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The Once and Future Property Tax -- Zelinski Law Review Article

THE ONCE AND FUTURE PROPERTY TAX: A DIALOGUE WITH MY YOUNGER SELF

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INTRODUCTION

I am not quite sure when I finally evolved from a brash young law professor into an irascible middle aged law professor, but I do not doubt that the evolution is now complete. As I look back on my youth (expansively defined as the first forty years of my life), I now realize that, when younger, I was blessed in many ways, some obvious, some less so. One of the less evident bounties of my youth was that, in my twenties, I was granted the perfect enemy: the local real property tax.

My life in New Haven in the mid-1970s revolved around four places: the law school, the graduate school of economics, New Haven City Hall, and my home. At all four locations, the municipal property tax was a dragon to be slain. In the legal world, the 1970s witnessed a burgeoning determination to displace the local property tax as the prime funding source for public education and to supplant local property tax revenue with expanded state financing, bankrolled by income and/or sales tax proceeds. At the economics department, the property tax fared as poorly—a regressive, inadministrable and inelastic levy, a relic of a bygone era doomed to extinction. I was then an alderman of the City of New Haven and, when I went to City Hall to work on budgetary matters, it was clear to all that municipal property taxes could no longer serve as an important revenue source for urban centers like New Haven. Indeed, New Haven—an older, "inelastic"[1] city then experiencing what we came to call

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A modified version of the Section II of this article appeared in an Urban Institute book edited by Professor Brody, *see* THE PROPERTY-TAX EXEMPTION FOR CHARITIES: MAPPING THE BATTLEFIELD 369 (Evelyn Brody ed., 2002) .

[1] The concept of municipal inelasticity was developed by David Rusk. *See* DAVID RUSK, CITIES WITHOUT SUBURBS (1993).

"deindustrialization,"—seemed to be a perfect example of the flaws of the local real property tax: its tax base stagnant; its prime locations occupied by tax-exempt institutions; surrounded by suburbs, some of which were (and still are) among the nation's most affluent communities.

Even when I went home, the evils of the property tax were paramount: My wife, then a staff economist for Connecticut's association of mayors, was in the front lines fighting for property tax reform. On more than one occasion, pillow talk was about different formulas for allocating state assistance to central cities.

In short, everywhere I went, the local real property tax was perceived as both bad and doomed.

If I could speak with that brash young law student/graduate student/alderman, he would undoubtedly tell me, with great confidence, that by the beginning of the next century (which then seemed very far away) the property tax would no longer play a role in the system of local public finance. True, he would have opined, some important issues remained for the transition period to a property taxless world, e.g., payments-in-lieu-of-taxes (PILOTs) to central cities as long as they remained dependent on property tax revenues. But for the long run, the intellectual, political, and legal assault on local property taxation would lead to the tax's demise.

Alas, he was wrong.

Today, even the most casual observer of local finance understands that the property tax continues to play a critical role funding municipal services, particularly public education.[2] Among the cognoscenti of local finance, the continuing centrality of the property tax is, if anything, even more widely acknowledged.[3]

This essay explains why the young man I once was, confident of the imminent demise of the property tax, was wrong. This is thus a dialogue with my younger self for, as I look back, it is clear that much of the critique of the local property tax to which I (and

[2] Property taxes remain a major political issue throughout the nation. *See* David M. Halbfinger, *Franks Proposes an Overhaul of New Jersey's Property Taxes*, N.Y. TIMES, June 22, 2001, at B4; Dirk Johnson & Kevin Peraino, *Ventura's Shutdown Smackdown*, NEWSWEEK, July 9, 2001, at 32 (discussing Minnesota Governor Ventura's program for increased state educational assistance and lower property taxes).

[3] Legal scholars and public finance economists today devote significant attention to the legal and policy issues posed by the local property tax. *See* William A. Fischel, *Homevoters, Municipal Corporate Governance, and the Benefit View of the Property Tax*, 54 NAT'L TAX J. 157 (2001); John A. Swain, *The Taxation of Private Interests in Public Property: Toward a Unified Theory of Property Taxation,* 2000 UTAH L. REV. 421; George R. Zodrow, *The Property Tax As a Capital Tax: A Room with Three Views*, 54 NAT'L TAX J. 139 (2001).

others) adhered was overstated. As we enter the new century, the local property tax survives for many reasons; chief among these is that the tax has distinct theoretical and practical advantages.

This is not to say that the standard local property tax is perfect or incapable of practical improvement; not everything I believed in my youth was wrong. But reality is indeed more complex than I and others thought: We overestimated the problems of the local property tax and underestimated the tax's virtues. We did not foresee the extent to which modifications of the tax and alternative revenue sources for localities would prove to be, not initial steps toward the abolition of the local property tax, but, rather, ameliorative reforms which would enable the real property tax to survive. We similarly underappreciated the need for robust local government to possess its own tax base and how well-adapted the local property tax is for financing genuinely local expenditures. We subscribed to overly-idealized notions of sales and income tax bases, forcing (in our minds, at least) the realities of the property tax into an inherently unwinnable competition with theoretically perfect alternatives for financing public services. The choices in the real world proved more difficult.

I. THE INDICTMENT AND PARTIAL ACQUITTAL OF THE PROPERTY TAX

In retrospect, the intellectual critique of the local property tax to which I and others adhered seems overly-simplistic; at the time, it seemed compelling. The critique rested on five premises. First, we confidently believed, the local property tax is invariably regressive. The economic incidence of the tax, this argument goes, falls heavily—and unfairly—on homeowners (who pay property taxes directly) and tenants (who pay such taxes indirectly via higher rents); since housing costs absorb greater percentages of the budgets of low- and middle-income families, property taxes disproportionately impact those budgets; because affluent families save greater percentages of their incomes and spend proportionately less of their incomes on housing, such families devote smaller percentages of their incomes to local property taxes than do low- and middle-income households.

Second, the critique continued, the property tax imposes its burden irrespective of the taxpayer's liquidity *vel non*. The classic example is the retiree living on a fixed income whose home appreciates significantly in value and whose local property tax obligation rises commensurately. Since the retiree's income is static, rising property taxes absorb increasingly large percentages of that income, creating liquidity problems for the fixed-income retiree.

Third, from the perspective of the municipal fisc, the real property tax base is inelastic, increasing less rapidly than other tax bases, most notably income. Under the classic, progressive income tax (unindexed for inflation), government revenues grow more rapidly than income itself since economic growth and inflation push taxpayers into higher marginal brackets. Even when progressive income taxes are automatically inflation-adjusted, government revenues in times of economic growth expand faster under such taxes than does income itself as increasingly prosperous taxpayers climb into higher brackets.[4]

In contrast, under the classic real property tax—with a single, fixed rate of tax—revenues rise less rapidly than income (even with accurate annual property valuations) since, in a modern economy, a lower percentage of new economic growth accrues to real estate and a correspondingly higher percentage of such growth accrues to services and intangible property, outside the scope of the real property levy. The inelasticity of the local property tax is in practice compounded by delays in assessing property values and by inaccuracies once those assessments are made; applying fixed tax rates to old and inaccurate assessments yields static revenues.

