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EMPIRE BUILDING AND FISCAL ILLUSION?
AN EMPIRICAL STUDY OF GOVERNMENT OFFICIAL BEHAVIORS IN TAKINGS

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ABSTRACT
The takings literature debates whether government officials minimize takings compensation or paying compensation to the extent that it maximizes their political interests. But there has been no empirical study. Besides, two assessment methods of takings compensation—one implemented by American states, the other proposed by scholars—have been empirically found to award inaccurate takings compensations to condemnees. There is no empirical research, however, on a third assessment method, implemented in Taiwan.

Using data of takings compensation and market value from Taiwan 2000 – 2007, I empirically examined whether the Taiwan assessment method (as takings compensations are pre-determined by annual governmental assessments of property value) produces accurate compensation, and whether government officials minimize compensation or maximize their political interests. I found that about two-thirds of the takings compensations in Taiwan were below market value and, therefore, inaccurate. Government officials can further reduce compensation payment but have failed to do so. Condemnees were under-compensated because the more politically influential landowners pressured the government to distort governmental assessments of property value. Political interests are government officials’ main concern.

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I. INTRODUCTION

Rational persons maximize their self-interests. What kind of self-interests do government officials maximize, when dealing with takings compensation? The takings literature provides two different views. The fiscal illusion theory portrays

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government officials\textsuperscript{4} as minimizers of takings compensation, if not maximizers of discretionary budgets—government officials are, therefore, empire builders\textsuperscript{5} and fiscal illusionists.\textsuperscript{6} Daryl Levinson has argued instead that government officials maximize their political interests,\textsuperscript{7} for example, votes to get re-elected.

No empirical study, however, has examined whether government officials, when dealing with takings compensation, minimize compensation payment or maximize their political interests. In this Article, I bridge the empirical gap by conducting a case study of Taiwan’s takings compensation practices starting in 1977. In another paper, I ask the same empirical question by looking into New York City’s takings compensation practices from 1990 to 2002.\textsuperscript{8}

A study on Taiwan, a foreign jurisdiction, is still interesting and necessary. In most (if not all) American states, takings compensation is assessed by the government \textit{after} a decision to condemn specific properties is made.\textsuperscript{9} By contrast, in Taiwan, takings compensation is assessed annually by the government \textit{before} such a decision is rendered.\textsuperscript{10} Empirically examining government officials’ decisions under both contexts helps us further understand the behaviors of government officials.

Another objective of this Article is to explore whether Taiwan’s post-1977 regime has produced \textit{accurate}\textsuperscript{11} takings compensation. Previous empirical studies have found that the American assessment method (\textit{ex post} assessment by the

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\textsuperscript{4} This Article uses “government officials” and “the government” interchangeably. I define “government officials” as those decision-making officials who are elected or directly supervised by elected officials. In Taiwan’s context, the government officials are local government mayors (elected) and high-ranking officials appointed by the mayors.


\textsuperscript{6} Fiscal illusion means that unless the government is required to pay compensation for condemned properties, it will think of the takings as costless.


\textsuperscript{8} See Yun-chien Chang, \textit{An Empirical Study of Takings Compensation in New York City} (working paper, 2008), available at \url{http://ssrn.com/author=951382}.

\textsuperscript{9} In terms of my previous paper, American states adopt “\textit{ex post} assessment by the government.” See Yun-chien Chang, \textit{A Framework of Takings Compensation Assessment} (working paper, 2008), available at \url{http://ssrn.com/author=951382}.

\textsuperscript{10} The \textit{ex ante} official assessment for each land parcel is used to levy tax and, when condemning, to pay compensation. In terms of my previous paper, Taiwan adopts “\textit{ex ante} assessment by the government.” See Chang, \textit{id}.

\textsuperscript{11} In this Article, I refer to assessments as “\textit{accurate}” when they are equal to market value. Accordingly, “\textit{under-assessments/compensations}” (or “\textit{over-assessments/compensations}”) means assessments/compensations lower (or higher) than the accurate market value.
government) failed to award accurate compensation to condemnees. Some condemnees received much less than the fair market value of their properties, while others got much more. In response to this inaccuracy problem, Saul Levmore and Abraham Bell & Gideon Parchomovsky have proposed to use another assessment method, \textit{ex ante} assessments by landowners themselves, to determine just compensation. I have argued that their models, when implemented, are unlikely to produce accurate compensation.

In searching for more accurate alternative assessment methods, a combination of the two above—\textit{ex ante} assessments by the government—seems to be the “natural” choice. This assessment method is exactly what Taiwan has implemented since 1977. To my knowledge, Taiwan is the only country that has adopted this method. An empirical study on how accurate the Taiwan regime compensates condemnees thus informs American policymakers whether the \textit{ex ante} assessments by the government method is a desirable reform option.

Weaving the two themes of this Article together, I will first use Taiwan’s data from 2000 to 2007 to examine whether \textit{ex ante} governmental assessments of takings

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12 See Curtis J. Burger & Patrick J. Rohan, \textit{The Nassau County Study: An Empirical Look Into the Practices of Condemnation}, 67 COLUM. L. REV. 430, 439-40 (1967)(finding that in Nassau County, NY, from 1960 to 1964, in 84% of cases, the compensation condemnees received was less than the lower one of the two assessed value; in 57% of the cases, the compensation was lower than 90% of the assessed value); Patricia Munch, \textit{An Economic Analysis of Eminent Domain}, 84 J. POL. ECON. 473 (1976)(finding that in Chicago, Illinois, from 1962 to 1970, low-valued properties received less than market value and high-valued properties received more than market value); Terrence M. Clauretie et. al., \textit{Residential Properties Taken Under Eminent Domain: Do Government Appraisers Track Market Values?}, 26 J. REAL ESTATE RESEARCH 317 (2004)(finding that in Clark County, Nevada, the government compensated landowners 17% above market value); Nicole Stelle Garnett, \textit{The Neglected Political Economy of Eminent Domain}, 105 MICH. L. REV. 101 (2006)(finding that in St. Joseph County, IN, the total compensation—sale price plus relocation assistance—for condemnation settlements is on average 157% of the average appraised value of the property).


15 This combination takes the “\textit{ex ante}” element from the scholar-proposed models and the “government assessment” element from the current U.S. regime. Another combination, \textit{ex post} self-assessments by landowners, in my knowledge, has not been implemented by any jurisdiction, for good reasons. See the discussion of both methods in Chang, \textit{supra} note 9; Lee Anne Fennel, \textit{Revealing Options}, 118 HARV. L. REV. 1399, 1419 (2005).

16 AJ van der Walt, in his comparative analysis of constitutional property clauses, looked into the constitutions of Australia, Austria, Canada, Germany, Guyana, India, Ireland, Jamaica, Japan, Malaysia, Mauritius, Namibia, South Africa, Switzerland, Trinidad and Tobago, United States of America, and Zimbabwe. In my reading, none of them seems to adopt \textit{ex ante} assessment by the government. However, a few of them, like Zimbabwe, Jamaica, and Ireland, authorize laws to stipulate how to compensate landowners. Those laws could adopt \textit{ex ante} assessment by the government, but van der Walt’s book did not survey those laws. \textit{See AJ VAN DER WALT, CONSTITUTIONAL PROPERTY CLAUSE: A COMPARATIVE ANALYSIS} 58-60, 81-82, 92, 114-16, 150-51, 183, 219-21, 240-41, 253-54, 262-63, 273-304-05, 315-16, 343-48, 372-73, 394-95, 440-41, 489-92 (1999).
compensation were accurate. I find that about two-thirds of Taiwanese condemnees were under-compensated; takings compensations were, therefore, inaccurate. To explain this empirical finding, I use the fiscal illusion theory and Daryl Levinson’s political interest theory. The fiscal illusion theory can not explain my findings, because Taiwan local governments can maximize their discretionary budgets (through increase of tax revenues) by raising governmental assessment of land value, but they have failed to do so. Moreover, Taiwan local governments voluntarily increase their payments of takings compensation, again contrary to the prediction of the fiscal illusion theory.

