders who will lower taxes? It is like voters forbidding anyone from spending more than \$20,000 on a car. No one *has* to spend more and why should we interfere with you if you want to? As already noted, Tiebout theorists have answers. The most powerful reply, Fischel's, is that the tax revolt was caused by judicial decisions that require school finances to be equalized across school districts. Such decisions served to sever the property tax from the primary local good it was meant to purchase, namely education. Thus, voters said, in effect, that, if they could not get what they wanted for their taxes, they would not pay them.<sup>15</sup>

Other theorists explain Proposition 13 as a result of a *political* failure on one of several different fronts rather than an economic calculation. Mainstream political leaders in California failed to anticipate the impact of inflation on taxpayers,<sup>16</sup> and/or individual communities utilized the tools of local federalism in a kind of revenue hoarding that reached its natural end in the passage of Proposition 13.<sup>17</sup>

Martin's analysis challenges both approaches. If Martin is correct, then, even as Tiebout was writing in 1956, the property tax was a very weak price for local public goods. Not just that, but homevoters liked it that way; the informal tax privilege served to make sure that they would *not* live in the Tiebout model. Accordingly, Martin dismisses Fischel's explanation for Proposition 13 (17).<sup>18</sup> As for the participatory theorists, Martin is at pains to emphasize that much of the property tax revolt had a progressive provenance—not only was the property tax long understood to be regressive, but the loss of the informal privilege took away a form of social insurance that was presumably most valuable to the least fortunate.

## B. Analysis

As should be clear, I think highly of this book. Martin's main argument is original and convincing. Like most important arguments, after reading this book one cannot believe the discussion of Proposition 13 and its progeny has gone on for so long without a general understanding of the import of the informal tax privilege that Proposition 13 clumsily aimed to recreate. The Tiebout-inspired theoretical literature has proceeded on the assumption that property taxes could serve as a price (or as part of one).<sup>19</sup> Yet the import of Martin's book is that the property tax, even

in the halcyon days before Proposition 13, did not serve as a price (or at least not a very clear one), and, furthermore, there is strong evidence that homeowners do not *want* the tax to so function. The book would have been stronger if Martin had more clearly and forcefully related his argument to this literature; this is what I am endeavoring to do in this review.

Yet even if we should accept Martin's argument in its entirety, there is obviously more to Tiebout. After all, precisely because of the richness of our federal system, there may well be states that have local government landscapes that more closely resemble the Tiebout model.<sup>20</sup> Furthermore, Martin suggests that a modern, efficient property tax collection system might have emerged in this country (without revolt) as a result of the Great Depression (29–30). This is because modern and equal assessment at a time of falling home prices, as during the Depression, would have *helped* homeowners and been welcomed, and thus a new system could have been put in place without income shocks. If that had happened, we might live in something more resembling a Tiebout paradise today, and that would arguably be more efficient.

We can look to Martin in considering these more abstract efficiency arguments as well. For Martin's point is not just that home voters did not want to lose their privilege and so could be coaxed out of it if there were no income shock, as during the Depression, but that home voters pre-

ferred having their homes protected from market forces. Martin does not explain why this might be so in any detail, but a family of explanations is readily at hand. Margaret Radin, tracing her argument to Hegel, argues that at least some kinds of property cannot be reduced to market value.<sup>21</sup> The value of one's home is an easy example of this notion. How much is it worth to keep the same neighbors, doctor, pharmacist, or grocer? One might assume that for the most part this value increases with time. It is important to note that the justification that Radin finds in Hegel for the informal privilege does not simply *explain* the informal privilege as a matter of cognitive science (as an example of the "endowment effect"), but *justifies* it. Property rights are not a brute given, but are provided (and crafted) to allow certain kinds of human flourishing, chief among them are pride of ownership, sense of place and community, social stability, and support.