Fourth, the local property tax, the critique continued, is unfair because of its local nature. This argument was particularly well-developed in the context of litigation challenging the use of local property taxes to finance public education.[5] The contention advanced in that litigation and in much of the relevant scholarly literature[6] was that children residing in communities with limited

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[4] See, e.g., Becky Trout, League Says Municipal Finances Look Good; Reliance on Property Taxes Throttles Cities, BNA DAILY TAX REP., July 2, 1999, at H-1 (quoting Donald J. Borut, executive director of the National League of Cities: "Not only is the property tax much less influenced by economic activity than the income or sales tax, the very nature of economic activity is also moving away from the traditional linkage of tangible property to economic production and growth."); Doug Sheppard, City Survey: The Good, The Bad, and the Semigood, TAX ANALYSTS, TAX NOTES TODAY, July 2, 1999, at 127-11 ("Municipal property tax revenues, in fact, increased only 3.9 percent in 1998, compared with increases of 6.5 percent and 6.8 percent in income tax and sales tax revenues, respectively.").

[5] Among the most recent decisions in the decades-long saga of this litigation are *Stowe Citizens for Responsible Government v. Vermont*, 730 A.2d 573 (Vt. 1999); *Anderson v. Vermont*, 723 A.2d 1147 (Vt. 1998); *Brigham v. Vermont*, 692 A.2d 384 (1997); and *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353 (1997).

[6] A good summary of this literature, as well as a perceptive analysis of the voluminous case law, are to be found in Richard Briffault, *Our Localism: Part I B The Structure of*

property tax bases face poorer educational systems than children living in localities with more ample property tax revenue. While the proponents of school finance reform were generally careful to eschew explicit claims that such reform would improve the scholastic performance of disadvantaged students, the implicit promise of their efforts was clear: substituting more generous state school financing for inadequate local funds would improve educational results.

Moreover, the critique of the local nature of the local property tax readily generalizes to municipal services other than education: Residents of communities with less property tax resources can less easily finance adequate public services than can residents of localities with abundant property tax bases.

Finally, the *ad valorem* nature of the real property tax, whatever its theoretical appeal, is in practice hard to implement. Absent actual sales, it is difficult and resource-consuming to appraise much valuable real estate, e.g., unique homes, special purpose industrial and commercial structures. Moreover, the appraisal process has historically been subject to considerable political manipulation, not the least because of the difficulties of determining fair market values absent sale transactions.

As compelling as these arguments may have seemed to me and others in the 1970s, a generation later, much (though not all) of this critique requires significant qualification while other parts of this critique look just plain wrong.

Chief among the intellectual developments challenging this critique of the local property tax are two alternative claims now widely accepted by students of property taxation: that the property tax is, as an economic matter, a tax on capital income generally and that the property tax essentially purchases benefits received from municipal government.[7] In the first case, the tax is progressive in its economic incidence; in the second case, the tax

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Local Government Law, 90 COLUM. L. REV. 1, 23-24 (1990).

[7] *See* Fischel, *supra* note 3; Therese J. McGuire, *Federal Aid to States and Localities and the Appropriate Competitive Framework*, *in* COMPETITION AMONG STATES AND LOCAL GOVERNMENTS 153, 158 (Daphne A. Kenyon & John Kincaid eds., 1991) ("[T]he primary source of local raised revenue is property taxes, a tax often thought of as a benefit tax."); Thomas J. Nechyba, *The Benefit View and the New View, in* PROPERTY TAXATION AND LOCAL GOVERNMENT FINANCE (2001); Wallace E. Oates & Robert M. Schwab, *The Allocative and Distributive Implications of Local Fiscal Competition*, *in* COMPETITION AMONG STATES AND LOCAL GOVERNMENTS, *supra*, at 127 ("if many local governments compete against one another, then all local taxes become benefit taxes"); Zodrow, *supra* note 3; George R. Zodrow, *Reflections on the New View and the Benefit View of the Property Tax*, *in* PROPERTY TAXATION AND LOCAL GOVERNMENT FINANCE (Wallace E. Oates ed., 2001).

has no net economic effect since the cost of the tax is offset by the benefits the tax purchases. While both views cannot be correct, together they erode the once widely-held belief that property taxation passes onto the consumers of housing and is thus regressive in its ultimate economic effect.

Central to the characterization of the real property tax as a levy on capital income generally is Professor Harberger's model of the corporate income tax and his conclusion that the corporate tax ultimately falls on all capital, corporate and noncorporate.[8] For purposes of this discussion, Professor Harberger's basic insights are that the corporate levy is initially imposed on selective capital (i.e., capital invested in corporate solution), that capital for the long term is fungible and mobile between the corporate and noncorporate portions of the economy, and that the owners of corporate capital, to avoid selective taxation, will seek higher after-tax returns by shifting their investments from the (taxed) corporate sector to the (nontaxed) unincorporated sector. This shift of capital, in turn, contracts the corporate sector and expands the amount of capital invested noncorporately. The upshot is a lower rate of return for all owners of capital as the holders of corporate capital are taxed while the owners of noncorporate capital receive lower returns since the supply of noncorporate capital is increased by the tax-induced movement of resources into the unincorporated sector to avoid corporate taxation; the consequent increase of the supply of noncorporate capital depresses the rate of return to such capital.

The Harberger model is readily adaptable to the local property tax, which, like the corporate income tax, is a selective tax on one particular sector of capital investment, i.e., real property.[9] To avoid this selective taxation, mobile capital will migrate to nontaxed sectors, i.e., forms of investment other than real property. Thus, the property tax turns out to be an impost on capital, imposed (directly) on capital held as real property and (indirectly) on all other capital, the supply of which is increased by the migration of capital avoiding real property[10] taxation with an attendant decrease in the rate of return to non-real estate capital.

If the real property levy is conceived in this fashion as

[8] *See* HARVEY S. ROSEN, PUBLIC FINANCE 294-98 (4th ed. 1995).

[9] *Id.* at 530-31.

[10] While remnants of the property tax on intangible and personal property persist in some places, in essence, the local property tax is today a tax on real estate. *See* JEROME R. HELLERSTEIN & WALTER HELLERSTEIN, STATE AND LOCAL TAXATION 97 (7th ed. 2001) (discussing the "long-term process of gradually excluding most personalty and intangibles" from property taxation).

ultimately burdening capital in general, the distributional implications of the tax are more complex than the traditional critique suggests. To the extent the property tax is passed onto renters and less affluent homeowners, that critique retains force since lower- and middle-income families devote higher percentages of their budgets to housing costs than do affluent households and thus spend (via their rent and mortgage payments) higher percentages of their incomes on real property taxation than do more prosperous families.

