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# EMINENT REASSESSMENT OR TAX DOMAIN: ARE LOCAL MUNICIPALITIES SUFFERING FROM DYSLEXIA?

ALLAN A. WIESEL<sup>†</sup>

## INTRODUCTION

Try to imagine a pleasant waterfront town. Quiet and quaint, this town has pretty ocean views. The homes do not belong to the rich and famous, but rather to simple, hardworking individuals living the great American dream. Now picture Grandma Betty, a little old lady who is fragile, weak, and donning a floral apron. Imagine her home: small, simple, sparse, yet kempt. She has lived in that home all her life, knows all the neighbors, their children, and even their grandchildren. It is the only place she has ever called home. She was born there, and hopes to die there. Yet others have different plans for Grandma Betty's home. The town in which she lives is suffering from budget woes. There are too many new students flooding the existing schools, and the local roads—suffering from dangerous potholes—have not been repaved in decades.

If the above depiction was successful, you have undoubtedly reached one conclusion as to the fate of Betty's home. Despite it being the only place she has ever known—the only place she has ever called home—the power of eminent domain allows the state to seize her land with little that she can do to protest.<sup>1</sup> It is a constitutional right of the federal government to “take” “private property” for “public use,” so long as its owner is provided with “just compensation.”<sup>2</sup> This power also exists at the state and municipal levels, and the “public use” and “just compensation” requirements have been extended to the states by means of the

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<sup>1</sup> See U.S. CONST. amend. V.

<sup>2</sup> *Id.* (“[N]or shall private property be taken for public use, without just compensation.”).

Fourteenth Amendment.<sup>3</sup> There are almost endless examples of people in similar situations as Betty, losing their homes to eminent domain proceedings, initiated by the very towns in which they lived and paid taxes their whole lives.<sup>4</sup>

Would you believe me, however, if I told you that another legal doctrine could also drive Grandma Betty from her home? This doctrine—which appears quite innocuous from the exterior—is capable of achieving the very same results as those realized through eminent domain. I am referring to tax reassessment.

There is indeed a connection between the seemingly unrelated and previously unconnected doctrines of eminent domain and tax reassessment. The two are worlds apart in their stated purposes, methods of execution, and complex rules of law. Yet despite this, application of either doctrine can achieve the same result: Grandma Betty, ousted from the only home she has ever known. In effect, tax reassessment can be utilized as a “backdoor” eminent domain—one without nearly as much public disdain—to accomplish some of the very same goals. Part I of this Note explains how the doctrine of eminent domain functions and how the Supreme Court has interpreted its various components, while Part II details specific instances evincing its abuse. Parts III and IV address the practice of tax reassessment

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<sup>3</sup> See *Chi., Burlington & Quincy R.R. Co. v. City of Chi.*, 166 U.S. 226, 235 (1897).

If compensation for private property taken for public use is an essential element of due process of law as ordained by the fourteenth amendment, then the final judgment of a state court, under the authority of which the property is in fact taken, is to be deemed the act of the state, within the meaning of that amendment.

*Id.*; see also U.S. CONST. amend. XIV, § 1 (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . .”).

<sup>4</sup> See, e.g., Pat Beall & Paul Lomartire, *Eminent Domain Case Draws National Spotlight*, PALM BEACH POST, Dec. 11, 2005, at 1A (describing the troubles encountered by many Riviera Beach, Florida residents as the town tried to take the homes of 1,000 renters and 347 homeowners through eminent domain, including the home of Martha Babson, who lived there for twenty-three years); Lisa Cornwell, *Woman Loses Ruling on Home: Road Project Targets Land*, CINCINNATI POST, Mar. 15, 2006, at A2 (noting the case of an eighty-year-old woman who stood to lose the home she lived in for most of her life); Jason George, *Testing the Boundary Lines of Eminent Domain; Long Branch Wants to Seize Old Homes to Make Room for New Ones*, N.Y. TIMES, Mar. 31, 2004, at B1 (noting the case of Long Branch, New Jersey, where the seaside town, in an effort to redevelop the area, condemned the homes of longtime citizens including that of a then seventy-seven-year-old woman who lived there since 1944).

in this same fashion, both examining the underlying concept and providing real-world examples of its misuse. Part V of this Note draws a connection between eminent domain and tax reassessment, and suggests reasons why one doctrine might be used in place of the other by a municipality in distress. Finally, Part VI discusses ways for preventing future doctrinal misuse.

### I. EMINENT DOMAIN

The Framers foresaw times in which land would need to be confiscated from its rightful owner for governmental use.<sup>5</sup> But because property is one of man's greatest assets, the Fifth Amendment protects Americans by requiring that this constitutional power be invoked, and that land be "taken," *only* for "public use" and with "just compensation."<sup>6</sup> Land cannot be taken simply because the mayor's niece decides to add an extension to her home.<sup>7</sup>

There are certainly times when private property is legitimately taken from its rightful owner for "public use." The best modern example is the constant need for more highways. As Americans own more and more vehicles, our national roadways are busting at the seams.<sup>8</sup> Driving time for the average American household has surged by more than forty percent since 1970,<sup>9</sup> and many Americans spend over two hours in their vehicles daily.<sup>10</sup> Los Angeles citizens wasted ninety-three hours behind the wheel in rush-hour traffic in 2003,<sup>11</sup> essentially working two additional weeks per year because of overcrowded highways.<sup>12</sup>

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<sup>5</sup> See Sheldon Richman, *Takings: The Evils of Eminent Domain*, FREEDOM DAILY, July 1995, available at <http://www.fff.org/freedom/0795e.asp>.

<sup>6</sup> See *id.*; see also U.S. CONST. amend. V.

<sup>7</sup> This would be a clear abuse of "taking" property for "public use" no matter what amount of compensation is provided.

<sup>8</sup> See Erin Cox, *Construction Projects Should Look Familiar*, ORLANDO SENTINEL, Oct. 29, 2006 (Special Section), at 3 ("[T]he quest for new and improved roads continues in an effort to try to keep up with the rapid pace of growth in the region that pops thousands [of] more cars onto already overcrowded roads every year.").

<sup>9</sup> Douglas E. Morris, Editorial, *Transit Missteps Leave Us Trapped*, BALTIMORE SUN, Sept. 29, 2005, at 17A.

<sup>10</sup> *Id.*

<sup>11</sup> Sharon Bernstein, *L.A. Traffic Moving a Bit Faster; Report Finds Congestion in Two Counties Eased in '03—But It's Still the Worst in the Nation*, L.A. TIMES, May 10, 2005, at B1.

<sup>12</sup> This number is based on a 7.5 hour work day. See BUREAU OF LABOR

One solution to the traffic problem is the construction of new highways and the addition of extra lanes to pre-existing, overburdened ones.<sup>13</sup> The main flaw in this solution is obvious: Land upon which highways are built must come from somewhere. This often translates into the government taking homes and businesses away from those whose property lines the route of a proposed highway construction plan. Most people would feel sorry for these property owners, as no compensation can suffice for the loss of memories. Nevertheless, this is an illustration of when eminent domain is not an abuse of power.<sup>14</sup> After all, new roadways need to be built, and they would not be efficient—nor even possible—if constructed around every existing home or business.<sup>15</sup> It is quite imaginable that the Framers anticipated a “public use” such as this, in which eminent domain would be necessary—albeit involving not cars and paved roads, but horses and dirt lanes.<sup>16</sup>

In the above scenario, the “taken” land remains in the hands of the government, as do all highways.<sup>17</sup> Recently, the Supreme

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STATISTICS, U.S. DEP'T OF LABOR, AMERICAN TIME USE SURVEY SUMMARY—2005 RESULTS (2006).

<sup>13</sup> See Ginny MacDonald, *City Drive Times May Get Longer, Study Says*, BIRMINGHAM NEWS, Sept. 12, 2006, at 1C. A study conducted by a University of North Carolina transportation studies professor found that 970 additional highway lanes could save a staggering thirteen million hours in travel time per year—in Alabama alone. *Id.* Such findings have surfaced all around the nation, proposing new roadways to achieve substantial savings in travel time. See, e.g., Sharon Linstedt, *Traffic Jams Drive Up Daily Commuting Costs, Study Finds*, BUFFALO NEWS, May 10, 2005, at B3 (describing Buffalo, New York's consideration of adding five additional lanes to ease congestion); William Petroski, *State Should Expand Roads to Ease Traffic, Study Says; a Libertarian-Oriented Group Warns of Worsening Congestion Nationally. Predictions for Iowa are Less Dire*, DES MOINES REGISTER, Sept. 2, 2006, at 2B (citing the research of the Reason Foundation, which finds that Iowa needs to add 164 miles of lanes over a twenty-five year period); cf. Steve Berg, *Voting on Transit; the Twin Cities Like to Talk About Its Traffic Problem—Denver Is Actually Doing Something*, STAR TRIBUNE (Minneapolis, Minn.), Oct. 24, 2004, at 1AA (noting that extra lanes can ease traffic in Denver).