More prosaically, I should add that housing markets can be volatile,<sup>22</sup> with price increases, especially in the short term, possibly not strongly reflecting relevant information for a specific neighborhood.<sup>23</sup> Thus, the protection from the market desired by home voters can be seen as coolly rational. The recent housing crises demonstrate this. For reasons in many ways internal to the structure of financial markets, certain mortgage-backed bonds were mispriced. For simplicity's sake, let us say this was because rating agencies had the wrong incentives and allowed

themselves to be bullied or bribed into giving inappropriate ratings on these bonds.<sup>24</sup> The downstream result of this systematic error was easier access to capital to buy homes, which increased the value of homes generally. From this perspective, it is easy to understand the widespread intuition illustrated by Martin that market forces must be controlled when it comes to homes and communities. Why should I be priced out of my home on account of a spike in my property taxes because some person is willing to pay a huge premium for my house as a result of a chain of miscalculations involving, for instance, the business model of rating agencies?

These considerations, gleaned from Martin, suggest that we are only ever likely to see truncated Tiebout dynamics, even leaving to the side the many other messy empirical and normative questions of the sort mentioned above.<sup>25</sup>

I have noted in passing that the core contribution of this book is its deep qualitative work into the social movements that gave us the property tax revolt, research that sweeps away convenient, but false, mythologies. I found the cross-cultural comparisons fascinating, but have doubt about their probative value. Also, as already noted, I found Martin's statistical models to be, at best, weakly corroborating.

I am not sure if it is an occupational hazard to deploy such models where none are needed, but I suspect that

it certainly is such a hazard to make statements like the following: "The central argument of this book is that state tax officials *caused* the tax revolt by doing away with informal tax privileges" (5) (emphasis added). Perhaps it is in order to back up strong claims to a unique causal role that Martin was impelled to run complex regressions and treat entire other countries and cultures vastly different from ours as "controls."<sup>26</sup>

Martin is too careful a scholar not to indirectly credit many of the other explanations for Proposition 13 and its progeny that he ostensibly discounts as not *the* cause. Martin, like Fischel, blames courts for not understanding the consequences of their tax decisions.<sup>27</sup> Indeed, when recounting federal concern with property tax relief, Martin has no problem asserting awareness of the school equalization litigation being pursued around the country and before the Supreme Court (80–81). It is hard to understand why voters and elites at the state and local level would not also have been aware of this litigation, especially in California. Martin details the contingent rightward turn of property tax reform, and in particular how the conservative tax reform movement had launched a particularly large-scale effort in support of Proposition 13 (102). If this is so, how can it not matter that Proposition 13 was voted on in an off-cycle primary election that in theory should have mattered more to Republican voters, as seemingly confirmed by at least one well-regarded analysis.<sup>28</sup> Mar-

tin explains the shocking effect of the large reassessments announced by the Los Angeles County assessor just before this election (104–05), but surely part of the reason for the shocking new values was years of high inflation.<sup>29</sup> Martin also acknowledges that California’s vast state budget surplus helped mitigate the impact of Proposition 13, confounding the threats of a collapse of government services made by its opponents and demonstrating that Proposition 13-style reform was feasible elsewhere (130). How can it be that the existence of this vast surplus in the first instance did not at all serve as a spur to those who voted for Proposition 13?

I should immediately note that Martin has counters.<sup>30</sup> For instance, as to the off-cycle election, he cites data that indicate that a majority of most groups, and not just white Republicans, voted in favor of Proposition 13 (106). One might also ask how much voters focused on something as technical as the state budget surplus and how well they understood it could be used to mitigate Proposition 13, at least in the short term. There are counters to these counters. The key in this review is just to observe that this reviewer found Martin’s insistence on relatively univocal causality as to a major historical event, downplaying several other factors with quantitative pedigrees and qualitative plausibility of their own, to be a relative weakness. This is not the place to argue about the philosophy of history and how one might best discuss historical causality. Suffice it to say

that Martin has elucidated a powerful new explanation for a large part of the much studied American property tax revolt and this is accomplishment enough.

#### IV. Prospects

Martin ends by arguing that because Proposition 13 was not a revolt against all taxes there is some chance of reforming the property tax system in California (and elsewhere) so long as due respect is paid to maintaining some form of social insurance that insulates homeowners from the housing market (171). I am certainly persuaded that Proposition 13 cannot be reformed in California without insulating homeowners to some extent, though I do wonder how the voters may or may not have changed since 1978. I am not sure that a generous circuit breaker and/or classification scheme that could have satisfied the voters then could satisfy the voters now. Nevertheless, especially while simultaneously challenging the extension of the privilege to commercial property, this is certainly a strategy worth developing.