However, to the extent that the property tax falls on the owners of capital generally, the tax is potentially progressive in its impact; indeed, the property tax resembles the kind of wealth impost favored by certain commentators.[11] The characterization of the property tax as a potentially progressive levy on wealth is reinforced by the fact that the real property tax, conceived as a tax on the users of particular types of capital, falls directly, not just on homeowners, but on the holders of commercial and industrial real estate as well.

The alternative challenge to the traditional wisdom, premised on the seminal writings of Charles Tiebout, views the property tax as a wash: the payment of property taxes purchases offsetting benefits in the form of government services.[12] In a Tieboutian world, if a particular taxpayer does not desire the package of taxes and services offered by the community in which he resides, he will change his residence to a locality furnishing a set of taxes and services more to his liking. Thus, each individual's property tax payments ultimately purchase for him a bundle of local government services which, in the individual's judgment, are worth the property tax cost.

Of course, this model is not without its limitations and qualifications. In any given metropolitan area, there may not in practice be enough municipalities to offer every individual the particular package of taxes and services he considers optimal; relocation from locality to locality may not be as easy as the Tiebout model assumes.

Nevertheless, with all of the necessary limitations and

[11] *See, e.g.*, Bruce Ackerman & Anne Alstott, *Your Stake in America*, 41 ARIZ. L. REV. 249 (1999); Anne L. Alstott, *The Uneasy Liberal Case Against Income and Wealth Transfer Taxation: A Response to Professor McCaffrey,* 51 TAX L. REV. 363 (1996).

[12] Tiebout's 1956 article is one of the few academic articles which truly deserves to be called seminal. *See* Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956). Indeed, it is difficult to conceive of current legal and economic scholarship on public finance without Tiebout's analysis. *See* Fischel, *supra* note 3, at 157; Zodrow, *supra* note 3, at 140 ("the renowned Tiebout model of local government").

qualifications, the benefits perspective on the local property tax contains an important insight: local property taxes can plausibly be characterized as, in large measure, the price paid for a particular bundle of government services. To that extent, the tax expended is offset by the municipal benefits received.

A further intellectual trend impugning the critique of the real property tax has been renewed interest in the problem of imputed income. Historically, the failure of income taxation to reach imputed income has been dismissed as a self-evident concession to administrative and political considerations. While, as a theoretical matter, homeowners receive imputed income from the rental values of their houses, the possibility of taxing this imputed income had traditionally been dismissed by invoking the practical difficulties of determining the amount of such income and by noting the unlikelihood that a representative who voted for taxing imputed income would be present for the next session of Congress to help implement his decision.

However, the problem of imputed income becomes more complicated once one considers the economic effects of excluding such income from the income tax base and the possibility that indirect taxation might, practically and in politically feasible ways, implicitly reach such imputed income. As a matter of economic efficiency, the allocation of resources is distorted when cash income is taxed but imputed income is not, since taxpayers are induced to hold resources in forms which produce (untaxed) imputed income rather than (taxed) cash income. Much contemporary tax policy literature describes and decries these kinds of tax-based economic distortions.[13]

Indeed, one of the staples today of an introductory law school course on the federal income tax is to contrast the tax burden of a renter who puts his money in the bank, pays tax on the resulting interest, and uses the after-tax cash to pay (nondeductible) rent with the lighter income tax burden of a homeowner who invests his cash in a house and lives in it, free of imputed rental income.[14] This simple comparison is particularly enlightening for my students who pay New York City rents.

However, the real property tax may be characterized as an indirect way of reaching the imputed rental value of homes. From

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[13] *See, e.g.*, JOSEPH M. DODGE ET AL., FEDERAL INCOME TAX: DOCTRINE, STRUCTURE, AND POLICY 80 (2d ed. 1999) ("[E]conomists would argue that imputed income from consumer assets should be taxed on neutrality grounds: Excluding such imputed income creates excessive demand for consumer assets as opposed to savings and investments.").

[14] *See id.* at 79-80.

this perspective, our hypothetical fixed-income retiree has more income than he realizes since, in addition to his cash income, he receives imputed income from his residence; in simplest terms, his home eliminates the need for the retiree to pay rent. The local property tax is a way of reaching this imputed income, correcting in rough fashion for the failure of the income tax to reach that income. If the resulting tax burden stresses the retiree's cash flow, that may be an economically appropriate signal that the retiree is overconsuming housing by staying in his home.

To be sure, it is not a politically compelling defense of the local property tax that it reaches the imputed rental value of homes missed by income taxation and that homeowners' liquidity complaints may indicate that they are overhoused. This analysis does, however, challenge the critique of the tax to which I and others adhered.

Also undermining that critique has been the academic doctrine known as optimal tax theory. For our purposes, the most important insights of that theory are that taxes (and, by extension, the benefits of government services) are capitalized into the value of taxed assets and that a simple static snapshot of current tax payments belies the underlying economics of taxation.

To return to our hypothetical retiree, the stream of anticipated property tax payments affected the price of his home when he originally bought that home. If, for example, the community in which the home is located has an unusually heavy tax burden, the retiree paid correspondingly less for his home than he would have had the home been located in a lower-taxed locality. Similarly, if the community has a particularly good school system, the value of the retiree's house is currently greater than it otherwise would be; his property tax payments can thus be characterized as maintaining the value of his home via the quality of school services.

Indeed, if the retiree sent his children to the local public schools, he was, for those years, effectively subsidized by the community's childless families and by commercial and residential property owners, since, in the short run, a homeowner's own property tax payments rarely cover all the costs of educating his children.[15] From this vantage, the retiree's current property taxes constitute delayed payment for the educational services he received earlier.

Moreover, the elasticity of a tax base does not appear to be

[15] Edward A. Zelinsky, *The Cities and the Middle Class: Another Look at the Urban Crisis*, 1975 WIS. L. REV. 1081.

the unalloyed virtue today that it once did. As a substantive matter, government expenditures provoke greater skepticism today than they did a generation ago. Procedurally, even those more sanguine about government outlays have grown more sensitive to the problems of a public sector on autopilot. There is, for example, widespread recognition that entitlement-type expenditures can distort public priorities. Public sector accountability can be enhanced by a tax (like the inelastic property levy) which continuously requires elected officials to decide openly about the size of public outlays by voting on tax rates.