<sup>14</sup> *Rindge Co. v. County of L.A.*, 262 U.S. 700, 702 (1923) (“[T]he California Code of Civil Procedure includes ‘highways’ among the ‘public uses’ for which the right of eminent domain may be exercised.”).

<sup>15</sup> See generally *supra* note 13 and accompanying text.

<sup>16</sup> Other “[p]roper uses of eminent domain include power substations, microwave towers, public sewerage systems, public water supplies[,] and pipelines for the transportation of various materials.” *Friends of Hatteras Island v. Coastal Res. Comm’n of N.C.*, 452 S.E.2d 337, 347 (N.C. Ct. App. 1995).

<sup>17</sup> Highways are maintained by local or state governments. See *S.C. State Highway Dept’ v. Barnwell Bros.*, 303 U.S. 177, 187 (1938) (“Unlike the railroads, local highways are built, owned, and maintained by the state or its municipal

Court determined that eminent domain can be applied in instances stretching far beyond a necessary highway, even to situations in which the state takes land but does not keep it under governmental control.<sup>18</sup> In *Kelo v. City of New London*, the Court held that the government can turn seized land over to a private developer, who could then independently develop that land.<sup>19</sup> The supposed benefit justifying this taking was that parts of Fort Trumbull, Connecticut, were run-down or “blighted,” and in dire need of redevelopment.<sup>20</sup> By allowing the construction of new homes, condominiums, or businesses, the area would become more attractive and thus generate more taxes, ultimately benefiting the public at large.<sup>21</sup> Moreover, such developments add more jobs.<sup>22</sup>

In *Kelo*, the city planned on taking fifteen homes—in good condition—via eminent domain.<sup>23</sup> It would then turn the property over to a private developer, who intended to build office space, a waterfront conference hotel, a marina, and new residences.<sup>24</sup> The main issue—which was vigorously disputed—was whether the taking, which was to benefit the developer’s personal gains, met the constitutional requirement of “public use.”<sup>25</sup> In a 5–4 decision, the Court held that the project to revitalize the “distressed” neighborhood served a public purpose, and this comprised a valid “taking” within the meaning of the

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subdivisions.”); see also N.J. Tpk. Auth., About the Turnpike, <http://www.state.nj.us/turnpike/nj-about.htm> (last visited July, 19, 2007) (noting that the New Jersey Turnpike Authority is responsible for the New Jersey Turnpike’s 148 miles of highway); N.Y. State Thruway Auth., Thruway Fact Book, <http://www.nysthruway.gov/about/factbook/index.html> (last visited July 19, 2007) (noting that the New York State Highway Authority, a government agency, is responsible for 641 miles of roadway which make up the New York State Thruway).

<sup>18</sup> See *Kelo v. City of New London*, 55 U.S. 469, 472–77 (2005).

<sup>19</sup> *Id.* at 489–90.

<sup>20</sup> *Id.* at 484.

<sup>21</sup> Newer and more attractive buildings command higher rents than their predecessors. Higher rents draw in those who are more affluent and can afford the premium. This, in turn, generates a slew of tax revenue increases. For a detailed discussion of this principle, see *infra* notes 118–22 and accompanying text.

<sup>22</sup> See *Kelo*, 545 U.S. at 473. Large scale construction projects require massive amounts of human labor. Furthermore, even once such projects are completed, employees are needed to operate the businesses and to maintain the buildings and facilities. See *Brooklynites: Seizure of Their Property Is Illegal*, 1010 WINS, Oct. 26, 2006, <http://1010wins.com/pages/115512.php?contentType=4&contentId=230652>.

<sup>23</sup> *Kelo*, 545 U.S. at 475.

<sup>24</sup> *Id.* at 474.

<sup>25</sup> See *id.* at 477.

Fifth Amendment.<sup>26</sup> The Court—recognizing that its decision would be a potential lightning rod for public outcry—invited the states to enact laws restricting the permissible scope of eminent domain powers; many states are considering this option.<sup>27</sup> Despite an increase in proposed legislation to this end, few state bills have actually been enacted.<sup>28</sup>

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<sup>26</sup> See *id.* at 489–90. Justices Stevens, Kennedy, Ginsburg, Souter, and Breyer made up the five justices who agreed with the City of New London. *Id.* at 470.

<sup>27</sup> See *id.* at 489. Justice Stevens wrote:

We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose “public use” requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised.

*Id.*

Justice O'Connor dissented, commenting that “[n]othing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory.” *Id.* at 503 (O’Conner, J., dissenting). She further stated that “[a]ny property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms.” *Id.* at 505.

<sup>28</sup> See David Barron, *Eminent Domain Is Dead! (Long Live Eminent Domain!)*, BOSTON GLOBE, Apr. 16, 2006, at D1. Since the invitation by the *Kelo* Court, there has been much legislation to restrict the reaches of eminent domain. *Id.* The bills are known as “anti-Kelo bills” and in some states there have been as many as fifty of them pending, yet, such legislation rarely leads to actual laws being passed. *Id.* Alabama has limited the use of eminent domain by economic development, but has left the door open when there is a “finding of blight in any area covered by any redevelopment plan or urban renewal plan.” *Id.* States such as “Indiana and Georgia arguably have somewhat stricter new laws, but they, too, exempt blighted properties . . . [T]he Institute for Justice . . . now merely touts the fact that many states have ‘in some way’ responded to Kelo.” *Id.* (citation omitted). In fact, only South Dakota “has a new law that actually limits eminent domain to government-owned development projects, such as roads, schools, and airports.” *Id.*

Michigan, which has implemented limitations upon eminent domain through Michigan Compiled Laws 213.23, held that the condemnation of land for a technology park and other private businesses was not sufficient to satisfy the “public use” requirement. See *County of Wayne v. Hathcock*, 684 N.W.2d 765, 776 (Mich. 2004).

For a public corporation to condemn property under MCL 213.23, a proposed taking must not only advance one of the three objectives listed in that statute, but it must also be “necessary” to that end. The Legislature has vested the authority to determine the necessity required under MCL 213.23 in those entities authorized to condemn private property under that statute. Accordingly, Michigan’s courts are bound by a public corporation’s determination that a proposed condemnation serves a public necessity unless the party opposing the condemnation demonstrates “fraud, error of

The *Kelo* Court did not act without precedent. In *Berman v. Parker*,<sup>29</sup> the District of Columbia exercised its eminent domain power to take land that it deemed “blighted” and turned it over to a private developer, the purpose being to make the area more aesthetically attractive.<sup>30</sup> There was fierce opposition led largely by a department store located within the “blighted” area, but which was itself in good condition.<sup>31</sup> Nevertheless, the Supreme Court held that the taking was constitutional; officials, it reasoned, had to “attack the problem of the blighted parts of the community on an area rather than on a structure-by-structure basis,”<sup>32</sup> and “[t]he entire area needed redesigning . . . including not only new homes but also schools, churches, parks, streets, and shopping centers.”<sup>33</sup> *Kelo* differs, however, in that the condemned property was neither in disrepair nor in an area in need of redevelopment.<sup>34</sup> As held in *Berman*, it is permissible “to determine that the community should be beautiful as well as healthy, spacious as well as clean, [and] well-balanced as well as carefully patrolled”<sup>35</sup> when contemplating whether to condemn a slum. It is entirely different to allow the condemnation of homes in perfect condition and in very well-maintained areas merely to spur economic growth.

As *Kelo* demonstrates, there are many arguments that a government can make to bring a “taking” within the confines of the law. The case has essentially opened a Pandora’s Box, in which—provided that a connection can be made between a taking and some public benefit, and that the state did not previously restrict the doctrine’s scope—eminent domain is almost universally permissible. The line between what is legitimately for “public use” and what is not has become so transparent that the Supreme Court even expanded the former to include increasing tax revenues and adding new jobs.<sup>36</sup> Clearly, the

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law, or abuse of discretion.”