Martin provides a particular reason to push for reforming Proposition 13 and similar measures immediately, that is, in 2009.<sup>31</sup> As noted above, in considering the history of the property tax in this country, Martin observes that the Great Depression provided an opportunity to modernize the property tax system without a one-time income shock

because housing prices at that time were generally falling, as they are today throughout the country. In California, median home prices fell just over 30% in 2008.<sup>32</sup> Because under Proposition 13 the assessed value of a property is reset at its acquisition value, the taxpayers who purchased new homes this year are going to pay *lower* property taxes than many of their neighbors in similar homes. It is hard to estimate the effects of a general reassessment to market value, but such a reassessment would likely create relatively more “winners” than “losers” than at any moment since the Great Depression.<sup>33</sup> It is already the case that county assessors are required to assess home values downward, and many are doing so.<sup>34</sup> This does not change the fact that a permanent shift to market value would be more welcome now than at any time in recent memory.<sup>35</sup>

This is especially true if two further (reasonable) predictions turn out to be correct. First, given the huge increase in home prices in California over the last decade or so, it seems that there is likely to have been a higher than average amount of turnover, and thus not just the passage of time, but the housing market itself, has perhaps made the value of Proposition 13’s privilege less valuable. Turnover decreases the value of Proposition 13’s privilege because it means that homeowners have been in their homes for a shorter time and thus have benefited less from having their assessed values kept below market.<sup>36</sup> Second, and related, there is a plausible argument that homeowners did not pay

very much, if anything, for the tax privilege provided by Proposition 13. The first step in this argument is to assume that the marginal consumer was setting the market-clearing price for housing in California.<sup>37</sup> It then seems fair to assume that the marginal consumer is indifferent between renting and buying and that this indifference is partially explained because she is not planning to stay in a property for a long time<sup>38</sup> and thus would not have put much value in Proposition 13’s privilege,<sup>39</sup> which builds over time. How the market clearing price was set over many decades throughout California is hard to say of course. Nevertheless, to the extent that the rapid rise in home prices in part fueled, and was fueled by, real estate speculation in particular, these buyers were quite possibly not taking many years of Proposition 13’s benefits into account. These very general and hard to prove predictions that suggest relatively little transition pain may be undermined because Proposition 13 itself has encouraged people not to move when they otherwise might have<sup>40</sup>—or, if they have moved, post-Proposition 13 innovations allow homeowners in some cases to carry their low assessed valuation to the new home. Furthermore, as a matter of politics, discussions of higher turnover and the marginal consumer are likely nonstarters.

Nevertheless, there is another reason why this crisis ought to be an opportunity to wean California off of Proposition 13 and that is that the consequences of Proposition

13 going forward are quite possibly going to be even worse than they have been. This is because of the very steep decline in property values that we are currently witnessing. Proposition 13 limits the extent to which the assessed values of property can be increased every year no matter how much the market price of a home has increased, and this means that it could be many years before local property tax collections return to the levels they were at before the crisis, even if real property values rebound much sooner. An example ought to make this clear. Suppose a home had an assessed value of \$500,000 in 2007. In 2009, let us suppose that the home is sold for \$300,000 and therefore its assessed value has been decreased to \$300,000. The 1% property tax rate (the maximum allowed under Proposition 13)<sup>41</sup> therefore results in a decrease from \$5,000 to \$3,000 in property taxes. Now suppose that by 2014 the real value of the home has rebounded to \$500,000. The value that the home can now be taxed at is a bit more than \$330,000, or \$300,000 increased every year by only 2% (the maximum allowed under Proposition 13),<sup>42</sup> yielding only \$3,300 in annual property tax on a home worth \$500,000. It will take another 20 years (until 2034!) before this home will yield the same amount of property tax (in nominal dollars) that it did in 2007.<sup>43</sup> This is not an imagined horrible; local governments in California are already concerned about it.<sup>44</sup>

In the end, Martin is convincing that moments of fiscal crisis can be moments for important reform. Furthermore,

armed with Martin's insight, the proposed dismantling of Proposition 13 could be paired with an aggressive circuit breaker and classification proposal that would privilege all homeowners, but particularly those on a fixed income. The application of the privilege to business could be eliminated altogether on the theory that it is bad for California's competitiveness—surely some more recent commercial property owners would see the merit to this argument. No doubt this is wishful thinking, but it demonstrates another merit of Martin's book, which is that it encourages one to think about property taxes anew, even in California.