In a sluggish economy, the relative inelasticity of property tax revenues may appear as something of a virtue as, on the downside, receipts from the more cyclical income and sales levies decline while the property tax base remains comparatively stable.[16]

In addition, mounting evidence suggests that increased funding for public schools has not improved student performance.[17] There remain arguments for substantial state financing of public schools: In a world of residential mobility among localities, municipalities tend to underfund education since students are unlikely to remain in the community as taxpayers and workers, repaying the community for its investment in their educations; notions of citizenship imply a basic commitment to each child regardless of his or her family's economic circumstances or locality; public education has an important redistributive component; for practical and theoretical reasons, redistributive activity should occur at higher levels of government. From these perspectives, state educational funding counteracts communities' tendency to underfinance education and guarantees each child his or her basic rights to schooling. While I find these arguments persuasive, I confess that they lack the emotional punch and intellectual clarity of earlier promises that jettisoning property tax-

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[16] *See* Wallace E. Oates, *The Theory and Rationale of Local Property Taxation*, *in* STATE AND LOCAL FINANCE FOR THE 1990S: A CASE STUDY OF ARIZONA 420 (Therese J. McGuire & Dana Wolfe Naimark eds., 1991) ("[P]roperty taxation promises a more stable source of local revenues than does a local income tax."); John E. Petersen, *Bet on the Tortoise*, GOVERNING, Apr. 2001, at 72 ("The sustained but gentle growth in property values has made the property tax the tortoise in the revenues race.").

[17] *See* Eric A. Hanushek, *The Economics of Schooling: Production and Efficiency in Public Schools*, 24 J. ECON. LITERATURE 1141, 1162 (1986) ("There appears to be no strong or systematic relationship between school expenditures and student performance."); Gary Burtless, *Introduction* to DOES MONEY MATTER?: THE EFFECT OF SCHOOL RESOURCES ON STUDENT ACHIEVEMENT AND ADULT SUCCESS 41 (Gary Burtless ed., 1996) ("Statistical evidence and recent historical experience suggest to me that school performance is unlikely to be improved solely by investing extra money in the nation's schools.").

financed public education would improve educational performance.

Finally, the unstated premise of the critique embraced by my younger self was that competing tax bases—the income and sales taxes—were obviously preferable to the real property levy as means of financing public services. To contemporary eyes, this is perhaps the most naive part of the critique, an overidealized notion of the alternatives to property taxation. Much of the output of the tax policy community over the last generation has documented the theoretical and practical limitations of the income tax.[18] Important voices similarly suggest that the viability of the sales tax is threatened both by the reluctance of legislatures to extend sales taxation to general services[19] and by the administrative problem of collecting the sales tax in a world of mail order and electronic commerce.

What, then, is left of the intellectual critique of the property tax which was so central to my younger years? Parts of that critique retain force: Concerns about regressivity remain insofar as the tax is passed onto tenants or is absorbed by homeowners of modest means; concerns about the appraisal process are still well-founded;[20] despite the disappointing gap between increased funding and improved student performance, persuasive reasons exist for allocating to the states a strong role in financing public education.

In short, the property tax, like any other human institution, if compared to a pristine theoretical ideal, will understandably prove wanting. However, in a world of imperfect choices, the local property tax, with its problems and limitations, is not as bad as the critique of my youth suggested and remains a viable revenue source for municipal government.

II. REFORM AS PRESERVATION

While academics and policy analysts were undermining the

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[18] Much of that critique has been developed under the rubric of tax expenditure analysis. *See* STANLEY S. SURREY & PAUL MCDANIEL, TAX EXPENDITURES (1985).

[19] HELLERSTEIN & HELLERSTEIN, *supra* note 10, at 746-49.

[20] While there are those who contend that modern, computerized appraisal methods remedy the deficiencies of the appraisal process, I am skeptical of such claims. *See* Edward A. Zelinsky, *For Realization: Income Taxation, Sectoral Accretionism, and the Virtue of Attainable Virtues*, 19 CARDOZO L. REV. 861, 881-82 (1997). However, as I discuss *infra*, the local property tax has distinct administrative advantages over alternative tax bases because of the visibility of real estate and its fixed situs.

critique of the property tax to which I and others ascribed, legislators and voters were simultaneously responding to taxpayers' loudest complaints about the local property levy. The result has been a nationwide expansion of devices which answer some of the most politically urgent outcries about the tax. These devices fall into three categories:[21] (a) provisions which abate the local property taxes of particular kinds of taxpayers (e.g., homeowners, the elderly, farmers), (b) general limitations which cap the taxes local governments can impose, and (c) increased financial assistance to municipal treasuries to offset the need for local property tax revenues.

Among the best known of the devices in the first category is the classic homestead exemption, which immunizes from taxation a portion of the value of each taxpayer's principal residence, e.g., the first $10,000 of the taxpayer's primary home.[22] Since commercial and industrial real estate, as well as second homes, do not receive equivalent exemption, the burden of the tax shifts toward such nonexempted property.[23]

Equally well known are devices, variously denoted as homestead provisions,[24] "circuitbreakers,"[25] or income tax credits,[26]

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[21] In theory, there is a fourth category of devices that have abated the pinch of the real property tax, i.e., market-based arrangements such as so-called "reverse mortgages," which permit older persons to borrow incrementally against the unrealized appreciation of their homes. However, in practice, such market-based devices have not played a significant role in alleviating discontent with the property tax.

[22] *See* W. VA. CONST. art. X, sec. 1b, subsec. C (authorizing the legislature to adopt an exemption up to $20,000 for real property "used exclusively for residential purposes" by nonelderly, nondisabled homeowners); FLA. STAT. ANN. § 196.031(1) (West 1999) (granting "[e]very person" an "exemption from all taxation" of the first $5,000 of "his or her permanent residence"); TEX. TAX CODE § 11.13(a), (b) (Vernon 1992) (providing all "adult[s]" with a basic "exemption from taxation" for county and school district property taxes for the adult's "residence homestead").

Typically, states with such general exemptions supplement them with additional or more generous exemptions for elderly, disabled and/or low income homeowners. *See* TEX. TAX CODE § 11.13(c) (providing additional exemption from school district taxation for residences of the disabled and those aged 65 and older); FLA. STAT. ANN. § 196.031(3) (increasing homestead exemptions for homeowners aged 65 and older and for "disabled person[s]"); W.VA. CONST. art. X, sec. 1b, subsec. C (requiring homestead exemption for taxpayers who are 65 or older or who are disabled).

[23] Alan Greenblatt, *The Loathsome Local Levy*, GOVERNING, Oct. 2001, at 36-37 ("the simple fact is that many states have put all kinds of brakes in place to assure that property-tax bills do not rise as fast as property values. Much residential property-tax relief shifts a good deal of the burden from homeowners to commercial and industrial property.").