By contrast, Levinson’s theory that local politicians care about political costs and benefits neatly captures the incentives of Taiwan local politicians. Bowing to pressure from politically influential landowners, Taiwan local politicians intentionally maintained government-assessed land value at below-market value, so as to reduce big landowners’ tax burden. Takings compensation, mostly determined by the same government-assessed land value, thus usually fell below market value. Condemnees, less politically influential than the powerful landowners, were unable to persuade politicians to set government-assessed land value higher. Furthermore, political interest theory can explain why sometimes it is in government officials’ political interests to award additional compensations so that some condemnees received more than government-assessed land value.

This Article is structured as follows: Part II briefs Taiwan’s takings compensation and property value assessment regime. Part III lays out the empirical method and summarizes pertinent data. Part IV reports the finding that most condemnees in Taiwan have been under-compensated. Part V examines whether the fiscal illusion theory or Levinson’s theory aptly explains Taiwan government officials’ behaviors. Part VI discusses whether the conclusions drawn from the case study on Taiwan are applicable to the American context. Part VII concludes.

II. TAIWAN’S REGIME: 1977 TO THE PRESENT

In 1977, Taiwan adopted its current assessment method, ex ante assessment by the government.17 The law, Equalization of Land Rights Act,18 requires that every year local governments investigate real land transaction prices.19 According to the

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17 From 1954 to 1977, Taiwan implemented another assessment method, ex ante assessment by landowners. See Chang, supra note 14.
18 PINGJUEN DIQUEN TIAOJI [Equalization of Land Rights Act] (Taiwan).
19 Local government employees in charge of assessing have to pass the “land use specialty” exam
investigated prices, local governments divide their jurisdictions into thousands of “land value districts,” each containing dozens of land parcels. The median of such investigated prices in a land value district will be its “preliminary district land value.”

The preliminary district land values are then sent to the Land Evaluation Committee in the jurisdiction for value adjustment. The adjusted values, usually lower than the preliminary district land value, become Announced Current Land Value (ACLV) of the land value districts. Land parcels in a district have the same ACLV, unless they are adjacent to busy streets. Every land parcel in Taiwan thus has an annually-updated official value, i.e., ACLV.

ACLV is the basis for calculating not only the takings compensation but also the land value increment tax. Since 2000, another law, Land Condemnation Act, has given local governments the discretion, when announcing ACLV on January 1 of each year, to announce one or more annual “extra proportion of ACLV” (hereinafter “extra proportion”) as additional compensation to all condemnees in the jurisdiction that year. For instance, an extra proportion of 30% gives condemnees 130% of ACLV as total takings compensation. Land value increment tax is not a property tax.

Its tax base could be conveniently thought of as “the ACLV in the year of the current sale” minus “the ACLV in the year of the previous sale.”

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20 There is neither requirement of how large a district should be, nor requirement of equal size. In 2002, Taipei City, which is as large as 24,250,411 square feet, is divided into 415,631 pieces of lands. And there are 2,743 land value districts (on average, 152 pieces of land per district; 8,841 square feet per district).
21 See Rules on Land Value Assessment art.21 (Taiwan).
23 Value of land parcels which are adjacent to busy streets will be further adjusted by a pre-set formula, which does not take into consideration the values of the buildings on the land parcels. See Rules on Land Value Assessment art.23 (Taiwan).
24 Equalization of Land Rights Act art. 10, 38 (Taiwan).
25 The discretion lies in deciding whether to award extra proportion. Once the amount of extra proportion is announced, it has to be awarded to every condemnee in the jurisdiction that year.
26 TUDI ZHENGSHOU TIAOLI [Land Condemnation Act] art. 30 (Taiwan).
27 The unit of extra proportion is usually 10%. That is, the extra proportion is usually 10%, 20%, 30%...100%....But there are few exceptions.
28 The property tax in Taiwan is in practice determined by another official value, Publicly Announced Land Value (PALV), announced every three years. See Chang, supra note 14.
29 Strictly speaking, the tax base of land value increment tax is the differences between “the reported transaction price of the current sale” minus “the reported transaction price of the previous sale.” But the original rationale for announcing ACLV is to give landowners a benchmark to transact and to report transaction price. But later on more laws, including several tax laws, were enacted to encourage
III. EMPIRICAL METHOD AND SUMMARY OF DATA

To examine whether governmental assessments are accurate, I will compare the compensation paid to landowners with the market value of the land. I do not, however, have real transaction price data to build a hedonic regression model\(^\text{30}\) to estimate market value.\(^\text{31}\) I must rely on the market value estimated by local governments (hereinafter “government-assessed market value”).\(^\text{32}\) Neither do I have individual data on condemnation compensations. But I can calculate the compensation legally due (hereinafter “stipulated compensation”) by the ACLV data and the extra proportion data.

That is to say, government-assessed market value will be a proxy for the real market value, while the stipulated compensation will be a proxy for the actual compensation. I do not plan to ascertain the magnitude of under-compensation or over-compensation in this Article.\(^\text{33}\) Rather, I focus on the big picture of the under- or over-compensation phenomenon.

Since 2000, the national government agency in charge of land assessment affairs, the Department of Land Administration in the Ministry of the Interior (DLA-MOI), has annually publicized\(^\text{34}\) the percentage of “ACLV divided by government-assessed landowners to report ACLV as the transaction price. So in practice the transaction price, the real tax base, approximates to ACLV.


\(^{31}\) Landowners in Taiwan in practice report their transaction prices according to ACLV, so local governments do not know most actual transaction prices. They only investigated a few of the transactions for assessing PALV and ACLV.

\(^{32}\) Broker business in Taiwan is very competitive (but many people buy and sell land without brokers). A few large broker companies use their own data to build hedonic models but the models are deemed as trade secret. Interview with Yi-chuan Chang, a real estate expert in Taiwan, in Taipei, Taiwan (Jun. 8, 2006).

\(^{33}\) I do not have market value dataset, but maybe none in Taiwan has a sufficiently good one. Cf. Chi-yuan Tsai, Land Taxes in Taiwan: Problems, Impact and Reforms, 3 Journal of Taiwan Land Research 37, 38 (2001) (“[T]he prices paid in ordinary market transactions are kept secret.”)(Chinese).

\(^{34}\) In my data, the government calls preliminary district land value simply “market value.” In the following, I will use the term “government-assessed market value” instead, to distinguish it from the real market value.

\(^{35}\) This would be an important research project if one proposes to redress under-compensation by increasing official assessments. In this case the accuracy of data is a priority.

\(^{36}\) A common reason Taiwan’s governmental agencies publish statistics is to show “how much they have done” to the supervising agencies, the legislature, and the public. I do not think that the...
market value” (called “ACLV percentage” hereinafter) for each jurisdiction. The data of extra proportion are unpublished and only post-2002 data are available from DLA-MOI. I got year 2000 data from an academic article. DLA-MOI also publishes the number of takings cases in each jurisdiction.

In sum, I have the ACLV percentage and extra proportion in Taiwan after 2000. (Extra proportion data in year 2001 are not available.) Combining these two data sets, I get the percentage of “stipulated compensation divided by government-assessed market value” (“compensation percentage” hereinafter)—the proxy of what I want to examine. I present the data in the following way:

Figure 1 exhibits the ACLV percentages of all jurisdictions from 2000 to 2007, showing the gradually-shrinking gap between ACLV and government-assessed market value. Figure 2 shows the extra proportion awarded to condemnees in all jurisdictions from 2000 to 2007. (Data as regards 2001 are not available.) Figure 3, exhibiting the compensation percentages in 2000 and from 2002 to 2007, is the multiplication of ACLV percentage and “extra proportion+100%.” If the percentage in Figure 3 is below 100%, the stipulated compensation is below the government-assessed market

DLA-MOI would have motives to mis-state the data, for they are not politically responsible for determining the percentages. Local governments, responsible for the percentages, may have such motives. But the percentages are decided by the Land Evaluation Committee, whose meetings are open to reporters. It is presumably difficult to manipulate the numbers. As discussed later, however, local government employees do have incentives to (and did) manipulate the transaction price they have investigated.