## Notes

The author would like to thank James Copeland, David Gamage, David Jung, Evan Lee, Isaac Martin, Rich Schragger and Kirk Stark for their very helpful comments and observations. All mistakes are his own.

<sup>1</sup> William Fischel, *The Homevoter Hypothesis* (Cambridge, Mass.: Harvard University Press, 2001), 111–18.

<sup>2</sup> The classic paper is Charles M. Tiebout, "A Pure Theory of Local Expenditures" 64 *J. Pol. Econ.* 416 (1956): 416.

<sup>3</sup> Parenthetical references are to the book being reviewed.

<sup>4</sup> There are a number of reasons why this eye-popping number must be taken cautiously, including that property tax *rates* may just have been set at a higher rate so as to raise the same amount of revenue from a systematically underassessed property tax base. Thus, raising the base could just have meant lower rates and no net tax increase. Martin has several potent counters (admittedly, perhaps not

all as developed as they might be). First, the property tax base was not *consistently* underassessed (e.g., commercial property tended to be assessed at a higher percentage of value), and thus if rates were higher because of the informal privilege, then this to some extent accentuated the privilege for residential property owners. Concomitantly therefore, eliminating the privilege, even if it resulted in no net revenue increase, shifted the total tax burden and in particular shifted it onto homeowners. Second, the movement to modernize the property tax did *not* simultaneously make it clear that it would be lowering rates, and thus would be revenue neutral. In fact, Martin does connect the modernization of the property tax base with greater local revenue needs. Third, Martin's argument indicates a potent *perception* of a tax privilege, which is more important than its actual size (175–79), and what is most important about this perceived privilege is not just that it offered protection from a one-time income shock, namely a shift to a base assessed at market value, but from income shocks over one's entire home ownership tenure because a property tax base that reflected market valuations could rise very dramatically relative to an individual's income.

<sup>5</sup> At least one sophisticated tax theorist had expected the property tax not to survive into the new century. See Edward A. Zelinsky, "The Once and Future Property Tax: A Dialogue with My Younger Self," 23 *Cardozo L. Rev.* (2002): 2199, 2200. Zelinsky believes that the property tax survived in part because, consistent with Tiebout, it provides some efficiency gains, but also because, ironically, tax reform movements like Proposition 13 have softened its bite. *Id.* at 2212, 2214. Martin allows us to see that to a large extent what Proposition 13 did was not to soften the property tax so much as keep it as it largely had been.

<sup>6</sup> This includes the failure of the California State Board of Equalization to address the problem of local assessors having substantial discretion over assessed valuations of property. It would have been preferable had Martin spent more space developing this issue because

at least one very knowledgeable interlocutor has expressed incredulity that the California State Board of Equalization had not addressed and solved this issue long before Proposition 13. Martin contends, very briefly, that the Board was a "blunt instrument" because it could only equalize assessment ratios between counties and could not change the valuation within counties (28), and furthermore for political reasons the Board did not do even what it could do and was generally an obstacle to reform (35–41).

<sup>7</sup> Given Martin's interest in these cross-cultural comparisons, and I found them all fascinating, I was surprised that he did not link his analysis more strongly to the so-called "endowment effect," though Martin does make reference to this literature in a footnote (194 n.26). See, e.g., Russell B. Korobkin & Thomas S. Ulen, "Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics," 88 *Cal. L. Rev.* (2000): 1051, 1107–08. It is not that surprising that no one likes to pay the government more money, especially all at once. Yet Martin's argument implies more than common sense annoyance, but especially deep feelings about the loss of *traditional* benefits. See also discussion of Radin, *infra*.

<sup>8</sup> See generally Tiebout, *supra* and Fischel, *supra*.

<sup>9</sup> Arguably it is the cost of the home that is most important, but according to Fischel home prices impound the future expected tax burden.