[24] *See* 35 ILL. COMP. STAT. ANN. 200/15-170 (West 1996) (establishing a "Senior Citizens Homestead Exemption"); KY. REV. STAT. ANN. § 132.810(2)(a) (Michie 2001) (providing a homestead exemption for persons 65 and older and for disabled homeowners); S.C. CODE ANN. § 12-37-250 (Law Co-op. 2000) (homestead exemption for taxpayers aged sixty-five and older, "totally and permanently disabled" or "legally blind").

which provide relief for an individual's property tax obligation on the basis of the individual's age (typically, sixty-five or older), income level,[27] or disability. Despite the arguments which belie the image of the fixed income retiree squeezed by property taxes—the putative fixed income retiree has substantial imputed income from his home; the community may well have educated his children at considerable cost; given the inflation-adjusted nature of Social Security and many private pensions, the retiree's income is not so fixed—the image of the illiquid, elderly property taxpayer packs significant political wallop. Legislatures have, unsurprisingly, responded.

Particularly noteworthy has been the increasing use of state income tax systems to bestow property tax relief. Such use allows legislators and governors to make clear to the public that they (rather than municipal officeholders) are abating the property tax burden, since, on an annual basis, the credit is reflected on the taxpayer's state income tax return (rather than his local property tax bill). One need not accept the premises of public choice theory in their starkest form[28] to see the resulting political advantage to state officials, in contrast to alternative forms of reducing property tax obligations (e.g., state assistance to municipal treasuries) which channel relief through the municipality and thus fail to alert the taxpayer that that relief ultimately emanates from the state house, not city hall.

As an administrative matter, such credits have much to commend them. The annual return for state income taxes is a particularly efficient means of channeling income-based property

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[25] *See* D.C. CODE ANN. § 47-1806.6(a)(2), (3) (2001) (labeling income tax credits for property taxes paid as "circuit breaker[s]"); OKLA. STAT. ANN. tit. 68, § 2802(9) (West 2001) (designating as a "circuit breaker" Oklahoma's property tax relief provisions for low income elderly and disabled homeowners).

[26] *See* MICH. COMP. LAWS ANN. § 206.520(1) (West 1998) (credits against state income taxes for "property taxes on the taxpayer's homestead"); R.I. GEN. LAWS § 44-33-5 (1999) (establishing an income tax credit for "property taxes accrued") .

[27] Maryland limits its credit for property taxes by wealth as well as income. *See* MD. CODE ANN., TAX-PROP. § 9-104(i)(1) (2001) ("A property tax credit under this section may not be granted to a homeowner whose combined net worth exceeds $200,000 . . . .").

[28] For purposes of this analysis, the critical public choice premise is that officeholders advance their political interests by dispensing governmental largesse so as to maximize electoral support. In this context, a governor or legislator who allocates state funds to reduce local property taxes will want taxpayers to know that he is responsible for their reduced property tax obligations. On public choice more generally, see Edward A. Zelinsky, *James Madison and Public Choice at Gucci Gulch: A Procedural Defense of Tax Expenditures and Tax Institutions*, 102 YALE L.J. 1165, 1171-72 (1993); Edward A. Zelinsky, *Unfunded Mandates, Hidden Taxation, and the Tenth Amendment: On Public Choice, Public Interest, and Public Services*, 46 VAND. L. REV. 1355, 1369-1370 (1993) [hereinafter *Unfunded Mandates*].

tax relief since that return must be filed anyway thus constitutes a preexisting device for communicating at low marginal cost the availability of property tax relief.[29] When the taxpayer files his state income tax return, he is, as part of that process, reminded to take the credit for property taxes. Moreover, a taxpayer who discloses income on that return automatically reveals his income level for the purpose of the property tax credit, allowing the credit to be calibrated to that income level.

My younger self viewed the profusion of circuitbreakers, homestead exemptions, and income tax credits for property taxes paid as important steps in the demise of the property tax. My older self sees them as undergirding a different political dynamic: By responding to some of the most politically compelling complaints about the property tax, such mechanisms "fix" the tax, inoculating it from more radical surgery.

One could imagine scenarios where progressively higher homestead levels or more generous circuitbreakers so decimate the property tax base that that base effectively ceases to exist. So far, however, the dynamic has been ameliorative: By alleviating the burdens of homeowners, these devices have tended to preserve the tax from more radical assault, allowing the property tax to play a reduced, but still important, role in financing local government.

Yet another approach has been the classification of different types of properties for the purpose of taxing the various categories at different rates. At one level, homestead exemptions, tax credits and circuitbreakers, available only to homeowners, implicitly serve as classification devices, since they target relief to one kind of real estate, i.e., principal residences. However, classification schemes in their prototypical form explicitly divide all taxed properties into a variety of different categories, each with its own effective tax rate.[30] Not surprisingly, the politically-sensitive categories—owner-occupied homes, the homes of the disabled, farm land—tend to receive the most lenient treatment under such classification schemes.

Classification schemes raise important issues of administrability. As the number of categories multiplies, the problems of pigeonholing particular properties become more pronounced. Moreover, under such arrangements, political

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[29] *See* Edward A. Zelinsky, *Efficiency and Income Taxes: The Rehabilitation of Tax Incentives*, 64 TEX. L. REV. 973, 1010 (1986).

[30] *See*, *e.g.*, MINN. STAT. ANN. § 273.13 (West 1999); *see also* John H. Bowman, *Real Property Classification, in* STATE AND LOCAL FINANCE FOR THE 1990S: A CASE STUDY OF ARIZONA 426-429, *supra* note 16.

pressure mounts, both to create more categories and to manipulate the categorization of specific properties.[31] At a more theoretical level, broad classification schemes (even more so than narrowly-focused circuitbreakers, homestead exemptions, and property tax credits) violate the basic premise of *ad valorem* property taxation, i.e., that tax burdens should be allocated in accordance with fair market value. Under the prototypical classification scheme,[32] two adjacent properties, with identical fair market values, may have significantly different tax obligations because they fall into different classifications.[33]

Even in states without general classification schemes, one form of property is often singled out generically for more lenient taxation: farm land, frequently taxed on less than its fair market value.[34] The defense of such favorable treatment typically invokes the image of a family farm on the cusp of suburban development. If that farm is appraised and taxed at fair market value, i.e., as land subdivided for housing, the family will be forced to sell the farm to pay its property taxes. By taxing the farm more lightly, the argument goes, the family can continue its agricultural lifestyle.

Special tax treatment for farm land appeals to the most basic

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[31] *See, e.g.*, Maud Naroll, *Nevada Lawmakers Approve Third Property Tax Category*, STATE TAX TODAY, July 5, 2001, at 129-17 ("Nevada lawmakers have passed a resolution to put another property tax category in the state constitution.").