The ACLV percentage can also be thought of as the taxable property value divided by the government-assessed market value.

In calculating ACLV percentage, the governments do not take into account the number of land parcels in a land value district. In brief, the city calculates the weighted average, while the boroughs calculate un-weighted average: A borough under the city calculates its ACLV percentage by adding up the ACLV percentages in every land value district in the borough and then dividing the sum by the number of land value districts, regardless of how many land parcels there are in the districts. A city, then, sum up “the ACLV percentage of the borough times the number of land value districts in the borough” and divide it by the total number of land value districts in the city. Telephone interview with an official in DLA-MOI (Mar. 7, 2007). In Taipei City, the ACLV percentage is usually the same across land value districts, so the above calculation method does not bias the statistics. Telephone interview with an official in Taipei City Government (Oct. 2, 2006). In jurisdictions other than Taipei City, however, percentage may vary. Hence, the above calculation method might create inaccurate statistics. Telephone interview with an official in DLA-MOI (Oct. 3, 2006).

DLA-MOI shies away from publishing those data because it worries that “letting condemnees know that compensation standards are different across regions would cause political turmoil.” Telephone interview with an official in DLA-MOI (Mar. 7, 2007).


Five of the 25 jurisdictions have two or three extra proportions in one year. In order to visualize the data and not give these jurisdictions unequal weights, I use the mean of the extra proportions as the representative extra proportion in Figure 2 and all figures that follow. One of those 5 jurisdictions has used a range of extra proportions (e.g. 110%~400%) in two years. For the same reason, I use the mean of the extra proportions as the representative extra proportion in this figure and all those following figures.
value.

[Insert Figure 1, Figure 2, and Figure 3 about here.]

**IV. Takings Compensation Often Lower Than Market Value**

Figure 4 shows the number of jurisdictions over- or under-compensated by year (in 2000 and from 2002 to 2007). In total (one jurisdiction in one year counted as one observation), stipulated compensations were lower than government-assessed market values in about 63% of the observations. The former is, therefore, higher than the latter in 37% of the observations.

In Figure 5, I treat the observations whose compensation percentages are between 95% and 105% as “neutral,” finding that only 18% of the observations have a compensation percentage from 105% to 126%, while 52% of the observations have a compensation percentage lower than 95%, the lowest being 22%. While Figure 4 and Figure 5 tell us how frequent government officials decide to set compensation percentage below or above government-assessed market value, it should be noted that the figures and statistics do not take into account the number of taken plots. One might surmise that government officials, when setting the compensation percentage, will take into consideration the number of forthcoming condemned plots.

Figure 6 incorporates the number of land parcels taken in each jurisdiction each year, showing a similar result. Roughly 63% of land parcels taken in this period were compensated with less than 95% of the government-assessed market value, while 14% of taken land received compensation higher than 105%.

From Figure 4, Figure 5, and Figure 6, we further find several phenomena. First, the nearer to the present, the more likely local governments compensate condemnees at, or more than, the government-assessed market value. Second, the distribution of under-compensation and over-compensation is skewed. Only a tiny fraction of condemnees were compensated 30% more than government-assessed market value, while roughly 150 times as many condemnees were compensated 30% less. The number of condemnees who were compensated 20% or 10% less was more than that of those who got 20% or 10% more. There were also condemnees who received only 60% (or less) of the government-assessed market value as compensation.

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40 The literature also indicates that compensations condemnees received were lower than real market value. See Chen, supra note 46, at 41; Wen-xiong Zhou, On the Current Land Value Assessment Procedures (Feb. 25, 2007), www.ymland.gov.tw (Chinese).
As for condemnations in 1977 through 1999, there is not enough data. There are reasons, however, to believe that condemnees in 1977 through 1999 received less compensation than those after 2000. First of all, the literature points out that ACLV from 1977 to 1999 was less than one-half of the real market value.\textsuperscript{41} That means the extra compensation has to be more than the ACLV compensation itself in order not to under-compensate landowners. But extra proportion compensation is legally mandated to every condemnation as late as 2000. Before then condemnors could give condemnees additional \textit{ad hoc} compensation.\textsuperscript{42} It is unlikely, however, that \textit{ad hoc} compensation will surpass ACLV compensation.\textsuperscript{43} Finally, the literature lamented under-compensation in this period.\textsuperscript{44}

The bottom line is that from 2000 to 2007, takings compensations in Taiwan were inaccurate—more than three-fourths of the takings compensation did not fall within 95%~105% of government-assessed market value. Most of those inaccurate compensations are under-compensation. Before 2000, according to the previous

\textsuperscript{41} Around 2000, most papers found ACLV to be around 37% to 47% of the real market value. See Fung-yiao Chen, On the Problems and Solutions of ACLV Assessment, Prof. Ying-yan Lin Retirement Commemoration Essay Collections, 2000, p.443-464 (Chinese)(reporting that in Tainan City, ACLV is 39%-47% of real market value); Wen-xian Su, Using Mass Assessment Method to Evaluate Announced Current Land Value, Cheng Chih University Master Thesis, 2000 (Chinese)(reporting that in Tainan City, ACLV is 47%~49% of real market value); Fung-yiao Chen, \textit{A Study on Official Land Values and Land Market Prices}, Land Economics Annual Publication, vol.14, 2003, p.10 (Chinese)(reporting that in 2001, throughout Taiwan, on average, ACLV is 65% of real market value).

In mid-1990s, ACLV is only around 45% of the real market value. See Tsai, \textit{supra} note 31, at 47 (reporting that from July 1995 to June 1996, ACLV divided by auction price of public land is 45%); Yu, \textit{supra} note 22, at 76 (reporting that from March 1996 to December 1996, ACLV divided by transaction prices of public land is 45%).

In 1980s, ACLV is no higher than 45% of the real market value. See Xu-wen Chang, \textit{An Empirical Study on the Divergence Between ACLV and Market Value}, \textit{25 JOURNAL OF THE LAND BANK OF TAIWAN} 1, 2 (1988)(Chinese)(reporting that in 1987, ACLV in Taipei City and Taichung City are only 37% and 12% respectively of auction price of public land); Xian-mian Feng, Equalization of Land Right: Incremented Value to the Public, Chung Cheng University Doctoral Dissertation, 1988 (Chinese)(reporting that in ten years, ACLV of two land value districts in Taipei City are 43%~44% and 30% respectively of market value); Shu-hui Huang, Theoretical and Empirical Analysis of Taiwan’s Land Value Tax Base: A Case Study of Taichung City’s Official Land Value, Cheng Chih University Doctoral Dissertation, 2000, p.71 (Chinese)citing previous studies, published from 1988 to 1990, which respectively conclude that ACLV is “40%~60%,” “30%~40%,” “40%,” and “37%” of real market value).

\textsuperscript{42} There is no data regarding how much and how often these compensations are.

\textsuperscript{43} In 1988, Urban Planning Law, the first law to legally authorize extra proportion compensation under certain circumstances, set a cap of 40%. In condemnation cases where Urban Planning Law is not applicable, it is unlikely that the local governments will award \textit{ad hoc} compensation that is more than 40% of ACLV. In 1996, Taiwan Provincial Government stipulated that its condemnation project would grant additional compensations to urban land and non-urban land alike, but they should be no more than, but not necessarily, 40%. See Taiwan Provincial Government (Mar. 7, 1996) Fu 85 No.148408 Explanation.

\textsuperscript{44} See, e.g., Yu, \textit{supra} note 22, at 78.
literature, takings compensations were probably more inaccurate and more skewed toward under-compensation.