*Id.* at 776. Missouri is one of the most recent states to have adopted new laws limiting the use of eminent domain. See H.R. 1944, 93d Gen. Assem., 2d Reg. Sess. (Mo. 2006).

<sup>29</sup> 348 U.S. 26 (1954).

<sup>30</sup> See *id.* at 29, 31.

<sup>31</sup> *Id.* at 31.

<sup>32</sup> *Id.* at 34.

<sup>33</sup> *Id.* at 34–35.

<sup>34</sup> See *Kelo v. City of New London*, 545 U.S. 469, 473–75 (2005).

<sup>35</sup> *Berman*, 348 U.S. at 33.

<sup>36</sup> See *Kelo*, 545 U.S. at 501 (O’Connor, J., dissenting). Justice O’Connor pointed

Court has come a long way since the days when eminent domain was reserved for the construction of new schools and highways.

## II. ABUSES OF EMINENT DOMAIN

There are many instances in which the power of eminent domain has been abused.<sup>37</sup> The Saleets, for example, lived in Lakewood, Ohio, for thirty-eight years before their town demanded they leave in order to make room for new luxury condominiums and businesses.<sup>38</sup> The elderly couple planned on spending the rest of their lives in that home, eventually passing it on to their children.<sup>39</sup> The mayor of Lakewood publicly admitted that the project sought to combat the aging and shrinking tax base, so that the town could raise the funds it deemed necessary to function.<sup>40</sup> She told *60 Minutes* that “[t]his is about Lakewood’s future. Lakewood cannot survive without a strengthened tax base. Is it right to consider this a public good? Absolutely[!]”<sup>41</sup> With constitutional protections in place, however, the town first had to declare the area in which the Saleets lived “blighted.”<sup>42</sup> The Saleets were lucky and eventually

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out in her dissent:

[T]he Court today significantly expands the meaning of public use. It holds that the sovereign may take private property currently put to ordinary private use, and give it over for new, ordinary private use, so long as the new use is predicted to generate some secondary benefit for the public—such as increased tax revenue, more jobs, maybe even aesthetic pleasure. But nearly any lawful use of real private property can be said to generate some incidental benefit to the public. Thus, if predicted (or even guaranteed) positive side-effects are enough to render transfer from one private party to another constitutional, then the words “for public use” do not realistically exclude *any* takings, and thus do not exert any constraint on the eminent domain power.

*Id.* at 501.

<sup>37</sup> See, e.g., Beal & Lomartire, *supra* note 4; Cornwell, *supra* note 4.

<sup>38</sup> See *60 Minutes: Eminent Domain: Being Abused?* (CBS television broadcast July 4, 2004), available at <http://cbsnews.com/stories/2003/09/26/60minutes/main575343.shtml>.

<sup>39</sup> See *id.*

<sup>40</sup> See *id.*

<sup>41</sup> *Id.*

<sup>42</sup> See *id.*; see also *supra* text accompanying notes 20–21. The mayor of Lakewood said that the “term ‘blighted’ . . . doesn’t have a lot to do with whether or not your home is painted.” See *60 Minutes: Eminent Domain: Being Abused?*, *supra* note 38. She further went on to say that, “[t]he question is whether or not that area can be used for a higher and better use . . . [which is] whether or not the structures generally in an area meet today’s standards.” *Id.*

were spared their home, but others in similar situations were not always as fortunate.<sup>43</sup>

The Salamones, for instance, are presently not sure of their home's fate in Neptune City, New Jersey.<sup>44</sup> Gaspere Salamone, ninety-six-years-old, has lived in the same home with his wife, eighty-five, since 1941.<sup>45</sup> Their plan is to remain in that home for the rest of their lives, but that may not be an option.<sup>46</sup> The Salamone home is part of an area deemed by the borough to need redevelopment; this is a more pleasant way of saying that eminent domain will be used if purchasing negotiations fail.<sup>47</sup> They can no longer independently sell the home to a private purchaser because few, if any, homebuyers would risk purchasing a home in a redevelopment area.<sup>48</sup> One of the worst aspects of their plight is that the Salamones do not have the money necessary to fight the borough in order to stop their eviction.<sup>49</sup>

In 2005, Diana Multare was being forced from her oceanfront Long Branch, New Jersey home of fifty years.<sup>50</sup> The then seventy-two-year-old woman expected to receive less than half of the property's actual worth upon its condemnation in order to make room for upscale condominiums.<sup>51</sup> Another Long Branch resident was evicted from his home and compensated with \$140,000—an amount rendering it nearly impossible to purchase another home in the same area.<sup>52</sup> Further south, the town of Riviera Beach, Florida, planned to construct a billion dollar yachting and housing complex, which would require evicting 6,000 residents.<sup>53</sup> Unbelievably, some of the residents' homes were less than ten years old, yet the town was considering

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<sup>43</sup> See 60 Minutes: *Eminent Domain: Being Abused?*, *supra* note 38.

<sup>44</sup> See Karen Sudol, "Oldest Taxpayer" Could Lose Home, ASBURY PARK PRESS (N.J.), Apr. 30, 2006, at 6A.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *See id.*

<sup>49</sup> *See id.*

<sup>50</sup> Erik Larsen, *Demonstrators Condemn Eminent Domain Long Branch Seizing Property to Make Way for Condos*, ASBURY PARK PRESS (N.J.), Oct. 16, 2005, at AA1.

<sup>51</sup> *Id.*

<sup>52</sup> *See id.*

<sup>53</sup> See Bill Cotterell, *Florida Is Grappling with Eminent Domain Ruling*, TALLAHASSEE DEMOCRAT, Oct. 13, 2005, at E5.

tearing them down in the name of eminent domain.<sup>54</sup> Those residents facing generous offers would probably be happy to take the money and leave, but those not so fortunate would likely feel otherwise.<sup>55</sup>

The case of Evaristi Corrales is a particularly disturbing example of eminent domain abuse. Corrales came to America in 1962 after fleeing Fidel Castro's regime.<sup>56</sup> While he was still in Cuba, the Communist government seized his bakery, making him unable to earn a living.<sup>57</sup> With promises of hope, he and his wife decided to pursue the great American dream.<sup>58</sup> He eventually purchased his own grocery store in the United States and did fairly well,<sup>59</sup> that is, until the City of Yonkers seized his store—along with other properties on the same block—to make room for the construction of a new school in satisfaction of a federal court order.<sup>60</sup> The Corraleses have been quite unfortunate—and rather unique—in falling victim to two separate occasions of eminent domain in twenty-five years. In Cuba, however, one can understand how such a thing could happen; in the United States of America, this is very disconcerting. As the cases above demonstrate, when states and their municipalities decide that they need to raise revenues, they often cross a moral line and abuse the power of eminent domain.

Politicians who abuse eminent domain often pay a damaging price at the polls. Elected officials must inevitably face voters at the next election. It is difficult, if not impossible, for a politician

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<sup>54</sup> *See id.*

<sup>55</sup> *See id.* (stating that the compensation one receives by eminent domain is "like winning the lottery; if you own a square foot in the middle of what's to become a new yacht club, you've got a winning ticket").

<sup>56</sup> Wayne King, *Our Towns; American Faces Eviction on Morris Street*, N.Y. TIMES, Dec. 5, 1989, at B1.

<sup>57</sup> *Id.*

<sup>58</sup> *See id.* (describing how the Corraleses moved to the United States, bought a house, and opened a successful business).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* The condemnation of land through eminent domain is legitimate for the construction of a new school. Nevertheless, this example is important because it shows another aspect of the abuses of eminent domain, one upon which this Note does not focus: the harsh insensitivity displayed toward those whose homes are "taken." Politicians may get so absorbed in the end result of the "taking" that they pay little attention to any extenuating circumstances that a homeowner might have. Sensitivity was clearly not a consideration when the Corraleses' business was confiscated after they previously had the same experience under the Cuban Communist regime.

to gain the support of those citizens that he or she helped uproot from their homes to make way for a shopping center. In fact, in Sunset Hills, Missouri, the electorate voted the mayor out of office, along with several other officials responsible for a residential condemnation designed to make way for a \$184 million shopping center.<sup>61</sup> Similar bad publicity often surrounds eminent domain proceedings, and is a reason why politicians often choose alternative means to raise needed revenues.<sup>62</sup>

### III. TAX REASSESSMENT

Benjamin Franklin once stated, “[i]n this world nothing can be said to be certain, except death and taxes.”<sup>63</sup> Taxes rarely evoke feelings of happiness and joy, yet in reality, they are crucial to the society in which we function. Imagine a world in which all taxes were optional: Our schools would probably be defunct, and our trash would amass in noxious, rotting piles. The point is clear. Few people would pay taxes if they were voluntary, and consequently, our society would rapidly deteriorate.<sup>64</sup> Thankfully, the only voluntary aspect of taxes is each citizen’s responsibility for calculating his or her own income tax liability.<sup>65</sup>

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<sup>61</sup> See Clay Barbour, *Some See a New Dawn in Sunset Hills*, ST. LOUIS POST-DISPATCH, Apr. 6, 2006, at C1.