[32] California's Proposition 13 can be understood, in part, as a classification scheme which categorizes property by the year in which it was acquired by the taxpayer. As has been widely noted, this frequently results in substantially identical properties being taxed at radically different levels because the earlier acquired property is essentially assessed at its historical acquisition cost while the more recently purchased property is assessed more closely to its fair market value. *See, e.g.*, Terri A. Sexton et al., *Proposition 13: Unintended Effects and Feasible Reforms*, 52 NAT'L TAX J. 99 (1999).

[33] Municipalities frequently engage in a form of classification by abating, permanently or temporarily, the property tax liabilities of newly-constructed projects. *See, e.g.*, Joan M. Youngman, *Property, Taxes, and the Future of Property Taxes*, *in* THE FUTURE OF STATE TAXATION 123 (David Brunori ed., 1998) (discussing "widespread use of tax incentives for business location and expansion.").

Such abatements are designed to attract economic development which allegedly would otherwise not occur within the locality. While these kinds of development-attracting property tax abatements raise important issues, they are not central to my analysis here, which focuses upon property tax devices aimed at mollifying popular objection to such taxation. Indeed, economic development abatements are often politically contentious as homeowners and small business people resent the perception that they are paying higher taxes than large (often, out-of-town) developers and corporations.

[34] *See* ALASKA STAT. § 29.45.060(a) (Michie 2000) (providing that, for municipal property taxes, farm land "shall be assessed on the basis of full and true value for farm use and may not be assessed as if subdivided or used for some other nonfarm purpose"); OR. REV. STAT. § 308.370(1) (1992) (providing that farm land shall "be valued at its value for farm use and not at the real market value it would have if applied to other than farm use").

cultural iconography of American life, as well as to contemporary concerns about suburban sprawl and open land. For present purposes, however, classifying farm land for more favorable property tax treatment reconciles a distinct, well-organized group—farmers—to the continuance of real property taxation.

In contrast to devices which abate the taxes of particular taxpayers and properties, a second type of provision imposes general limitations on localities' ability to tax. The best known of these limitations is California's Proposition 13 which, *inter alia*, generally precludes municipalities from taxing more than one percent of a property's assessed value. Proposition 13 spawned a host of similar property tax limitations throughout the country.[35] Even in those states where such limitations were not adopted, Proposition 13 created a climate which increased the (already great) sensitivity of municipal officials to the political perils of raising property tax rates.

My younger self viewed Proposition 13 as validating the belief that the property tax was doomed to extinction. In retrospect, the reality has, again, been more complex: Proposition 13 and its progeny, by capping locally-derived property tax revenues, have generally afforded sufficient relief from property taxation to preempt further efforts to abolish such taxation.

A third practical reason that local property taxation has survived, despite the expectations of my youth, has been the growth of alternative revenues for municipal treasuries, revenues which have mitigated the need to raise funds from the property tax and have correspondingly reduced the reliance of localities on property tax dollars. In part, the growth of alternative revenues has taken the form of increased state aid to localities, filling the financial gaps left by Proposition 13 and its progeny. In part, this growth has taken the form of state assistance for public school systems in response to state judicial determinations that educational funding overly-reliant on local property tax revenues is constitutionally defective.[36] Municipally-imposed user fees constitute yet another expanding source of nonproperty tax revenues for localities in the wake of property tax limitations.[37]

A particularly notable source of nonproperty tax revenue for

[35] *See* Steven M. Sheffrin, *The Future of the Property Tax: A Political Economy Perspective*, *in* THE FUTURE OF STATE TAXATION, *supra* note 33, at 134; Alvin D. Sokolow, *The Changing Property Tax and State-Local Relations*, 28 PUBLIUS 165, 171 (1998) ("[T]he property-tax limitations enacted after 1970 restrict local government finances much more severely than the measures adopted earlier.").

[36] *See* Sokolow, *supra* note 35, at 171.

[37] *See* Sheffrin, *supra* note 35, at 135.

localities has been expanded payments-in-lieu-of-taxes (PILOT). PILOT payments come in a variety of configurations. In one version of PILOT, a higher level of government that owns property reimburses from its general revenues the lower level jurisdictions in which such property is located for some or all of the taxes such property would yield if taxable. Thus, for example, the federal government in a variety of instances reimburses states and localities for taxes such jurisdictions would otherwise receive from federally-owned land.[38] Many states[39] similarly compensate municipalities for state-owned (i.e., tax-exempt) properties within the borders of such municipalities. In yet other versions of PILOT payments, states reimburse localities for properties owned by governmental instrumentalities.[40] In still other variations of PILOT programs, such instrumentalities (e.g., publicly-owed utilities, housing authorities, airport commissions) are directed or authorized to make payments from their own operating revenues to localities in lieu of taxes.[41] At least two states (Connecticut and Rhode Island) make PILOT payments from general revenues to reimburse municipalities for the presence of certain private, nonprofit institutions within the municipalities' boundaries.[42]

In another version of PILOT payments, such payments come to the locality by agreement between the locality and a private tax-exempt entity, which sends a check to the municipal fisc while the entity retains its exempt status. While these PILOT payments are nominally voluntary outlays by the exempt institution, the political

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[38] *See, e.g.*, 31 U.S.C. § 6902(a)(1) (1994) ("The Secretary of the Interior shall make a payment for each fiscal year to each unit of general local government in which entitlement land is located . . . .").

[39] *See* COLO. CONST. art. XXVII, § 10 (State land acquired pursuant to Great Outdoors Colorado Program "shall be subject to payments in lieu of taxes to counties in which said acquisitions are made."); CAL. PUB. RES. CODE § 4654 (West 2001) ("There shall be paid to each county in which lands acquired for state forest purposes are situated . . . an amount equivalent to taxes levied by the county on similar land similarly situated in the county . . . ."); MASS. GEN. LAWS ANN. ch. 58, § 17 (2001) (payments in lieu of taxes to towns in which certain state-owned institutions are located).

[40] *See, e.g.*, IOWA CODE § 463A.4 (West 1997) ("The state shall make payments in lieu of taxes to compensate for the loss of tax revenues occasioned by the fact that property is owned by the upper Mississippi riverway commission, and thereby exempt from taxation by subdivisions of this state.").

[41] *See* IND. CODE ANN. § 36-3-2-10 (Michie 2000) (providing for PILOT payments from "public entities" such as airport authorities and wastewater treatment facilities); KY. REV. STAT. ANN. § 58.580 (Michie 1997) (Churchill Downs Authority required to make PILOT payments in "an amount equal to the local property taxes Churchill Downs would have paid under private ownership"); MD. CODE ANN., TRANSP. § 6-411 (2001) (Administration of the Port of Baltimore required to make PILOT payments "to the Mayor and City Council of Baltimore" for certain properties).