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Herein I address certain concerns about the potential influence of the proxy data on my findings. I use government-assessed market value as a proxy of real market value. It is not an issue, however, when I discuss the behavioral models of government officials later. Government officials do not know what the real market value is; they know only the government-assessed market value and how far ACLV deviates from it. If compensation percentage is below 100%, government officials clearly know that they have made a decision to award condemnees below the market value that the government declared. For the purpose of arguing what government officials maximize, what matters is what information they have and how they interpret it.

When it comes to ascertaining whether condemnees have been compensated below the real market value from 2000 to 2007, using government-assessed market value as a proxy for the real market value is indeed imperfect for four reasons. First, there is a selection bias incurred by basing the assessment of market value only on land parcels transacted in the previous year. Second, the samples of real transactions are too small to accurately reflect market value. Third, the so-called “busy-street” adjustment is not flexible and accurate enough to reflect the distinct situations of every busy street. Fourth, though the official value of land has reflected the size of each land, each land parcel’s difference in quality is still not fully captured in the assessment process.

Notwithstanding the above four critiques, the proxy data are still acceptable and useful. First of all, those four critiques suggest that the government-assessed market value is inaccurate, but they do not indicate that the value is systematically biased in a

45 According to a research conducted in 1994, sampling 16 towns, 61% of the land value districts have no investigated transactions, 27% of the land value districts have one to three investigated transactions, and 11% of the land value districts have more than four investigated transactions. See Shu-hui Huang, 2001, Knowing Land Value Better to Enforce Equalization of Land Rights, 2001, p.79 (Chinese) (citing another research).

Another research shows that 45% of the land value districts have investigated transactions in Taichung City in 2001. See Chang-hong Li, Using Current Official Land Value Assessment Method to Discuss Land Value Increment Tax Policy: A Case Study of Taichung City (March 2, 2007), http://w3.tccg.gov.tw/intro/institution/plan/service/05doc/s_05_9101.doc (Chinese).

When no transaction is investigated, the government calculates land value by referring to rent or easement in the district, or the government extrapolates land value from adjacent districts.

certain way. Since the proxy data indicate that the distribution of compensation is skewed toward under-compensation (see Figure 3 and Figure 5), and my empirical goal therefore is just to examine whether condemnees are actually generally under-compensated, only if the government-assessed market value tends to systematically over-assess the real market value will my empirical findings be spurious. Government-assessed market value, in fact, tends to do the opposite—it is prone to under-assess the real market value:

Several papers written by local government officials pointed out that, during the assessment procedure, government employees in charge of assessing land value have incentives to, and did indeed, discount the investigated transaction prices for political reasons—the investigated prices ultimately influence ACLV and PALV, which determines landowners’ tax burdens; government employees, if submitting the real, high transaction prices, will be accused of raising the tax. No evidence shows that either the local government employees and officials or the officials in DLA-MOI have incentives to increase the government-assessed market value or to manipulate it in some other way. The government-assessed market value, therefore, tends to be lower than the real market value.

Furthermore, if the real market value increases over the years, the government-assessed market value tends to understate the real market value, because the government-assessed market value for one year is the median investigated price of the previous year. Real market value of land in Taiwan has generally increased.

47 In demarcating land value districts, local governments are required to group together contiguous land parcels whose market values are similar, if not homogenous. The standard deviation of market values in a land value district should not be very large. Thus, even if the investigated prices are not representative, the errors should not be very large. Most important of all, no evidence shows or no theory predicts that investigated prices tend to be higher or lower than the real median market value in a land value district.

48 For example, suppose the real market value is $100 and the compensation is $105. If government-assessed market value over-assesses the real market value to be $120, an observer will conclude that the condemnee is under-compensated, even if she actually obtains $5 more as compensation.

On the contrary, suppose the real market value is $100 and the compensation is $90. If government-assessed market value is lower than the real market value, say, $80, an observer will conclude that the condemnee is over-compensated, even though the condemnee actually receives $10 less than the real market value.

Therefore, to ensure that the under-compensation observation is not spurious, one only has to care about whether the government-assessed market value tends to over-assess the real market value.

49 Sometimes government employees will discount investigated prices more than once, in order to meet up to the “policy goals” set by their supervisors or the requirements by the Committee. See Yu, supra note 22, at 109.

50 After 1977, the government-assessed PALV and the landowner-reported DLV are still used to levy land value tax, as in 1954-1977.

51 See Li, supra note 45; See Yu, supra note 22, at 97-99.

52 For example, in 2005, Blackacre was sold for $200. The government uses this price as the preliminary district land value and ACLV for Blackacre for year 2006. But in fact Blackacre could be
Between March 2002 and September 2003, the Urban Land Value Index (published by DLA-MOI) decreased about 5%; but from September 2003 to March 2007, the index has increased about 7%.53

The variation of the ACLV percentages within a jurisdiction would also be a problem.54 If the ACLV percentage of a condemned plot is significantly higher or lower than the jurisdiction average, condemnees are compensated more or less than what my proxy (average) data show. Given the size of my data, if the ACLV percentage variation is random, the effect should have been roughly cancelled out. If the ACLV percentage in the condemned area is intentionally pressed down below average, it will not affect my general finding that a majority of Taiwanese condemnees were under-compensated and takings assessments are inaccurate.

On the contrary, if the ACLV percentage in the condemned area is systematically above average due to manipulation, it will weaken my claim that roughly 60% of Taiwanese condemnees were under-compensated. It will still lend support to another claim that takings assessments are inaccurate, unless government officials have been manipulating ACLV percentage in the condemned area so as to make condemned land’s compensation percentage 100%—this seems unlikely. Moreover, both theories I will soon discuss would not predict that government officials insistently inflate ACLV percentage for condemned land, so it is unlikely that the ACLV percentage in the condemned area is systematically above average.

V. EXPLANATION: TWO BEHAVIORAL MODELS OF GOVERNMENT OFFICIALS

To understand why Taiwanese condemnees were often under-compensated and sometimes over-compensated, it is necessary to have a behavioral model of the compensation decision-makers—government officials. As Louis Kaplow put it, “[a] number of (conflicting) views regarding the effect of a compensation requirement on government behavior were offered. Much further analysis and empirical study is necessary to resolve the issue.”55 In the following, I use Taiwan’s experience as a case study of the theoretical dispute, showing that the fiscal illusion theory56 (also

54 See supra note 36.
56 I discuss the “fiscal illusion” theory as defined in the legal academia. The public choice literature defines fiscal illusion quite differently as “the legislature can deceive the citizens about the true size of
known as the “cost-internalization theory\(^\text{57}\)”) does not thoroughly explain what I found in Taiwan, whereas Levinson’s political interest theory better explains it.

### A. The Fiscal Illusion Theory

#### 1. Claims

The fiscal illusion theory argues that government officials will not internalize the costs of takings unless paying compensation.\(^\text{58}\) The takings compensation requirement is necessary to enforce the cost internalization.\(^\text{59}\) The fiscal illusion theory, however, does not make clear government officials’ utility function. Why do government officials prefer to give less than fair market value? Because of their ideology, laziness, politics, emotion, or any other concern?

Furthermore, the fiscal illusion theory does not make their behavioral predictions as clear as possible. With or without just compensation requirement, do government officials aim to minimize compensation payment or just reduce compensation to a certain extent? Scholars opposing this theory have argued that this theory implicitly assumes the government behaves like a profit-maximizing firm.\(^\text{60}\) Accordingly, government officials should pursue compensation minimization. In the following, I take the fiscal illusion theory as arguing that government officials minimize takings compensation, recognizing that some fiscal illusion theorists may have implicitly assumed otherwise.

If assuming profit-maximization, the fiscal illusion theory can even be connected with William Niskanen’s famous thesis\(^\text{61}\) that the government pursues budget government.” See DENNIS C. MUELLER, PUBLIC CHOICE III 527-29 (2003); Michael H. Schill, Intergovernmental Takings and Just Compensation: A Question of Federalism, 137 U. PA. L. REV. 829, 859 n. 115 (1989).