<sup>62</sup> See Press Release, Mo. Senate, Senate Advances Bill Protecting Missouri Homes, Farms and Businesses: Bill Limits Eminent Domain for Economic Development (May 2, 2006), available at <http://www.senate.state.mo.us/06info/members/newsrel/d15/050206.pdf> (describing the approval of a bill that encourages Missouri municipalities to find alternative means of raising money by limiting their power to use eminent domain for economic development); see also T.R. Reid, *Missouri Condemnation No Longer so Imminent; Supreme Court Ruling Ignites Political Backlash*, WASH. POST, Sept. 6, 2005, at A2 (“The popular backlash has slowed or blocked many pending projects, as developers, their bankers and local governments suddenly face public furor.”).

<sup>63</sup> Letter from Benjamin Franklin to Jean-Baptiste Leroy (Nov. 13, 1789), in JOHN BARTLETT, *BARTLETT’S FAMILIAR QUOTATIONS: A COLLECTION OF PASSAGES, PHRASES, AND PROVERBS TRACED TO THEIR SOURCES IN ANCIENT AND MODERN LITERATURE* 321 (Justin Kaplan ed., 17th ed., Little, Brown & Co. 2002).

<sup>64</sup> See Joshua D. Rosenberg, *The Psychology of Taxes: Why They Drive Us Crazy, and How We Can Make Them Sane*, 15 VA. TAX REV. 155, 157–58 (1996) (describing the widespread disdain that people have towards taxes).

<sup>65</sup> Compliance with income tax laws is somewhat voluntary because most people are never audited so it is left up to the taxpayer to voluntarily comply with the honest preparation of his or her taxes. There is, however, nothing voluntary about paying taxes in general. See William P. Barrett, *What’s Voluntary About Taxes?*, FORBES, Apr. 4, 2005, [http://www.forbes.com/taxes/2005/04/04/cz\\_wb\\_0404taxes](http://www.forbes.com/taxes/2005/04/04/cz_wb_0404taxes).

New York law provides that “[a]ll real property within the state shall be subject to real property taxation.”<sup>66</sup> Property taxes are especially important to local communities, as they provide the necessary funding to run public schools.<sup>67</sup> Local governments generally collect property taxes from their citizens, but it is state constitutions and statutes that confer authority on those municipalities in order to operate.<sup>68</sup>

Although all aspects of real property taxation are disliked by property owners, tax reassessments—or reevaluations<sup>69</sup>—often leave a particularly bad taste in their mouths. Tax reassessment is the “systematic review of the assessments of all locally assessed properties, valued as of the valuation date of the assessment roll containing those assessments, to attain compliance with the standard of assessment.”<sup>70</sup> The assessment is intended to “appraise all real property inside its borders according to its ‘full and fair value.’”<sup>71</sup> There is no affirmative duty for a municipality to reassess properties, although New York State has created incentives to do so.<sup>72</sup>

html (“To the [Internal Revenue Service], therefore, ‘voluntary’ apparently means little more than ‘not done at gunpoint.’”).

<sup>66</sup> N.Y. REAL PROP. TAX LAW § 300 (McKinney 2000).

<sup>67</sup> See *Bd. of Educ. v. Nyquist*, 94 Misc. 2d 466, 476–77, 408 N.Y.S.2d 606, 609 (Sup. Ct. Nassau County 1978) (stating that New York relies chiefly on local real property taxes to finance public elementary and secondary education), *modified*, 83 A.D.2d 217, 443 N.Y.S.2d 843 (2d Dep’t 1981), *modified*, 57 N.Y.2d 27, 439 N.E.2d 359, 453 N.Y.S.2d 643 (1982), *appeal dismissed*, 459 U.S. 1139 (1983). See generally *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

New York has created over 700 school districts with power to levy and collect taxes on the real property within district boundaries and to retain such tax revenues to finance public education within each district. Cities with populations exceeding 125,000 have themselves been given similar powers. By decision of the State, local property taxes are the primary source of funds for the support of public elementary and secondary education.

*Nyquist*, 94 Misc. 2d at 476, 408 N.Y.S.2d at 609.

<sup>68</sup> Stewart E. Sterk & Mitchell L. Engler, *Property Tax Reassessment: Who Needs It?*, 81 NOTRE DAME L. REV. 1037, 1041 (2006).

<sup>69</sup> See Manchester Twp., N.J., Questions that Are Often Asked When a Municipality Is Undertaking a Reassessment, <http://manchestertownshipnj.org/assessor/assessor.htm> (last visited July 17, 2007) [hereinafter Questions] (noting that the terms tax reassessment and tax reevaluation can be used interchangeably).

<sup>70</sup> N.Y. REAL PROP. TAX LAW § 102 (McKinney 2003).

<sup>71</sup> Questions, *supra* note 69.

<sup>72</sup> See N.Y. REAL PROP. TAX LAW § 1573 (McKinney 2006) (listing several ways that New York State offers assistance to municipalities to induce compliance with property reassessments). Such incentives may include a payment of up to five dollars per parcel of land that the municipality has reassessed. *Id.* While this might

When a municipality in New York—except New York City and Nassau County—reassesses property, it must utilize a uniform percentage of market value.<sup>73</sup> “This means that all taxable properties in [a] city, town[,] or village must be assessed at market value[,] or all at the same uniform percentage of market value each year.”<sup>74</sup> The process is complex and cumbersome, because to achieve a uniform percent of current market value, each and every parcel in a municipality must be inspected.<sup>75</sup> The interior and exterior of each building is taken into account, as are the recent sales prices of other local properties comparable to that being reassessed.<sup>76</sup> “If the assessor is adjusting assessments to a uniform percentage of market value, rather than 100 percent of market value, the assessor would apply that percentage to all assessments.”<sup>77</sup> Technically, the assessor evaluates and determines current market value annually, making any appropriate changes to the assessed properties.<sup>78</sup> In reality, assessments are not conducted annually, but are done every five to ten years.<sup>79</sup> In many instances,

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seem trivial, there are hundreds of thousands of housing units in Nassau County alone, and, in the aggregate, this sum can be a substantial amount. U.S. CENSUS BUREAU, NASSAU COUNTY QUICKFACTS, at <http://quickfacts.census.gov/qfd/states/36/36059.html> (last visited July 17, 2007). In yet other instances, up to seven dollars per parcel may be paid out. N.Y. REAL PROP. TAX LAW § 1573 (McKinney 2006). Additionally, there is up to a two dollar per parcel incentive for counties that have reassessed their properties prior to April 1, 1996 and that have “completed a revaluation or an update implemented on an assessment roll having assessments at one hundred percent of value and finalized subsequent to the nineteen hundred ninety-six calendar year.” *Id.*

Interestingly, Nassau County, New York, was ordered by the State Supreme Court to revalue properties because, as the judge stated, “[Nassau County’s] failure to meaningfully update land values as well as their failure to review and update assessments in light of changing values of similar properties clearly contravene time-honored constitutional principles.” James Barron, *Nassau Ordered to Revalue Property*, N.Y. TIMES, Dec. 18, 1992, at B9 [hereinafter *Nassau Ordered to Revalue*]. These inequities occurred because New York does not require assessments.

<sup>73</sup> N.Y. STATE OFFICE OF REAL PROP. SERVS., HOW ASSESSORS ACHIEVE FAIR AND ACCURATE ASSESSMENTS (2006), available at <http://www.orps.state.ny.us/pamphlet/achfairassmts.htm> [hereinafter OFFICE OF REAL PROP. SERVS. I].

<sup>74</sup> *Id.*

<sup>75</sup> *See id.*

<sup>76</sup> *See Questions, supra* note 69.