<sup>10</sup> Richard Schragger, "Consuming Government," 101 *Mich. L. Rev.* (2003): 1824, 1831 (reviewing William A. Fischel, *The Homevoter Hypothesis: How Home Values Influence Local Government Taxation, School Finance, and Land Use Policies* [Cambridge, Mass.: Harvard University Press, 2001]). The literature on Tiebout, including criticisms, is enormous. Schragger's essay is particularly comprehensive, as is the following article: William W. Bratton & Joseph A. McCahery, "The New Economics of Jurisdictional Competition: Devolutionary Federalism in A Second-Best World," 86 *Geo. L. J.* (1997): 201, 213–16.

Shanske: What the Original Property Tax Revolutionaries Wanted: Review of The Permanent Tax Revolt

<sup>11</sup> See also Schragger, *supra*, at 1832–33.

<sup>12</sup> See, e.g., Gerald E. Frug, *City Making: Building Communities Without Building Walls* 167–79 (Princeton: Princeton University Press, 1999).

<sup>13</sup> See, e.g., Alexis De Tocqueville, *Democracy in America* (Harvey C. Mansfield & Delba Winthrop, trans. & ed., 2000), 87.

<sup>14</sup> See also Jacob L. Vigdor, “Other People’s Taxes: Nonresident Voters and Statewide Limitation of Local Government,” 47 *J. L. & Econ.* 453 (2004) (surveying explanations, including that local voters do not believe they can control their local governments and that voters are voting for statewide provisions of certain services, but concluding the best explanation, analyzing Massachusetts’s Proposition 2½, is that voters were seeking to limit taxes in *other* jurisdictions).

<sup>15</sup> Fischel, *supra* note 1, at 111–18.

<sup>16</sup> Kirk Stark summarizes the “conventional explanation” at Kirk J. Stark, “The Right to Vote on Taxes,” 96 *Nw. L. Rev.* (2001): 191, 197–201.

<sup>17</sup> See, e.g., Gary J. Miller, *Cities by Contract* (Cambridge, Mass.: MIT Press, 1981), 196.

<sup>18</sup> Martin does cite to the large literature engaging with Fischel very specifically, including an article of his own (195 n.36). See Kirk Stark & Jonathan Zasloff, “Tiebout and Tax Revolts: Did Serrano Really Cause Proposition 13?,” 50 *UCLA L. Rev.* (2003): 801, 830. (“[O]ur swing model suggests that the cause for any voter shift between 1972 and 1978 lies not in school finance reform, but in a combination of the “revolt of the haves” . . . and the problem . . . of seniors getting priced out of their homes by soaring tax bills.”); Isaac A. Martin, “Does School Finance Litigation Cause Taxpayer Revolt? Serrano and Proposition 13,” 40 *Law & Soc’y Rev.* (2006): 525, 527; *but see* William A. Fischel, “Did John Serrano Vote For Proposition 13?” A Reply To Stark And Zasloff’s “Tiebout And Tax Revolts: Did Serrano Really Cause Proposition 13?” 51 *UCLA L. Rev.* (2004): 887, 887.

<sup>19</sup> See Wallace E. Oates, “The Many Faces of the Tiebout Model”

in *The Tiebout Model at Fifty*, ed. William A. Fischel (Cambridge, Mass.: Lincoln Institute of Land Policy, 2006), 46–53.

<sup>20</sup> And there are lots of studies that purport to demonstrate that a fully functioning Tiebout dynamic is the norm. See, e.g., Robert Inman, “Commentary,” in *The Tiebout Model at Fifty* 46–53, *supra* at note 19.

<sup>21</sup> As Radin puts it: “One’s expectations crystallize around certain “things,” the loss of which causes more disruption and disorientation than does a simple decrease in aggregate wealth.” Margaret Jane Radin, *Reinterpreting Property* (Chicago: University of Chicago Press, 1993), 64.

<sup>22</sup> On property tax rate limitations as insurance against market volatility, see Nathan B. Anderson, “Property Tax Limitations: An Interpretive Review,” 59 *Nat’l Tax J.* (2006): 685. Anderson’s analysis is purely theoretical (versus Martin’s qualitative analysis); neither author addresses the possibility that the volatility may in some sense not even accurately reflect the value of the property (at least for anything but the short-term).