\(^\text{58}\) See supra note 3.


\(^\text{60}\) See Been & Beauvais, supra note 57, at 92.


One of the important assumptions in Niskanen’s model is that “bureau heads are monopolists, so they get the budget they desire,” because bureaus control information that congress does not have. See Ronald Wintrobe, Modern Bureaucratic Theory, in PERSPECTIVE ON PUBLIC CHOICE 429, 433-39 (Dennis C. Mueller ed., 1997). In Taiwan’s case, legislature is not involved in the process, but local
maximization—given that the government prefers to minimize takings compensation (a type of budgetary outflow), it would be reasonable to assume that the government prefers more budgetary inflow as well.\textsuperscript{62} That is, the fiscal illusion theory would implicitly endorse the claims that government officials maximize budget or “discretionary budget.”\textsuperscript{63} In the following, I take the fiscal illusion theory as predicting that government officials maximize discretionary budget,\textsuperscript{64} also recognizing that some proponents may have implicitly assumed otherwise.\textsuperscript{65}

To recapitulate, I take the fiscal illusion theorists’ major empirical claim as takings compensation minimization. I believe that the fiscal illusion theorists are less willing to identify their theory with (discretionary) budget maximization. But as a theoretically matter I also explore it as their potential claim. In the Taiwan case study below, I do not examine whether government officials maximize the whole (discretionary) budget. Instead, I test whether government officials maximize the net of “tax revenues minus takings compensation payment,” a sub-category of discretionary budget.\textsuperscript{66} As the next sub-section will show, Taiwan government officials neither minimize takings compensation nor maximize discretionary budget.\textsuperscript{67}

\section{Unable to Explain Taiwan’s Experience}

The finding that more than 60\% of the condemnees were under-compensated seems to support the assertion of the fiscal illusion theory that government officials
governments do have discretion (monopoly power) in setting ACLV to determine part of the budget they will have. This similarity notwithstanding, this Article does not claim that Taiwan’s experience directly refutes Niskanen’s model.

\textsuperscript{62} Of course, it all depends on the utility function of government officials. For instance, government officials may dislike any type of spending but be indifferent to budget size.

\textsuperscript{63} Niskanen originally argued that government agencies pursue budget maximization. See William Niskanen, Bureaucracy and Representative Government (1971). Later, Niskanen agreed to his critics that government agencies maximize discretionary budget (the difference between the total budget and the minimum cost of production). See William Niskanen, Bureaucrats and Politicians, 18 J. L. & Econ. 617 (1975); Moe, supra note 61, at 459.


\textsuperscript{65} The relationship of fiscal illusion theory and Niskanen’s model has not been clearly pointed out by the fiscal illusion theorists. Levinson, the opponent, only discuss Niskanen extensively in his general discussion of government official behaviors, but not specifically in the takings context. See Levinson, supra note 5, at 932-34; Levinson, supra note 7, at 381.

\textsuperscript{66} Not all budgets come from land value increment tax and the government has other types of necessary expenses. However, the higher the net of “tax revenues minus takings compensation payment,” the higher the amount of discretionary budget would be. If the government really aims to maximize discretionary budget, it will maximize this sub-category of the discretionary budget.

\textsuperscript{67} Several empirical studies have suggested that Niskanen’s budget maximization model is not borne out by evidence. See the overview in Wintrobe, supra note 61, at 438-39.
dislike paying compensation. In fact, my finding proves the opposite. ACLV is used for determining takings compensation as well as calculating land value increment tax. Compensation is a budgetary outflow and tax revenue is a budgetary inflow. Should local governments maximize discretionary budgets, they will increase (or decrease) ACLV until the marginal benefit of more tax revenue equals the marginal cost of higher compensation payments.68

But the ACLV has never been set at the level where the discretionary budget is maximized. The ACLV in every jurisdiction in every year from 2000 to 2007 is below government-assessed market value, as Figure 1 shows. Local governments thus can legally raise ACLV to increase tax revenue, until it reaches government-assessed market value, but they have failed to do so.69

Their reluctance is not due to the concern over increased compensation payment. For local governments, the marginal benefit for every one dollar raise in ACLV is “one dollars times the land value increment tax rate (20%70) times the probability of sales,” whereas the marginal cost is “one dollar times the probability of condemnation.” Doing a simple calculation, one will find that as long as the sale is at least five times as likely as the condemnation, marginal benefit of increasing ACLV is larger than its marginal cost.71

Data72 show that, in Taiwan from 2000 to 2007, sale was on average 55 times as frequent as takings; the median was 21 times. In only 27 of the 200 observations73 (14%) were sales less than five times as frequent as takings in the year.74 It is unlikely, therefore, that Taiwan local governments shy away from raising ACLV because of compensation concern.75 There is otherwise no reason (offered by the fiscal illusion

68 More than 10% of total local budgets come from land value increment tax receipt. Data are available at Ministry of Finance, R.O.C., http://www.mof.gov.tw/public/Data/statistic/Year_Tax/94/4080.htm (last visited Dec. 3, 2006). Since land value increment tax is an important source of budget, budget-minded local governments will have incentives to manipulate ACLV.
69 Generally, ACLV percentages did grow gradually, but the pattern can not be called maximization, which would not have taken twenty plus years to increase that little.
70 20% is the lowest land value increment tax rate since 2002. Using 20% tax rate in the benefit side calculates the minimum tax revenues for local governments.
71 If the quotient of “1 dollars * 20% * the probability of sales” divided by “1 dollar * the probability of condemnation” is larger than 1, the marginal benefit surpass the marginal cost. After simple calculation the formula becomes: if the quotient of “the probability of sale” divided by “the probability of condemnation” is larger than 5, the marginal benefit surpasses the marginal cost.
73 One jurisdiction in one year counts as one observation.
74 As noted in footnote 70, because much higher tax rates also applied, so frequency less than 5 does not necessarily makes the marginal costs of increasing ACLV higher than the marginal benefits.
75 I assume that in a jurisdiction, on average, the land parcels sold and the land parcels condemned are similar in market value. Only if the land parcels condemned are on average several times more expensive than those sold will refute my assertion in the text. The large size of my data, as well as the
theory) why local governments did not increase ACLV to maximize their discretionary
budgets.76

Furthermore, if local governments seek to minimize compensation payments, the
discretionary extra proportion should be zero. Extra proportion is not mandated by law.
Every local government in every year can choose to pay additional compensations or
not. Figure 2 shows that, however, extra proportion in any jurisdiction in any year was
at least 20%. The median extra proportion was 40% every year; the mean extra
proportion fluctuates around 50%. That is to say, local governments voluntarily pay an
additional, significant amount of compensation. Moreover, the fact that (as Figure 5
and Figure 6 show) 18% of the jurisdictions awarded, and 14% condemned plots
received, more than government-assessed market value is also an unfavorable result
for the fiscal illusion theory.77

In conclusion, local governments consciously make these fiscally-expensive
choices without official mandates from DLA-MOI, the court, or the central legislature.
Local governments have neither maximized their discretionary budgets nor minimized
takings compensation payment. The fiscal illusion theory, therefore, does not explain
well what happened in Taiwan. In the next section, I examine whether political
interest theory can explain better.

B. The Political Interest Theory

1. Claims

Daryl Levinson, among others,78 criticized the fiscal illusion theory. Levinson

common notion that usually cheap land gets condemned, makes it unlikely.

76 Granted, number of sales is not given. Rise in ACLV may also decreases the number of sales, thus
may reduce the total amount of revenues from land value increment tax (which is levied only when the
land is sold). But given that sales are generally much more frequent than takings, it is unlikely that
ACLV has ever reached the point where any increment in ACLV will reduce total land value increment
tax revenues.

77 One caveat is in order. Because my data may under-assess the real market value, the actual cases of
over-compensation may be fewer.