<sup>77</sup> OFFICE OF REAL PROP. SERVS. I, *supra* note 73.

<sup>78</sup> *See id.*

<sup>79</sup> *See Real Property Tax Appeals Must Be Filed by April 1, 2005*, REAL PROP. TAX APPEALS UPDATE (Riker Danzig Scherer Hyland & Perretti LLP, Morristown, N.J.), Feb. 2005.

however, gaps in excess of fifty years occur, leading to huge jumps in assessed home values.<sup>80</sup> If the land owner is not satisfied with the results of a reassessment, he can generally request an informal hearing; if necessary, a formal hearing before a designated committee is held.<sup>81</sup>

It is important to remember that tax reassessments are not utilized to increase the tax base.<sup>82</sup> Rather, they are merely supposed to spread the local tax burden equally.<sup>83</sup> A clear example is two identical homes on a block, the only block in a town. The total tax base for the town is \$10,000. One of the homeowners pays \$6,000 in annual property taxes, while his neighbor—for an identical home and lot size—pays only \$4,000. This unfairness is exactly what tax reassessment is intended to cure. Each of the homeowners should share the tax burden equally, paying \$5,000 each. On paper, tax reassessment appears to be a wonderful tool for achieving fairness. In practice, however, reassessments can produce the opposite result.

#### IV. ABUSES OF PROPERTY TAX REASSESSMENT

Cases which demonstrate abuses of tax reassessment are not as common—and are less publicized—than those involving eminent domain. This is largely because tax reassessment does not usually evoke the same feelings of hatred and distrust as does the mere concept of redevelopment eminent domain.<sup>84</sup>

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<sup>80</sup> See *Nassau Ordered to Reevaluate*, *supra* note 72; Bruce Lambert, *Judge Allows Reassessment to Proceed in Nassau*, N.Y. TIMES, Dec. 21, 2002, at B5; Vivian S. Toy, *Nassau Taxes May Be Fairer, but Protests Abound*, N.Y. TIMES, Feb. 2, 2003, at 14LI.

<sup>81</sup> See N.Y. REAL PROP. TAX LAW § 524 (McKinney 2000); Questions, *supra* note 69.

<sup>82</sup> See Editorial, *Reassessment Makes Sense*, GREENVILLE NEWS (S.C.), July 27, 2006, at 6A; Questions, *supra* note 69. A tax base is “the wealth (as real estate or income) within a jurisdiction that is liable to taxation.” Merriam-Webster Online Dictionary, <http://www.m-w.com/dictionary/tax%20base> (last visited July 15, 2007).

<sup>83</sup> See Sterk & Engler, *supra* note 68, at 1045; see also Questions, *supra* note 69. Even though property values rise throughout entire municipalities, the tax base does not increase because the New York State Board of Equalization and Assessment applies the appropriate equalization rate, ensuring that it remains stable. See N.Y. STATE OFFICE OF REAL PROP. SERVS., UNDERSTANDING THE EQUALIZATION RATE (2007), available at [http://www.orps.state.ny.us/pamphlet/under\\_eqrates.pdf](http://www.orps.state.ny.us/pamphlet/under_eqrates.pdf).

<sup>84</sup> See Press Release, Quinnipiac University, Connecticut Voters Say 11-1 Stop Eminent Domain, Quinnipiac University Poll Finds; Saving Groton Sub Base Is High Priority (July 28, 2005), <http://www.quinnipiac.edu/x1296.xml?ReleaseID=821> [hereinafter Quinnipiac] (“[Eighty-eight] percent of voters [] disagree strongly or

There is, however, no shortage of documented cases detailing the abuse of property tax reassessments, and the resulting havoc. Just like eminent domain, reassessments uproot people from their homes, and often there is extreme unfairness in the amount at which property is valued.

The Waclawiaks moved into their Branford, Connecticut, cottage—with a slight view of the Long Island Sound—before the real estate boom in which home prices skyrocketed.<sup>85</sup> The modest house had no basement, garage, or attic,<sup>86</sup> and its yearly property taxes were approximately \$3,000.<sup>87</sup> By their fifth year, these taxes had tripled to \$9,000, the government's justification being that the property had a water view.<sup>88</sup> The Waclawiaks's misfortune, however, does not compare to that of their neighbors, the Scotts.<sup>89</sup> Living in the area for over fifty years, they had already planned to retire in their home.<sup>90</sup> Soon, they might need to make other plans; the taxes are simply becoming harder and harder to pay.<sup>91</sup> The home that cost them \$35,000 to build in 1963 was reassessed to \$20,000 in taxes annually.<sup>92</sup> Another neighbor had to work a second job just to afford her property taxes.<sup>93</sup> Although, technically, a homeowner can challenge a reassessment, it is often not economically feasible because the challenger is responsible for new appraisal and legal fees.<sup>94</sup>

Obviously, those unable to afford higher taxes will find it equally difficult to avail themselves of this prohibitive means of redress.

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somewhat with newer applications of eminent domain to take private property for economic development projects.”).

<sup>85</sup> See Marcia Chambers, *A Shocking Assessment: As Towns Turn to Private Companies to Do Their Appraisals, the Consequences Especially If You Live Near the Water, Can Shake Your Foundations. Just Ask the Good People of Branford*, HARTFORD COURANT, Aug. 7, 2005, at 3.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *See id.*

<sup>89</sup> *See id.*

<sup>90</sup> *Id.*

<sup>91</sup> *See id.*

<sup>92</sup> *Id.* (noting that the Scotts “learned that their taxes had doubled, from \$10,000 to \$20,000”).

<sup>93</sup> *Id.*

<sup>94</sup> *See id.* Not only do the costs of fighting a reassessment make it difficult to challenge, but private companies that conduct reassessments use secret formulas so that “they can always explain [the challenge] away.” *Id.* Therefore, even if an attorney was hired on a contingent-fee basis, the newly assessed value would be hard to fight.

In Atlantic City, New Jersey—home to some of the world's most famous casinos—the Angelinis faced similar problems.<sup>95</sup> The elderly couple—who have lived in Atlantic City for forty years—pay taxes with their Social Security benefits and small pension, upon which they also live.<sup>96</sup> When a tax reassessment takes effect in 2007—the first one in the area in twenty-five years—their property taxes could more than triple to \$10,000.<sup>97</sup> The huge jump is attributable to the lengthy delay between reassessments, and—in defense of the city—there are substantial property tax inequities among its residents.<sup>98</sup> For example, one citizen pays \$25,000 a year on his Boardwalk townhouse, while a neighbor in an identical home—but which was erected several years prior—pays only \$6,000 in property taxes.<sup>99</sup> This demonstrates just how steeply real estate prices have risen in Atlantic City over a relatively short period of time. Nevertheless, the ramifications of such a reassessment for the Angelinis and other longtime residents are troubling, because they lack the means to afford their own homes.<sup>100</sup>

In Suffolk County, New York, a large reassessment was recently conducted—much to the dismay of many of its homeowners.<sup>101</sup> There were widespread claims of unfairness that accompanied the reassessment, ranging from notices of increase being sent to residents only days before the expiration of the contest period, to unjustifiably high values being attributed to certain homes.<sup>102</sup> One such home belonged to Melissa Bishop, who was forced to sell her house when it was assessed at \$947,000.<sup>103</sup> The highest offer she received was \$830,000, far less than the state's claimed value.<sup>104</sup> This is ironic, since assessments are intended to bring a home's worth up to fair market value.<sup>105</sup> When these New York homeowners fought the

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<sup>95</sup> See Michael Diamond, *Special Report: Atlantic City Tax Reassessment May Drive Many Homeowners Out of Town*, PRESS ATLANTIC CITY, Sept. 18, 2005, at A1.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *See id.*

<sup>99</sup> *Id.*

<sup>100</sup> *See id.*

<sup>101</sup> See Valerie Cotsalas, *Fighting Town Hall on Assessments*, N.Y. TIMES, June 4, 2006, at 11.

<sup>102</sup> *See id.*

<sup>103</sup> *See id.*

<sup>104</sup> *Id.*

<sup>105</sup> See OFFICE OF REAL PROP. SERVS. I, *supra* note 73.

reassessed values of their homes, they were faced with less than ideal conditions, rendering it difficult for them to prevail.<sup>106</sup>

As should now be obvious, tax reassessment can displace families much in the same way as eminent domain. When municipalities conduct a reassessment, those forced to leave due to the financial burden often cannot find affordable homes within the immediate area, and are instead forced to move long distances, sometimes to unsafe areas.<sup>107</sup> They not only lose the homes in which they often had hoped to retire, but they may be forced to quit their jobs if they no longer live within a reasonable commuting distance from their employers. Tax reassessment thus causes one to wonder whether its destructive potential outweighs its purported benefits.