<sup>23</sup> Fennell would label these “offsite” factors because they are less in the control of the individual homeowners. Lee Anne Fennell, “Homeownership 2.0,” 102 *Nw. U. L. Rev.* (2008): 1047, 1072–73. Fennell argues that there can be significant benefits in allowing homeowners to invest in homes with less exposure to such factors through making sophisticated financial hedging available to the typical home buyer. Martin can be seen as maintaining that homeowners have pursued this kind of protection already through the “self-help” of property tax reform, which suggests that Fennell-type reforms could be rather popular. As Fennell astutely notes, her reforms on their own would not eliminate the liquidity/income shock problem inherent to a property tax regime tied to current market value. *Id.* at 1108–09. Thus the privilege, or something like it, seems necessary.

<sup>24</sup> To be sure, this is just a partial caricature, but it is one that seems to have support in the one of the most important reports on the



crisis to date (though there are many reasons identified) and certainly seems consistent with my (limited) experience. See Securities and Exchange Commission, Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies (July 2008), 24.

<sup>25</sup> My perception is that the Tiebout-theorists are correct that as an empirical matter there are truncated Tiebout dynamics to be found, though fewer than they tend to think, and at a far higher cost (e.g., in terms of segregation, environmental degradation). This messy reality suggests that more normatively justifiable Tiebout dynamics can be cultivated with no loss of relative efficiency from the status quo. I argue for this position at length and offer examples in Darien Shanske, *Above All Else Stop Digging: Local Government Law as a (Partial) Cause of (and Solution to) the Current Housing Crisis*, forthcoming.

<sup>26</sup> One powerful response, made by the author, is that his quantitative studies helped guide him to the correct qualitative approach. I cannot gainsay the import of expertly using different methods in order to arrive at the right answer and then sharing the different approaches with one's readers. My point as a reviewer is to note that, given the excellent work the author eventually did guided by these quantitative studies, I did not find these particular approaches essential.

<sup>27</sup> Martin does not mention *Allegheny Pittsburgh Coal Co. v. County Commission*, 488 U.S. 336 (1989). In that case, Chief Justice Rehnquist wrote for a unanimous court that a West Virginia assessor's doling out of an informal property tax privilege through not making regular reassessments of older property failed rational basis review and was a violation of the Equal Protection Clause. This suit was brought by a large commercial landowner, a coal company, which had purchased land relatively recently. The Court began and ended its opinion by emphasizing that the practice of the assessor was inconsistent with West Virginia law. *Id.* at 338, 345. The big question raised by the case was whether *Allegheny* signaled that the Court would overturn Proposition 13 as failing rational basis review because it resulted

in disparities at least as egregious. See William Cohen, "State Law in Equality Clothing: A Comment on *Allegheny Pittsburgh Coal Company v. County Commission*," 38 *UCLA L. Rev.* (1990): 87, 90. As William Cohen correctly anticipated, the Court did not do so. *Id.* at 99. Having read Martin, one must wonder what would have happened if a case challenging the informal residential privilege had been brought to the Court years earlier. As the Court observed in *Allegheny*, it had already found equal protection violations in similar cases, though none involving this kind of informal assessment and not for the last 40 years before *Allegheny* was decided. *Allegheny*, 488 U.S. at 345–46. Re-reading *Nordlinger v. Hahn*, 505 U.S. 1 (1992), the case in which the Court distinguished *Allegheny* and upheld Proposition 13, what jumps out after reading Martin is how important it was to the Court that Proposition 13 was a *formal* enactment of the voters of California, which could be connected to the rational goals of neighborhood stability and tax burden predictability. See *id.* at 12, 14–15.

<sup>28</sup> See Stark and Zasloff, *supra* note 18, at 829–30, 834.

<sup>29</sup> This is the reason for Proposition 13 that apparently impressed the Supreme Court. See *Nordlinger*, 505 U.S. at 3–4.

<sup>30</sup> Several raised with me in his generous response to an earlier version of this review.