[42] CONN. GEN. STAT. ANN. § 12-20a (West 2000); R.I. GEN. LAWS. § 45-13-5.1 (1999).

reality is usually more complex as the municipality brandishes any number of potential sanctions to induce the PILOT payment.[43] These sanctions range from the municipality marshaling public opinion against the exempt entity if it declines to make PILOT payments to the denial of zoning relief or building permits desired by the tax-exempt entity to, in the extreme case, the municipality's threat to seek political or judicial revocation of the entity's tax-exempt status.

In practice, it is typically in everyone's interest to compromise on a "voluntary" PILOT payment which is often less than the full taxes that would be paid on loss of exempt status, but which, from the municipality's perspective, provides immediate financial succor.[44]

In short, just as the theoretical critique of the local property tax to which my younger self adhered was undermined intellectually, in practical terms a variety of measures alleviated many of the most burdensome features of the tax. By responding to the most pressing political imperatives, these measures have immunized the tax from outright abolition.

III. THE AFFIRMATIVE VIRTUES OF THE LOCAL PROPERTY TAX

My younger self would have found it oxymoronic to speak of the virtues of the local property tax. To my older, if not wiser, self, it seems clear that the persistence of the local property levy is attributable to more than inertia: The real property tax is, in many respects, well-adapted to the imperatives of local government.

Robust local government[45] requires its own revenue base. Municipalities totally dependent for funding on the state and

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[43] *See, e.g.*, Carey Goldberg, *Harvard Deal With Boston Hints at Era Of Harmony*, N.Y. TIMES, Aug. 26, 1999, at A11 ("Not that the city would say, exactly, that it has been blocking Harvard since the land-buying ruckus began, . . . but Boston wants to complete the deal on the [PILOT] payments, and it is 'first things first from the city's perspective.'"); *see also* Youngman, *supra* note 33, at 120 ("At the local level, cities have exerted increased pressure on exempt institutions to initiate or increase payments in lieu of taxes.").

[44] *See, e.g.*, Rick Valliere, *Medical Center to Retain Tax Exemption, Make Annual Payments to City of Lebanon*, BNA DAILY TAX REP., 09 DTR H-1 (Jan. 14, 2002); J. Christine Harris & Fred Stokeld, *City to Grant Property Tax Exemption in Exchange for Payments in Lieu of Taxes*, 2002 TAX NEWS TODAY, Jan. 14, 2002, at 9-3.

[45] There is, to be sure, an important premise here: the desirability of robust local government. For more on this, see Edward A. Zelinsky, *Metropolitanism, Progressivism, and Race*, 98 COLUM. L. REV. 665 (1998) (reviewing David Rusk, CITIES WITHOUT SUBURBS (1993); NEAL R. PEIRCE, CITISTATES: HOW URBAN AMERICA CAN PROSPER IN A COMPETITIVE WORLD (1993); DAVID L. KIRP ET AL., OUR TOWN: RACE, HOUSING AND THE SOUL OF SUBURBIA (1995)).

federal governments cannot exercise a high degree of independence. Municipalities sharing a revenue base with the state and federal governments are similarly vulnerable to the decisions of the higher levels of government which ultimately exercise first dibs on that base. In Tieboutian terms,[46] a local government must have its own tax rate to signal the price of public services provided by that government so that families and firms can evaluate the efficiency and desirability of the government's services.

As the American system of public finance has evolved, real property taxation has become the independent revenue source of local government. While history has its claims, were we designing the American system of public finance *ab initio*, there are also reasons—heavily administrative in nature—which would lead us to assign to the property levy the role of the primary municipal tax base.

First, real estate is visible, facilitating collection of the real property tax by localities with little administrative sophistication. Sales, income and much personal property, tangible and intangible, can be hidden from the tax collector, thus necessitating more advanced (often intrusive) forms of tax administration. Indeed, visibility (or the lack thereof) lies at the core of contemporary concerns about the long-term viability of sales taxes and about the growth of abusive tax shelters for publicly-traded corporations.

In theory, the sales tax is protected by the use tax: If goods are purchased out-of-state without the payment of sales tax in the state of purchase, use tax is subsequently due when the as-yet untaxed goods are brought home. In practice, most such repatriation of untaxed goods is invisible to the tax collector, making the use tax impossible to enforce.

Similarly, corporate tax shelter arrangements are difficult for the IRS to monitor. While these arrangements may involve hundreds of millions of dollars, the details of these arrangements are typically buried in complex corporate tax returns involving billions of dollars. Not surprisingly, those concerned about corporate tax shelters assert the need to induce or require corporations to disclose such shelters so they can be more readily evaluated by the IRS.[47] There is no comparable problem under the

[46] *See id.* at 671.

[47] *See* Lee A. Sheppard, *Slow and Steady Progress on Corporate Tax Shelters*, TAX ANALYSTS, TAX NEWS TODAY, July 12, 1999, at 132-4; Sindhu G. Hirani, *ABA's Tax Section Urges Strict Disclosure To Identify Abusive Corporate Tax Shelters*, BNA DAILY

real property tax. Real property is, as lawyers say, open and notorious, facilitating the collector's task.

Second, real estate has a fixed and easily determined situs, which prevents taxpayers from shifting the tax base to another locality to avoid detection. In contrast, the personal property tax has largely atrophied in the United States because of the ease with which taxpayers can move personalty when the collector comes looking for it.

The situs issue is subtler in the sales and income contexts, but still highlights the advantages of fixed situs real estate as a local tax base. Sales may involve multiple parties in different localities, e.g., a seller in one municipality, a buyer in another, a shipper in yet a third. In such cases, identifying in which locality the sale occurs for tax purposes is difficult, if not downright metaphysical. The practical problems of collecting the sales tax are similarly serious in the case of multijurisdictional sales when one locality is entitled to tax (e.g., the town of the buyer), but the party most easily charged with a withholding obligation (e.g., the seller) is elsewhere.

Similar problems arise in the income tax context in the face of income-generating activity which straddles multiple localities, e.g., a corporation with facilities in different cities. Allocating income to specific localities in such settings is, by definition, arbitrary and subject to taxpayer manipulation.

Moreover, the situs problems of the sales and income tax bases are growing greater in an increasingly integrated economy in which more economic activity overlaps different localities. It is widely understood that sales tax is today largely uncollectible on mail order and internet sales since, under current law, the jurisdiction of the purchaser is forbidden to impose a withholding obligation on a seller located outside the jurisdiction. One need not subscribe to the most expansive forecasts about electronic commerce[48] and telecommuting[49] to agree that the problems of

TAX REP., Sept. 10, 1999, at G-1.