#### V. THE CONNECTION BETWEEN EMINENT DOMAIN AND TAX REASSESSMENT

Considerable evidence of the hardships caused by both eminent domain and tax reassessments has been provided. The question remains: What exactly connects these two doctrines? Aside from their capacity to produce devastating results, the most obvious link is that raising taxes to such an extreme as essentially to evict homeowners is similar to a Fifth Amendment “taking.” Nevertheless, this Note does not focus on that similarity, as “[it] is well established that taxation is not a ‘taking’ within the meaning of [the Constitution].”<sup>108</sup> Despite the uncanny resemblance, courts have repeatedly held that property remains in its owner’s hands even after a reassessment renders it unaffordable; likewise, the owner continues to be free to do with the land what he chooses.<sup>109</sup>

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<sup>106</sup> See *Cotsalas*, *supra* note 101.

She braved the rain and cold on grievance day and got in line at 11 a.m. Nearly three hours later, she was given a number (548). The town was hearing grievance No. 100 at that point, she said, so she left and returned at 6:30 with a copy of “The Da Vinci Code” to pass the time. She never had a hearing. Instead, a town official gave [her] and many others receipts for a hearing on another day.

*Id.*

<sup>107</sup> See Su-jin Yim & Erin Hoover Barnett, *The Lents Paradox*, THE OREGONIAN, Sept. 7, 2006, at 10.

<sup>108</sup> *State ex rel. Att’y Gen. v. Lake Superior Court*, 820 N.E.2d 1240, 1251 (Ind. 2005) (discussing the established precedents in *Hutchins v. Town of Fremont*, 142 N.E. 908, 912 (Ind. 1924)).

<sup>109</sup> See *id.*

The shared trait at issue in this Note has never been noted by courts. In eminent domain proceedings and case law, this attribute is widely publicized and largely touted, while in the arena of tax reassessments it is dormant and even hidden. The attribute forming the nexus between these two doctrines is the ability to raise tax revenues.<sup>110</sup> When exercising eminent domain powers, municipalities have been very upfront in disclosing increased taxes as one of the principal goals sought by the “taking.”<sup>111</sup> Courts have repeatedly declared that increased tax revenues are one of the legitimate benefits to the public, and as such, can justify the use of eminent domain.<sup>112</sup> A cluster of small homes—whether in run-down or pristine condition—cannot match the tax revenues generated by a luxury condominium building, a shopping center, or a marina built in its place. That is not to say that towns are given *carte blanche* to do whatever they please in the pursuit of increased tax revenues; courts still require a showing of “blight.”<sup>113</sup> The judicial rationale, however, is that such increases can help fund schools, maintain roads, and provide a variety of other municipal services.<sup>114</sup>

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<sup>110</sup> For a discussion of increases in tax revenues with eminent domain, see *supra* text accompanying notes 82–84. For a similar discussion as to tax reassessment, see *supra* note 36 and accompanying text. Please note that the discussion of tax reassessment speaks only with regards to property tax revenues, not to income or sales tax revenues which will be discussed in this section.

<sup>111</sup> See *Kelo v. City of New London*, 545 U.S. 469, 483 (2005) (stating that Fort Trumbull, Connecticut, was not “confronted with the need to remove blight,” but “the area was sufficiently distressed to justify a program of economic rejuvenation . . . . The City has carefully formulated an economic development plan that it believes will provide appreciable benefits to the community, including . . . new jobs and increased tax revenue”); *Cirelli v. Ent.*, 885 So. 2d 423, 430–31 (Fla. Dist. Ct. App. 2004) (“[T]urning [] land into productive property promotes development and, as courts in other jurisdictions have observed, increases tax revenues.”); *Cent. Steel Supply Co. v. Planning Bd. of Somerville*, 850 N.E.2d 1051, 1058 (Mass. 2006) (stating that the urban renewal plan was to “encourage real estate investment, increase tax revenues, and create more jobs”).

<sup>112</sup> See, e.g., *Kelo*, 545 U.S. at 484 (“Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment.”).

<sup>113</sup> A town cannot simply condemn land to raise taxes. It may do so only if the area is “blighted” or “distressed.” Nevertheless, this requirement can be easily circumvented as demonstrated in *Kelo*, in which the “distressed” area contained homes in good condition, yet the condemnation was upheld. See *id.* at 470–75.

<sup>114</sup> See *Bd. of Educ. v. Nyquist*, 94 Misc. 2d 466, 476, 408 N.Y.S.2d 606, 609 (Sup. Ct. Nassau County 1978), *modified*, 83 A.D.2d 217, 443 N.Y.S.2d 843 (2d Dep’t 1981), *modified*, 57 N.Y.2d 27, 453 N.Y.S.2d 643, 439 N.E.2d 359 (1982), *appeal dismissed*, 459 U.S. 1139 (1983) (noting that property taxes help fund public

Tax reassessment is the more complicated of the two doctrines, as it is only designed to distribute the tax burden equally, and not actually to raise the tax base.<sup>115</sup> Yet, despite its stated purposes, increased tax revenues are an inevitable byproduct of tax reassessments. The gains are not realized in the form of property taxes, for, in practice, the tax base should neither increase nor decrease; rather, they are achieved in the form of income and sales taxes.

For example, take the Atlantic City case.<sup>116</sup> Homes recently commanding taxes of only \$6,000 are likely to jump to \$16,000, or even \$25,000.<sup>117</sup> Many long-time local homeowners will no longer be able to afford those high taxes on their fixed incomes.<sup>118</sup> As a result, they are forced to find other residences with taxes consistent with their spending abilities.<sup>119</sup> At the same time, homes in the area—such as one bedroom condominiums—soar to prices in excess of \$300,000.<sup>120</sup> It is obvious that people in the same income level as those just reassessed will not be able to move in, as they too would have trouble affording such high taxes. This leads to an inevitable outcome: Wealthier people will become the new occupants, as only they can afford to pay the higher taxes. These wealthier citizens earn more income and,

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schools); *see also supra* note 16.

<sup>115</sup> *See supra* text accompanying notes 82–84. Often, municipalities will need to raise the tax base, for example, to build new schools or pay new salaries. They can achieve this through tax rate increases or by enacting a new tax. They may not meet their needs by conducting a tax reassessment, which is not intended for such purposes, but rather for remedying inequalities in property taxes.

<sup>116</sup> *See Diamond, supra* note 95; *see also supra* notes 96–100 and accompanying text.

<sup>117</sup> *See Diamond, supra* note 95.

<sup>118</sup> *See id.*

<sup>119</sup> The same idea professed by Saul Levmore in his discussion about self-assessment can apply here:

Although the buyer cannot force sales but can only force a choice between selling and paying higher taxes, the holdout's hand is much weakened and the investor's incentives are stronger. After all, a seller who holds out will be forced to pay higher property taxes until the next assessment day, which may be a year or two away. The threat of such a tax burden will surely discourage owners from holding out when dealing with a buyer who may be comparing a number of sites and be perfectly able to go elsewhere.

Saul Levmore, *Self-Assessed Valuation Systems for Tort and Other Law*, 68 VA. L. REV. 771, 789 (1982). Just as with self-assessment, the position that a seller is placed in forces him to sell, so too, with municipality conducted assessments, the homeowner is put in a position where he is forced to sell because while he might hope and pray for some relief, he cannot afford the taxes in the meantime.

<sup>120</sup> *See Diamond, supra* note 95.

hence, pay more income taxes than their predecessors.<sup>121</sup> They also spend more money, as they possess more to spend, leading to increased sales tax revenues.<sup>122</sup>

When local governments are faced with budget shortfalls, they are left with very few options. Tightening a budget is often like pulling teeth, and can cause an uproar within local and state governments.<sup>123</sup> The use of eminent domain is one option. Blighted areas can be taken over for private development of luxurious housing and new upscale shopping centers, and the additional tax revenues generated can help alleviate the government's financial woes.<sup>124</sup> The problem is that eminent domain—especially for the purpose of increasing tax revenues as opposed to, for example, creating new schools or highways—does not sit well with voters.<sup>125</sup> An elected official with any serious political ambitions does not want his name associated with the uprooting of local communities.<sup>126</sup>

Politicians can, alternatively, turn to tax reassessment, which does not evoke the same slew of emotions as does eminent domain.<sup>127</sup> In fact, many local governments underutilize their

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<sup>121</sup> See I.R.S. 2005 Tax Rate Schedules, <http://www.irs.gov/formspubs/article/0,,id=133517,00.html> (last visited July 19, 2007); see also RICHARD GARLIKOV, ETHICAL AND PHILOSOPHICAL FOUNDATIONS OF ECONOMICS ch. 31, <http://www.garlikov.com/EPFE/chap31.htm> (last visited July 19, 2007).