78 See Vicki L. Been, Lucas v. The Green Machine: Using the Takings Clause to Promote More
Efficient Regulation?, in PROPERTY STORIES 221, 248-49 (Gerald Korngold & Andrew P. Morris eds.,
2004) (arguing that the assumption of governments’ maximizing monetary profits is unlikely to be
accurate); Been & Beauvais, supra note 57, at 88-100; Louis Kaplow, An Economic Analysis of Legal
Transitions, 99 H ARV. L. REV. 509, 567-70 (1986); Carol M. Rose, What Federalism Tells Us About
Takings Jurisprudence, 54 UCLA L. REV. 1681, 1690-92 (2006)(linking the discussions of federalism
with the demerits of fiscal illusion theory); Thomas W. Merrill, Rent Seeking and the Compensation
Principle, 80 NW. U. L. REV. 1561, 1583-84 (1985)(book review); Note, Taking Back Takings: A
Coasean Approach to Regulation, 106 H ARV. L. REV. 914, 923-25 (1992)(arguing that takings
compensation is not the only way to force cost internalization in a Coasean world where marketable
police power servitude is sold).
questioned its asymmetric assumption that “government will take no account of the costs of resources unless those costs are translated into budgetary outflows in the form of just compensation payments” and yet “government will automatically internalize the social benefits of takings even if these benefits are not translated into budgetary inflows.”79 Instead, Levinson argued that

“predictions of government behavior should be based not on the supposed self-aggrandizing motives of a personified Leviathan, but instead on some combination of the constituent-driven political pressures brought to bear on government officials and the set of independent interests these officials might pursue in the space afforded them by democratic agency slack.”80

In a recent article, Nicholas Bagley & Richard Revesz echoes Levinson in arguing that officials will not seek to increase the budget size.81

I call this school of thought “political interest theory,”82 under which government officials’ utility function is dominated by political costs and benefits, instead of budgetary inflow or outflow concern. Namely, government officials seek to increase (if not maximize) their own political interests, instead of minimizing compensation payments or maximizing their agencies’ budget. The behavioral predictions of this theory, by its nature, can not be specific generally, because the relative weights of political costs and benefits depend on contexts. The following sub-sections explain how Taiwan local politicians’ concern over political costs and benefits lead them to under-compensate condemnees most of the time.

2. Local Governments Swayed by Influential Landowners

The theory I adopt to explain Taiwan’s experience is the public choice theory83

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79 Levinson, supra note 5, at 969. Accord Levinson, supra note 7, at 350.
80 Levinson, supra note 5, at 916.

This seems to be an enlarged version of Levinson’s previous theory. In an earlier article, Levinson only stressed that “government internalizes only political incentives” (emphasis original), and did not discuss the independent interests of officials. See Levinson, supra note 7, at 357.
82 Levinson’s thesis also allows government officials to pursue certain personal goals. I do not deny this point, but will not discuss the personal interests of Taiwan’s government officials, because the political interest theory is sufficient to explain the findings.
in general and the political interest theory in particular. The central question here is why the under-compensated condemnees are not able to secure compensation at market value with their political influence (I will discuss over-compensation later). Actually, this question poses a potential challenge to the public choice theory. According to Mancur Olson’s classic treatment of collective action, condemnees (a small group whose members have large personal assets at stake) should be relatively easy to get organized and should acquire the compensation due them in the political arena. Yet these condemnees in Taiwan were under-compensated.

The missing piece from the above simple characterization is the interest group representing big landowners/local factions. To receive higher compensation, condemnees must make either ACLV or extra proportion increased. As for the ACLV, it is a tug-of-war between condemnees and landowners. Condemnees receive the ACLV as compensation, while landowners pay taxes according to the ACLV. As for the extra proportion, it is still the local landowners who ultimately foot the bill, though their tax burdens are less directly linked to the extra proportion—landowners’ opposition to raising extra proportions, therefore, should be weaker.

I will argue that the general insights of the public choice theory still apply, but they have to be carefully tailored before being applied to Taiwan’s specific context. A majority of condemnees were under-compensated, because local politics in Taiwan is indeed dominated by interest groups, but condemnees are only one of the interest groups. Big landowners/local factions are another interest group, having more political clout than the condemnee group. Condemnees may even fail to form a group to lobby. The rest of this section explains big landowners’ strong political influence, while the next two sub-sections elaborate the reasons for condemnees’ relative political weakness.

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Some public choice theorists, like William Fischel, adopt cost-internalization theory. See Fischel, supra note 3, at 549.


85 On the other hand, extra proportions are a big favor to ask. Extra proportions usually apply to the whole jurisdictions. Condemnees have to be very influential to persuade the government to increase compensation for all condemnees in order to give the lobbying condemnees better compensation.

86 A condemnee could seek redress within the administrative system. Namely, a condemnee can file an administrative appeal to a local government for ex post re-evaluation of her land’s ACLV. Observing through court cases, I have observed more failures than successes to persuade the Land Evaluation Committee to raise the ACLV in this ex post procedure. I do not have data to further discuss this issue. But the real estate expert I interviewed observed that condemnees have almost no chance to win in the procedure. Interview with Yi-chuan Chang, a real estate expert in Taiwan, in Taipei City, Taiwan (Jun. 8, 2006).
The key institution that determines ACLV and extra proportion is the Land Evaluation Committee in each jurisdiction. A Committee has 17 members, including the mayor, a local legislator, six local government officials, and several representatives from relevant associations. A Committee, deciding on a majority rule, can adjust the preliminary district land value (government-assessed market value) as it sees fit; its decision on ACLV and extra proportion is final and almost always deferred by DLA-MOI and the court.

In practice, the local legislator serving in the Committee, who speaks for the interests of landowners, is disproportionately influential. Mayors, seeking re-election or other positions, face pressure from landowners and local legislators and will take seriously the voters’ requests of not increasing taxes. The mayor directly oversees the six Committee members who are local government officials. They are quite likely to vote according to the mayor’s will. Those nine Committee members who are not government officials are also lobbed, or even threatened, by other local legislators, big landowners, or even gangsters, not to increase ACLV significantly.

How exactly do landowners exert their political influence on local legislators and local mayors? Local politics in Taiwan, quite different from that in America, is

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87 The city mayor is the director of the Committee. The rest of the Committee members are the city government secretariat (as the deputy director); 5 government officials from different agencies; 1 local legislator; 1 land value expert; 1 “fair local person”; 7 representatives from different associations (like appraisers’ association). Committee members serve three-year terms and can be elected indefinitely. Usually, DLA-MOI asks the presidents of those associations to attend Land Evaluation Committees. But sometimes the associations will elect another member as their representatives. Telephone interview with an official in DLA-MOI (Mar.7, 2007).

88 See Supreme Administrative Court 2002 Ruling No. 1396; Kaoshiung Higher Administrative Court 2005 Ruling No. 662; Taichung Higher Administrative Court 2004 Ruling No. 376; Taichung Higher Administrative Court 2000 Ruling No. 124.

The court rarely overturns a Committee’s decisions, except when there are serious defects in the assessment procedures. See Supreme Administrative Court 2000 Ruling No. 3134; Supreme Administrative Court 2002 Ruling No. 1396. Kaoshiung Higher Administrative Court 2004 Ruling No. 788 ruled that the ACLV in that case is obviously improper and required the Land Evaluation Committee to re-assess. All cases available at Judicial Yuan Materials Information System, http://wjirs.judicial.gov.tw/index.htm (last visited on Oct. 27, 2006).

89 See Tsai, supra note 31, at 45 n.1; Yu, supra note 22, at 95; Zhou, supra note 40, at 1. The last two authors are government employees in charge of assessing land value.

90 See, e.g., Yu, supra note 22, at 94-98; Li, supra note 45 (reporting that 95% of the participants showing up in the hearing held by local governments want the ACLV to be as low as possible).

For a general account of why elected officials respond to property tax payers’ demand, see David Lowery, Public Choice When Services Are Costs: The Divergent Case of Assessment Administration, 26 AM. J. POL. SCI. 57, 59-61 (1982).