[48] *See, e.g.*, Trout, *supra* note 4 (quoting Donald J. Borut, executive director of the National League of Cities: "The rapid growth of electronic commerce is threatening profound impacts on local businesses as well as local revenue systems if Internet shopping continues to enjoy a tax shelter that discriminates against local merchants."). Note the dilemma in Mr. Borut's position. On the one hand, that position decries the property tax as economically inelastic and therefore less desirable than sales and income taxes. On the other hand, the predicted expansion of electronic commerce threatens local sales and income tax revenues and thus bolsters the comparative virtues of the real property levy. *See also* AUSTAN GOOLSBEE, IN A WORLD WITHOUT BORDERS: THE IMPACT OF TAXES ON INTERNET COMMERCE (Nat'l Bureau of Econ. Research, Working Paper No. 6863, 1998).

siting sales and income are likely to grow in the years ahead. In a sense, then, the real property tax, the oldest of taxes, is also the newest of taxes with a geographically fixed base in a world of increasingly difficult situs issues.

Finally, real property is universal in the sense that every locality has some. In contrast, largely residential communities, lacking significant commercial or retail activity, have little in the way of sales to tax.

In short, viable local government as Americans know it requires a tax base which is predominantly the localities' which is easily allocable by local jurisdiction. The real property tax fits that prescription.[50]

Arrayed against these advantages of local real property taxation is the great difficulty of determining fair market values for real estate absent actual sales of such real estate. Here, the critique of my youth retains its force, because appraising much real property is time-consuming, fairly subjective and ultimately manipulable.[51]

While the advocates of computer-based appraisal systems claim to have solved the appraisal problem, I am skeptical. Fundamentally, the appraisal process requires such often problematic determinations as the comparability of properties and the future income streams predicted for industrial and commercial facilities. Larger, computerized databases do not eliminate these judgments and, in some respects, make them more difficult, since both sides—the taxpayer and the fisc—can marshal such elaborate databases on their behalf.[52]

For a different perspective, see Robert J. Cline & Thomas S. Neubig, *The Sky Is Not Falling: Why State and Local Revenues Were Not Significantly Impacted By The Internet in 1998*, STATE TAX TODAY, July 6, 1999, at 128-11 ("Although e-commerce sales are growing rapidly and are receiving widespread attention, there is only a small current negative impact on sales and use tax collections . . . .").

[49] *See* Andrew M. Reidy, *Home Work Problems*, ABA J., Jan. 2000, at 70 ("Telecommuting has gone mainstream. In 1998, more than 11 million employees in the United States worked at home, connected by computer, e-mail and other electronic technology, and the number is sure to increase in the coming years."); *see also* Linda Micco, *Consultant Predicts Fifty Percent Rise in Contingent Workers Within Next Decade*, BNA PENSION & BENEFITS DAILY, Jan. 5, 2000 ("Within 10 years. . . . home-based employees (will) constitut(e) another one-quarter to one-third of the workforce.").

[50] Professor Fisher summarizes the analysis nicely: "Every parcel of real estate is visible, in a fixed location, and even the smallest governmental unit (has) taxable property within its jurisdiction." GLENN W. FISHER, THE WORST TAX? A HISTORY OF THE PROPERTY TAX IN AMERICA 120 (1996).

[51] *See, e.g.*, Ken Dilanian, *Many Homes in Philadelphia Region Over- or Underassessed*, STATE TAX TODAY, Dec. 13, 2001, at 240-21.

[52] I have been intimately involved in two city-wide property tax appraisals in New Haven, one as a municipal legislator, the other as a member of the executive branch of the

The alternative to *ad valorem* real estate taxation—to tax properties at their original acquisition costs—eliminates the problems of the appraisal process, but at a cost many consider unacceptably unfair and inefficient, i.e., the discrepant taxation of economically similar properties based on differences in historical purchase prices.[53]

In short, the local real property tax is a sound method of financing local expenditures, with flaws comparable to those of competing tax bases, i.e., income and sales.

CONCLUSION

While the critique of the property tax I embraced in my youth was overstated, I am determined, in my middle age, to avoid the mirror image of that critique, an overly-sanguine estimation of the current condition of local public finance. I agree, for example, with those who contend that unfunded mandates distort local priorities and constitute an unjustifiable form of hidden taxation, hidden in the sense that those imposing such mandates derive the political benefits of mandated services, but require local officials to levy the taxes to pay for them.[54] The proper level of financial assistance to municipalities is a permanently contentious issue, given the difficulties of identifying and quantifying the

municipality. The former was conducted in traditional fashion with paper files and typewritten reports; the latter utilized more advanced computerized methods.

There is no question but that the more advanced technology can be dazzling in its effect. A homeowner, skeptical that his house has been appraised properly, is instantly confronted with graphic pictures of his home and comparables, on-screen descriptions of these properties, and mathematical formulas of value. The data is organized and presented more efficiently in computerized form than under the old system, relying on paper files and typewritten reports.

However, as visually impressive as the new technology is, substantively the appraisal process still involves the same (often questionable) judgments as the old system. *See* Zelinsky, *supra* note 20, at 881-82 (1997).

[53] Proposition 13, which essentially shifted California from a traditional *ad valorem* system to taxation based on historical acquisition cost, was designed to roll back property tax burdens, not to solve the problems of the appraisal process. However, a by-product of that shift is to reduce such problems while imposing often radically different property tax burdens on homes of equal market value. *See, e.g.*, Terri A. Sexton et. al., *Proposition 13: Unintended Effects and Feasible Reforms*, 52 NAT'L TAX J. 99, 101 (1999) (In Los Angeles county, "[t]he typical home buyer paid $280,000 for a house in 1991 and paid $2,800 in property taxes. In contrast, a homeowner who had owned an identical dwelling since 1975 paid only $540 in property taxes.").

[54] *See Unfunded Mandates*, *supra* note 28; Edward A. Zelinsky, *The Unsolved Problem of the Unfunded Mandate*, 23 OHIO N.U. L. REV. 741 (1997). For a contrary perspective, see Julie A. Roin, *Reconceptualizing Unfunded Mandates and Other Regulations*, 93 NW. U. L. REV. 351 (1999).

externalities of local public services and thus determining the level of those services which should be paid for by state or federal taxpayers benefitting from such externalities. It is similarly difficult to agree upon the implicitly redistributional component of many municipal activities, most obviously, education, but others—such as police services—as well. Absent such agreement, it is impossible to definitively resolve how much of such activities should be financed by the higher levels of government at which redistribution should take place.

In short, it is not easy to determine what is a genuinely local expenditure, properly financed by local property taxes.

My younger self would have rejected the legitimacy of that inquiry: Even after the federal and state governments make proper payments to localities for mandated services, services generating interjuridictional benefits and services of an implicitly redistributive nature, my younger self would have insisted that the remaining cost of bona fide local activity is better financed by means of local income and sales taxation. My older self sees the benefits of financing that genuinely local activity with local property taxes.