<sup>122</sup> See GARLIKOV, *supra* note 121. Wealthy households earn an average annual income of \$235,900, and were among the top 8% of households in the United States. Over 20% of the income earned by these households is spent on luxury goods and services. See Am. Express, *American Express Platinum Luxury Survey Shows Wealthy Gen X Consumers Are Mighty in Luxury Buying Power, Spending More than Baby Boomer Population*, June 7, 2005, [http://home3.americanexpress.com/corp/pc/2005/genx\\_lux.asp](http://home3.americanexpress.com/corp/pc/2005/genx_lux.asp).

<sup>123</sup> See Richard G. Jones, *Corzine Orders New Jersey Government Shutdown*, N.Y. TIMES, July 2, 2006, at 11 (describing the crisis that New Jersey recently faced when the government temporarily shut down because officials could not come to an agreement on Governor John Corzine's budget proposal).

<sup>124</sup> See *supra* text accompanying notes 18–21.

<sup>125</sup> See Quinipiac, *supra* note 84 (“Connecticut voters say 89 [to] 8 percent that the state legislature should pass laws limiting the use of eminent domain . . .”); see also *supra* notes 61–62 and accompanying text.

<sup>126</sup> Because many voters want the use of eminent domain to be curtailed, it would be difficult for a politician to emerge from an election victorious if voters associate him with abusing those very powers. See *supra* notes 61–62 and accompanying text.

<sup>127</sup> Although there are horror stories by reassessments just as there are by eminent domain, tax reassessments are expected as the law clearly states that property taxes are assessed as per the property's fair market value, which could not be done accurately without frequent reassessments. See Questions, *supra* note 69.

power in this area, being generally entitled to conduct reassessments annually;<sup>128</sup> yet as noted above, neighborhoods sometimes go without reassessments for periods of over fifty years.<sup>129</sup> Most citizens understand that it is only a matter of time before they will be faced with one.<sup>130</sup>

The obvious issue is that, in a purely formal sense, property reassessments are not utilized to achieve the very outcome that they inevitably produce—i.e., to increase tax revenues.<sup>131</sup> Unfortunately, it would be almost impossible to prove that the governmental motive behind a reassessment is augmenting tax revenues, as opposed to ensuring that the tax burden is shared equally among a town's constituents. Nor would any politician ever admit this. Nevertheless, the reality of the matter is hard to ignore, and, as this Note demonstrates, a municipality can in fact conduct a reassessment for reasons it claims are legitimate and fair, yet in practice do so only to reap the ancillary benefits that a reassessment inevitably produces—income and sales tax revenues.<sup>132</sup> As with eminent domain, the government may be seeking to increase such revenues, but rather than jeopardize a town's image—or, better said, a politician's image—by raising tax rates, it instead uses its tax reassessment power to achieve the same goals, maintaining its image and dignity in the process.

One might argue that municipalities do not reap the full benefits of increases in income and sales taxes, since it is the states that collect and spend these taxes and not the individual municipalities.<sup>133</sup> Yet in the sometimes corrupt world of politics, it is not hard to imagine the existence of a quid pro quo relationship between local and state governments. If a locality earns additional income for the state, the latter can simply budget increased funds for that area as compensation. Although

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<sup>128</sup> See *supra* text accompanying note 78.

<sup>129</sup> See *Nassau Ordered to Reevaluate*, *supra* note 72; Toy, *supra* note 80.

<sup>130</sup> See John Rather, *If You're Thinking of Living In: Great Neck; Great Site for Schools, Parks and Trains*, N.Y. TIMES, Sept. 8, 2002, at 11.

<sup>131</sup> See *supra* notes 82–84 and accompanying text.

<sup>132</sup> See *supra* text accompanying notes 120–22.

<sup>133</sup> Sales tax is often the combination of state and locality imposed taxes. For example, the New York State sales tax is 4%, the New York City sales tax is 4%, and there is an additional Metropolitan Commuter Transportation District surcharge of .375%, so that a taxable good purchased in New York City is taxed at 8.375%. NYC.gov, Sales and Use Tax, [http://home2.nyc.gov/html/dof/html/business/business\\_tax\\_nys\\_sales.shtml#rates](http://home2.nyc.gov/html/dof/html/business/business_tax_nys_sales.shtml#rates) (last visited July 18, 2007). Therefore, a municipality will directly benefit from a portion of increased sales tax revenue.

this is again hard to prove, such difficulty should not invalidate the clear doctrinal connection.

One might also argue that a cash-strapped municipality can simply raise taxes in a variety of ways, and thus need not resort to an improperly-motivated tax reassessment.<sup>134</sup> This ignores that politicians universally prefer actions least damaging to their reputations. Ordering a much overdue tax reassessment is surely less of a political risk than expropriating an elderly citizen's home through eminent domain, or than enacting an entirely new and far-reaching tax.

## VI. DEAD-BOLTING BACKDOOR EMINENT DOMAIN

Although the purpose of this Note is not to propose the reformation of tax reassessment and eminent domain, it is nevertheless important to consider possible ways to prevent—or at least to diminish—their interchangeability. Governments must not utilize tax reassessment in the same fashion as eminent domain—the two doctrines were created for entirely different purposes. If preventative roadblocks are not instituted, there is nothing stopping a politician from employing tax reassessments to achieve outcomes reserved for eminent domain, especially if doing so protects his reputation. It is specifically the procedure for challenging newly reassessed property taxes that is in need of dire change.<sup>135</sup> While the suggestions below do not address every detail wrong with the hearing process, they do highlight some of the most glaring inequities.

A great characteristic of this country is the right to due process.<sup>136</sup> This opportunity to be heard is not simply a ceremonious act; it is part of our Constitution and is judicially enforced.<sup>137</sup> Sadly, this right is sometimes ignored in the context of tax reassessments, as municipalities can employ an arsenal of tricks to render a fair hearing anything but.<sup>138</sup>

When the owner of reassessed property challenges the outcome of that assessment, he is entitled to a hearing before a designated board to plead his case and to explain why his taxes

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<sup>134</sup> See *supra* note 115.

<sup>135</sup> See *supra* notes 94, 106 and accompanying text.

<sup>136</sup> See U.S. CONST. amend. V.

<sup>137</sup> See *id.*

<sup>138</sup> See *supra* note 94 and accompanying text.

should be reduced.<sup>139</sup> The deck, however, is often stacked against him. The formula used to derive the new tax liability may be purposely complex, designed to confuse the challenger and make it difficult for him to proceed.<sup>140</sup> This unethical practice should be eradicated; instead, municipalities should be forced to adopt a single mathematical formula, free from any and all unnecessary complexities. Furthermore, each property owner should receive a personalized statement detailing each variable of the equation, along with a clear written explanation as to how the new tax liability was derived.<sup>141</sup> These steps would ensure that formulas are not fashioned merely to deter and thwart successful challenges. They would also address the problem of so-called “drive-by” assessments, since it is almost impossible to produce a personalized explanation of the formula and its application to the specific property without a concomitant physical inspection.<sup>142</sup>

Increasing the frequency of tax reassessments is also important in maintaining the integrity of the practice. If conducted annually, or even every five to six years,<sup>143</sup> reassessment is less likely to mimic the effects of eminent domain.<sup>144</sup> When an individual’s tax liability rises by a few thousand dollars over a period of six years, despite the financial strain that this may cause, she might be able to meet the increase by working overtime, finding a second job, or even cutting her existing spending habits. On the contrary, when a

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<sup>139</sup> See N.Y. REAL PROP. TAX LAW §§ 523–25 (McKinney 2000).

<sup>140</sup> See *supra* note 94 and accompanying text.