<sup>31</sup> This is on top of the obvious reasons. First, California is facing a huge budget deficit, about 40 billion dollars over the next two years. See California Legislative Analyst's Office, Overview of the Governor's 2009–10 Budget 3 (Jan. 8, 2009), available at <[http://www.lao.ca.gov/2009/budget\\_overview/09-10\\_budget\\_ov.pdf](http://www.lao.ca.gov/2009/budget_overview/09-10_budget_ov.pdf)>. Second, California, as a result of Proposition 13, has one of the lowest average property tax rates in the country (0.68% in 2007). David Leonhardt, "State-by-State Property Tax Rates," *N.Y. Times*, Apr. 10, 2007. Third, because property taxes are so relatively low in California, it must rely more on the more volatile income and sales taxes. See David Scott Gamage, "Coping through California's Budget Crises in Light of Proposition 13 and California's Fiscal Constitution," in *After the Tax*

Shanske: What the Original Property Tax Revolutionaries Wanted: Review of The Permanent Tax Revolt

*Revolt: California's Proposition 13 Turns 30*, ed. Jack Citrin and Isaac William Martin (Berkeley: Berkeley Public Policy Press, 2009).

<sup>32</sup> California Association of Realtors, *C.A.R. releases housing market report* (Dec. 16, 2008), available at <<http://www.car.org/newsstand/newsreleases/som2008release/>>.

<sup>33</sup> Karen de Sa, "Property Tax Assessments could Plunge across California, Worsening Fiscal Crisis," *San Jose Mercury News*, Jan. 9, 2009.

<sup>34</sup> See Cal. Rev. & Tax. § 51 (assessors must take into account declines in value); Cal. Rev. & Tax § 1603 (application for reduction of assessment).

<sup>35</sup> And this is assuming that county assessors have indeed been lowering all home values uniformly—assuming this is not so, then many homeowners would directly profit from a statewide shift. Amy Reeves, "Housing Prices Spur Property Tax Appeals; Act Quickly When Bill Arrives; Requests Rise Fourfold in Some California Locales; Plenty Seen Elsewhere Too," *Investors Bus. Daily*, Oct. 31, 2008, at A6 (noting that though many assessors in California are lowering property assessments on their own, there has still been an explosion of property tax appeals in many areas).

<sup>36</sup> The most recent information on average home ownership in California that I have found, from 2003, is that 48% of Californians have lived in their current home for 10 years or more. Hans P. Johnson, "California's Newest Neighborhoods," *California Counts*, Aug. 2003 at 5. Since 2003, over 600,000 new single-family homes have been added in California, almost a 10% increase, which suggests a further decline in the number of homeowners who have assessed values that predate the boom that began in the 1990s. State of California, Department of Finance, E-5 Population and Housing Estimates for Cities, Counties and the State, 2001–2008, with 2000 Benchmark (May 2008). Furthermore, in 2003, there was an average of about 600,000 sales/year. See Johnson, *supra*.

<sup>37</sup> Arthur O'Sullivan et al., *Property Taxes and Tax Revolts 90–92*

(1995).

<sup>38</sup> One might assume this because someone with the income to buy would not be indifferent if planning to stay in a location for a long period.

<sup>39</sup> Of course, this buyer could think that the next buyer would plan on staying, but aside from the further cognitive complexity, the question is why the first buyer would not understand that the market-clearing price in the next round would also be set by the marginal consumer.

<sup>40</sup> And there is some evidence of this, see Nada Wasi and Michelle J. White, *Property Tax Limitations and Mobility: Lock-in Effect of California's Proposition 13* (Brookings-Wharton Papers on Urban Affairs—2005).

<sup>41</sup> Cal. Const. art. XIII A, 1(a).

<sup>42</sup> Cal. Const. art. XIII A, 2(b).

<sup>43</sup> This scenario might even hold true for people who did not sell their homes for less, but just had their assessed value lessened by their county assessor. The question would be if the assessor is permitted to treat the previous assessed value of \$500,000 as a threshold that can be returned to if the property does return to that value. One property owner made the argument that an assessor can only increase a property by 2% over its last assessed value and may never return to the earlier value (in this example, \$500,000). The taxpayer won in superior court, but lost before the appellate court. See *County of Orange v. Bezaire*, 11 Cal. Rptr. 3d 478 (Cal. Ct. App. 2004). Note that two justices of the California Supreme Court dissented from the denial of the court to review this decision. Given the extraordinarily larger stakes the next time this issue returns and the closeness of the legal question, far more litigation on this issue is to be expected.

<sup>44</sup> Carolyn Said, "Property Tax Revenue Plummets with Home Values," *S.F. Chron.*, Jan. 29, 2009, A1.