91 In practice, among other things, a mayor can appoint another government official to replace a non-cooperative government official serving in the Committee. Thus, local government officials are expected to be subservient to the mayor.

92 No literature has discussed whether landowners in practice would lobby for extra proportion.

93 See Yu, supra note 22, at 94-101.

94 More on this in VB.5.
dominated by local factions,\(^95\) which are not like what James Madison described in Federalist No.10. Rather, Taiwan’s local factions are “more group-like, permanent and sharply defined than factions elsewhere. They have permanent names, a strong sense of identity and a stable leader.”\(^96\) These factions control various local associations (like Farmers’ Associations\(^97\)) and local credit cooperatives, so as to get as many votes as possible and get a lion’s share of the financial resources in these institutions.\(^98\) They are also “often alleged to hold ties with organized crime.”\(^99\)

The leaders of these local factions are often elected as mayors or local legislators; at least they support candidates favored by the factions. This way, local factions dominate local politics. To secure more financial resources, local factions also play a major role in the real estate business.\(^100\) As big landowners who profit from real estate transactions and pay much more land taxes than ordinary landowners, local factions strongly prefer low ACLV (so as to reduce tax payments),\(^101\) and they wield political influences to prevent the ACLV from increasing significantly within a year.\(^102\)

3. **Condemnee May Fail to Organize**

Big landowners/local factions have successfully influenced the decision on ACLV. Condemnees, a small group of landowners with a high personal stake, should also succeed (if not more successful than a bigger local faction) in lobbying for more compensation. But they do not. I offer the reasons in this sub-section. As Saul Levmore observes, small groups may “fail to organize” or “do organize but lose out to

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\(^{96}\) For a great introduction of Taiwan’s local factions and their specialty, see Joseph Bosco, *Faction Versus Ideology*, 137 CHINA Q. 28, 32-41 (1994).


\(^{98}\) See, e.g., Chen, *supra* note 95, at 138-39, 153.


\(^{100}\) See, e.g., Chen, *supra* note 95, at 144-46; Yu, *supra* note 22, at 84.

\(^{101}\) Tax rate is set by the central legislature and is applicable to every local jurisdiction. It is easier for local factions to get lower tax payment by pressing down ACLV than by lobbying for lower tax rate.

dispersed voters or larger organized groups." I elaborate them in turn.

Condemnees may fail to organize for several reasons. First of all, most condemnees are not repeated players. It is difficult to maintain a long-term organization for condemnees, because they come and go. In addition, since condemnees often are less “discrete and insular” than “diffuse and anonymous,” it is very costly, thus difficult, to set up such an organization from scratch each time some condemnees want to lobby.

Furthermore, according to Figure 6, 70,533 of the 167,696 (42%) under-compensated plots in Taiwan from 2000 to 2007 received about 90% of government-assessed market value as compensation. The losses of these landowners are relatively small and may have incentives to free-ride on others’ efforts—at least not to spend more money on lobbying than they can get back from lobbying—making the number of potential members of such organizations even smaller.

Moreover, condemnees may fail to organize because they can not be sure of the best time to lobby. Decisions regarding both ACLV and extra proportion are not rendered case-by-case, but announced on January 1 each year. To lobby for a higher ACLV or a higher extra proportion, condemnees have to know exactly in the previous year of condemnation that their land parcels are going to be condemned. The Land Condemnation Act does require a hearing before condemnation, but the hearing requirement is waived for, to name a few, condemnation plans involving military secrets, condemnation plans for which hearings have been held in the earlier stages of the urban development project.

In cases in which the hearing requirement is waived, though landowners could know the possible condemnation plan several years in advance in the urban development project hearing, landowners have no way of knowing that the

104 See the comparison and analysis of these two types of groups in Bruce Ackerman, *Beyond Carolene Products*, 98 HARV. L. REV. 713 (1985).
106 Land Condemnation Act art. 30 (Taiwan).
107 Compensation is calculated according to ACLV at the time of condemnation, not ACLV at the time of a condemnation project. The Land Act art. 240 (Taiwan).
108 Nothing substantive will be adjudicated in the hearing. The hearing is only for receiving comments from landowners and other relevant parties. In the context of this paper, the only function of a hearing is to let landowners know in advance that a condemnation might be coming.
110 If the condemnation involves military secrets, there would not be any hearing from beginning to
condemnation is near until the condemnor agency announces the condemnation plan (after the budget for takings has been approved by the legislature).\textsuperscript{111} By then it would be too late for condemnees to lobby Land Evaluation Committees with regards to changing either ACLV or extra proportion.

It is unlikely that landowners will begin to lobby for higher compensation once they know of a possible condemnation. Lobbying is not costless. An extra proportion is decided independently from an extra proportion in previous years; ACLV, though correlated with its previous appraisals, is also flexible. Securing a high ACLV or extra proportion this year does not guarantee the same terms next year. Furthermore, for potential condemnees, seeking a high compensation not in the year of their own condemnation actually benefits others (whose land is actually condemned) at their expense—they will have to pay more tax to defray higher compensation or enjoy less benefits from the remainder of the tax revenues. After all, the condemnation may never happen,\textsuperscript{112} so their political efforts may be wasted.

When such hearing is held as Land Condemnation Act requires, condemnees can be relatively sure as to when the condemnation will take place. The condemnation project, however, is still contingent on the approval by central government agencies and on the passing of the budget.

What I argue above regards high organization costs in local politics. Condemnees face similar hurdles in national politics. National legislature can amend laws to mandate compensation at (government-assessed) market value or propose a constitutional amendment of market value compensation.\textsuperscript{113} But to pass the amendments or proposals, there has to be a significant number of condemnees persuading a sufficient number of legislators \textit{at the same time}; otherwise, there will not be a required majority to amend laws or propose constitutional amendments. But without long-lasting organizations lobbying for higher compensation or other organizations that are willing to represent condemnees’ interests,\textsuperscript{114} condemnees’

\textsuperscript{111} The government would keep the condemnation plan secret until the plan has gone through the administrative process and the city council has passed the budget. Telephone interview with an official in Parks and Street Lights Office, Taipei City Government (Oct. 30, 2006).

\textsuperscript{112} Land can be designated as “preserved land for public infrastructure.” Since 1988, there was no deadline for condemning such land. Thus, landowners of such land know in advance that their land might be condemned but they are not sure whether and when (no deadline implies that governments are not obliged to condemn!).

\textsuperscript{113} Taiwan’s Constitution does not contain a specific just compensation clause or any clause specifying how the value of land should be assessed. Article 143 stipulates that “[g]overnment may condemn such land according to its value.” (emphasis added.) The Grand Justices of the Constitutional Court, Judicial Yuan, the sole institution that has constitutional review power, has not made any interpretation concerning the constitutionality of ACLV and extra proportion as “its value” compensation.

\textsuperscript{114} The most probable candidate for representing condemnees’ interests is the Farmers’ Associations,
demands will fall on deaf ears.\textsuperscript{115}

4. \textit{Condemnees May Lose to Local Factions}

Even if condemnees do organize a lobbying group, the small size of the group does not necessarily give it an edge over a large group.\textsuperscript{116} As Jerry Mashaw suggests, if what attracts government officials is the number of votes a group can offer, small size is a disadvantage.\textsuperscript{117} Daniel Farber argues that small groups of condemnees can still be “attractive customers” for government officials.\textsuperscript{118} This might be true generally, but it is not persuasive in Taiwan’s context.

To increase their compensation, condemnees have to battle with landowners/taxpayers in general and big landowners/faction members in particular. But landowners are far more numerous than condemnees. There is only about one condemnee in every one thousand landowners in a year.\textsuperscript{119} As compared to big landowners/faction members, the votes or campaign resources condemnee groups can offer is slim. Condemnees can be good “customers,” but local factions are local because from 1979 to 1991 in Taipei City (the only data available), on average 51\% of condemned land is farming-related. But I argue that farmers’ associations will not be helpful in lobbying for more compensation.