<sup>141</sup> Currently, New York assessments are accompanied by a vague explanation with little detail as to why an assessor arrived at the stated property value. The attachment instead focuses on “[w]hen, where, and how payments are to be made,” and how to proceed with a challenge. N.Y. STATE OFFICE OF REAL PROP. SERVS., PROPERTY TAXPAYER’S BILL OF RIGHTS—DO YOU KNOW WHAT YOUR PROPERTY TAX BILL IS TELLING YOU? (2007), available at <http://www.orps.state.ny.us/pamphlet/taxbrgts.pdf>.

<sup>142</sup> “Drive-by” assessments occur when an assessor never leaves his vehicle to inspect a home when determining its value. See Clay Barbour, *Official Calls Out Incorrect Appraisals*, ST. LOUIS POST-DISPATCH, July 12, 2006, at B1. This poses an obvious problem as the assessor cannot fully determine a home’s value because there can be many items which would raise or lower the value that could only be discovered upon closer inspection. See *id.*

<sup>143</sup> See *Real Property Tax Appeals Must Be Filed by April 1, 2005*, *supra* note 79 (noting that reassessments commonly do not occur every year).

<sup>144</sup> New York recognizes that frequent assessments are advantageous in that they eliminate the “cumulative impact” and “simplify the assessment process.” See N.Y. STATE OFFICE OF REAL PROP. SERVS., ANNUAL REASSESSMENT QUESTIONS AND ANSWERS 1 (2006), available at <http://www.orps.state.ny.us/reassess/arfaqs.pdf>.

reassessment is conducted every fifty years and some individuals' taxes skyrocket by several thousand dollars,<sup>145</sup> there is simply no quick fix. In spite of the fact that the dollar increase may be identical, a rapid tax hike simply does not afford the homeowner any substantial opportunity to devise a plan to salvage her home.

Finally, a fair system should be implemented for establishing hearing dates. Currently, New York municipalities provide set grievance days on which hearings are scheduled, and those wishing to challenge their taxes can simply show up.<sup>146</sup> Yet, because numerous landowners tend to feel that their properties have been inappropriately valuated, large crowds often attend these hearings.<sup>147</sup> Consequently, many people are forced to return multiple times before finally being given the opportunity to plead their case.<sup>148</sup> Presumably, someone challenging a tax increase without legal representation is doing so because he cannot afford the luxury of an attorney.<sup>149</sup> Even if granted permission from his employer, such a person might find it difficult to take off more than once, as he will likely have to forgo his salary. A hearing scheduling system thus needs to be created, one in which all those wishing to appeal their tax liability be assigned a set hearing date so that the entire process should, as a result, require only one day. Furthermore, a four-hour period on that assigned day should be provided during which the challenger is guaranteed to be heard.<sup>150</sup> While additional grievance days may be necessary, this would at least

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<sup>145</sup> See *Nassau Ordered to Reevaluate*, *supra* note 72.

<sup>146</sup> See N.Y. REAL PROP. TAX LAW § 525 (McKinney 2000).

<sup>147</sup> See *supra* note 106; see also Elissa Gootman, *Nassau Overhauls Its Tax System, and Braces for Owners' Appeals*, N.Y. TIMES, Dec. 31, 2002, at B1 ("[C]ounty officials braced for a flurry of tax grievances.").

<sup>148</sup> See *Cotsalas*, *supra* note 101.

<sup>149</sup> There are services that provide licensed real estate tax consultants that attend hearings in place of a property owner. The fees, however, may be prohibitive as they range from fifty percent of the first year's reduction to as much as the full first year's reduction, which can be several thousand dollars when a reassessment has not been conducted for many years. See, e.g., NY Property Tax Reduction, The FAQs About Property Tax Reduction, <http://www.nytaxcut.com/faqs.html> (last visited July 20, 2007) (explaining how the company will fight a customer's tax increase and the fees involved).

<sup>150</sup> Utility companies provide a similar system for service calls. See Time Warner Cable of N.Y. & N.J., *Appointments*, <http://www.timewarnercable.com/nynj/customer/appointments.html> (last visited July 20, 2007) (stating that they "schedule appointments Monday through Saturday within four-hour time blocks throughout the day").

ensure that, if a homeowner loses, it is on the merits, and not simply because the hearing could not be attended.

When a municipality needs additional revenue, it must be raised through legitimate means.<sup>151</sup> While it is easier in a political sense to resort to tax reassessments, this is a blatant misuse of such power. To ensure that tax reassessments are utilized exclusively for their intended purpose, it is imperative that the above changes be made.<sup>152</sup> And, even for those who disagree that, in practice, tax reassessments are used in place of eminent domain, it is hard to argue against legal reforms that, if nothing else, would make tax reassessments fairer.

### CONCLUSION

This Note does not intend to denigrate the motives of American municipalities. Nor does it desire that citizens question each and every government action in the arenas of eminent domain and tax reassessment; there are legitimate and beneficial reasons for the exercise of each power,<sup>153</sup> and, hopefully, politicians pursue what is best for the public and not for themselves. Yet, there may be instances in which an ulterior motive is the driving force behind a decision that can dramatically affect many lives; tax reassessment might be used in place of eminent domain, or where no reassessment would have otherwise been performed at all.<sup>154</sup> This Note seeks a

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<sup>151</sup> Municipalities often need to raise additional revenue as they are expected to provide a wide range of services. See Laura D. Chaney, Comment, *Alabama's Constitution—A Royal Pain in the Tax: The State's Constitutionally Defective Tax System*, 32 CUMB. L. REV. 233, 233 (2001) (stating that without taxes, there would be no "roads, bridges, public schools, libraries, police and fire protection, garbage collection, and other public services").

<sup>152</sup> See Sterk & Engler, *supra* note 68, at 1041 (noting that state constitutions and statutes provide different regulatory frameworks under which municipality property tax collection and reassessment operate); see also Questions, *supra* note 69 (explaining the municipality's uniform tax reassessment calculation and system for scheduling informal and formal hearings).

<sup>153</sup> Eminent domain is an important resource to build new schools and highways, and tax reassessments, when used solely with the right intentions, can be helpful in reducing inequities amongst the property taxes that constituents must pay.

<sup>154</sup> If the municipality needs additional funds, rather than raise the tax rate and upset the local citizens, it can conduct a tax reassessment which it otherwise would not have done. This decision would be purely motivated by political pressures as opposed to what really matters, a solution that is best for the people. Similarly, if a situation called for eminent domain in which the homes in the area were truly blighted and a redevelopment would be warranted, political pressures, mainly the

heightened sense of public awareness among citizens nationwide faced with either of these two doctrines.

Certain behavior exhibited by government officials should immediately raise red flags. When a tax reassessment is looming, the public should immediately scrutinize its timing and surrounding circumstances. A budget crisis, short-staffed and under-funded schools, or roadways in disrepair can all prompt government misuse. This might sound familiar, as every municipality certainly has its fair share of each. Nevertheless, these problems are conducive to local politicians who, while seeking remedies, strive to do so without also hurting their own reputations.

Another good indicator is a recent spike in redevelopment, especially when eminent domain had been invoked, but—after bitter opposition from local citizens—was abandoned.<sup>155</sup> The simultaneous presence of even all such factors does not signify a definitive violation of law.<sup>156</sup> Yet what do exist are pieces of a puzzle, and only if such practices are questioned can these pieces come together to form a complete picture. Eminent domain and tax reassessment may achieve similar outcomes, but they are intended for very different purposes.<sup>157</sup> As citizens of a country in which rights exist to protect the misappropriation of land, we have a very important task: to ensure that “never the twain shall meet.”<sup>158</sup>

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fear of losing supporters, might cause the government official to utilize a tax reassessment instead. This can potentially be far more reaching than eminent domain as it can affect more people than would have otherwise been affected.

<sup>155</sup> See *60 Minutes: Eminent Domain: Being Abused?*, *supra* note 38 (noting that the Saleets were spared the loss of their home after there was fierce opposition to the eminent domain proceedings).

<sup>156</sup> There can be an instance in which the motivation behind a reassessment is suspicious, yet in fact, all other potential solutions were considered but were inferior.

<sup>157</sup> As stated numerous times throughout this Note, eminent domain is intended for situations in which land needs to be “taken” for a “public use.” The construction of a school is the prime example of this. The purpose of tax reassessments is simply to eliminate inequities among real property tax payers.

<sup>158</sup> RUDYARD KIPLING, *The Ballad of East and West*, in COMPACT EDITION OF RUDYARD KIPLING 61, 61 (Charles Scribner's Sons 1925) (1889).