Farmers’ Associations are controlled by local factions. Condemnees have to be influential enough within the factions to trigger lobbies from the associations. Though a majority of condemnees are farmers, condemnees/farmers are still only a minority in the Farmers’ Associations. Farmers’ Associations are more likely to spend their political resources on policies that take care of most farmers or prominent local faction members than on policies that only take care of the few condemnees.

In addition, politicians are more willing to grant farmer-specific subsidies (like monthly stipends for old farmers) than awarding more compensation to condemnees, who are not a recognizable group, because it is easier for politicians to “sell” the former policies to the general public.\textsuperscript{115} In 2000, the bill of Land Condemnation Act was debated in the national legislature. The administration proposed the bill in which condemnees receive ACLV plus extra proportion compensation. In floor debates, only a few legislators made a case for more-than-market-value compensation. But they eventually gave up (probably for lack of supports from other legislators) and consented to the administration’s proposal. See Zhou-xin Dun, On Taiwan’s Land Condemnation Regime: A Power Approach, Cheng Chih University Master Thesis, 2005, p.47-48 (Chinese). The transcripts of floor debates are available at Legislative Yuan Legal System, \url{http://lis.ly.gov.tw/lgcgi/lglaw} (last visited Dec.5, 2006).

\textsuperscript{116} See Saul Levmore, \textit{Just Compensation and Just Politics}, 22 CONN. L. REV. 285, 306-07 (1990)(arguing that condemnees are unlikely to compete effectively in the political arena).

\textsuperscript{117} See JERRY L. MASHAW, \textit{GREED, CHAOS, \& GOVERNANCE: USING PUBLIC CHOICE TO IMPROVE PUBLIC LAW} 34 (1997) (“[I]f votes are the medium of exchange, then groups of large size obviously have a significant advantages, even if their interests are not so intense.”). \textit{Accord} NEIL K. KOMESAR, \textit{IMPERFECT ALTERNATIVES, CHOOSING INSTITUTIONS IN LAW, ECONOMICS, AND PUBLIC POLICY} 74 (1994).


\textsuperscript{119} From 2002 to 2006, on average, the area of condemned land divided by that of total private land is 0.00146. I use this number as a proxy for the ratio of condemnees to landowners.
politicians’ “boss.”

Those very politically influential landowners facing condemnations will not be left under-compensated, however. Their best plan is not to demonstrate under-compensation on the streets along with other condemnees, but to avoid being condemned through under-the-table strong-arm tactics. 120 Evidence shows that these powerful landowners can pressure local governments to change the condemnation project to spare their land. 121 Hence, those most influential landowners are not with the condemnee groups, making the rest of the condemnees even more politically helpless. 122

5. Explanations for Over-compensation

This sub-section explores the other side of the phenomena—over-compensation. One may wonder why it is in the political interests of government officials to award extra proportion every year. Generally speaking, big landowners/faction members oppose an increase in ACLV, but not extra proportion, since the expenses of the latter are shared by all taxpayers and not directly linked to big landowners’ tax bills. Though condemnees could offer government officials only few, if any, political resources in return, and as noted above, condemnees may not be able to lobby government officials before condemnation, government officials are willing to award extra proportion without condemnees’ quid prop quo.

120 Some evidence suggests that some landowners would seek higher compensation (maybe because they are not influential enough to change the condemnation project). A government official asserted that condemnees would ask local legislators to pressure Land Evaluation Committees to increase the ACLV of the land value districts which contain soon-to-be-condemned land. See Li, supra note 45.
121 See, e.g., Chen, supra note 95, at 122-23; Email from Cheng Chih Chen, a condemnee in Taiyuan County, to the author (Nov. 15, 2006, 10:19 EST) (on file with author)(The local administration change from constructing a linear road to constructing a curve road that bypasses influential landowners’ land).
American political lore is also rife with such stories. See Barton H. Thompson, Jr., A Comment on Economic Analysis and Just Compensation, 12 INT’L REV. L. & ECON. 141, 141 (1992).
But cf. Garnett, supra note 12, at 105, 110-20 (in a case study of Chicago’s expressway planning, surmises that condemnors “avoid taking property that has high subjective value.”)
122 Levinson has questioned the necessity of the just compensation clause, because it just “forces government to do what it will always choose to do anyway, namely minimizing the political costs of its taking by redistributing the economic costs from concentrated interest groups to diffuse taxpayers or politically expendable beneficiaries of other government program.” See Levinson, supra note 7, at 376. This argument, however, should be context-dependent—Levinson seemed to admit this point, but he did not make clear whether a just compensation requirement is still “superfluous” when condemnees are not politically influential. See id.
Taiwan’s experience shows that, without a just (market value) compensation requirement, local governments usually did not fully redistribute the costs of takings to the taxpayers, because taxpayers/big landowners are politically more powerful. In other words, Taiwan local governments did manage to minimize the political costs, but not by giving market value compensation. Therefore, a just compensation requirement, in regimes such as Taiwan’s, would force the government to do what it otherwise will not choose to do.
Without extra proportion, takings compensation will be utterly low.\textsuperscript{123} The significant decrease in compensation in the absence of extra proportion certainly will increase \textit{ex post} political pressure from condemnees through, for example, massive street demonstrations; such demonstrations in the pre-extra proportion period (before 2000) were indeed not rare.\textsuperscript{124} The court may intervene because the administration is “going too far.” Essentially, bad publicity is a political cost for government officials. Hence, it is in their political interests to offer certain extra proportions.

On the other hand, it may not be in \textit{all} government officials’ best political interests to give high extra proportion so as to award 100\% market value compensation. For government officials, there are \textit{political opportunity costs} in every \textit{discretionary} governmental spending. They may prefer to allocate the money “saved” from compensation to their pet projects, which will bring political benefits that outweigh the political costs incurred by slight under-compensation.\textsuperscript{125}

Why then, one might ask, is there over-compensation? The key point is: under some circumstances, it could be in the government officials’ political interests to give condemnees government-assessed market value, or some higher amount, as compensation. (Remember that the political interest theory does not predict compensation minimization.) For instance, in a large-scale subway or railroad construction project, a delay of land assembly due to protests against under-compensation can prolong the whole project, causing the government to pay contractual damages to various contractors.\textsuperscript{126} The damages could far outweigh the “saved” compensations and eventually take a heavy toll on government officials’ political capital.\textsuperscript{127}

Now I turn to explain the trend of increasing compensation percentage shown in Figure 3 and Figure 4. The compensation percentage is determined by the ACLV percentage and the extra proportion. Though hard to tell from Figure 2, in fact extra proportion in a jurisdiction \textit{never} increases, and most jurisdictions’ extra proportions

\textsuperscript{123} In such a circumstance, Figure 1 would become a scatter plot showing compensation percentage.
\textsuperscript{124} See, \textit{e.g.}, Zhong-dao You, Land Condemnation Practices, 2001, p.120.
\textsuperscript{125} While the fiscal illusion theory argues that a just compensation requirement forces government officials to take into account the opportunity costs of the taken properties, the political interest theory argues that a just compensation requirement forces government officials \textit{not} to take into account the \textit{political} opportunity costs of paying compensations to the taken properties.
\textsuperscript{126} In a very famous case in Taipei City (in which the compensation percentage has been higher than 100\% since 2002), partly due to massive and fierce protests against condemnation, the construction project of a subway line was delayed. In the end, Taipei City had to pay the French contractor, MATRA, 50 million dollars as damages.
\textsuperscript{127} The contractual damages could chip away at government officials’ reputation of good legal and political judgment. The damages can also reduce the budgetary resource that would have been at government officials’ disposal to increase their political interests.
remain the same. Thus the increase in compensation percentage can be attributed only to the increase in ACLV percentage.

This increase, however, is not due to the ebb and flow of local factions’ political power, but due to a change in national tax policy. In 2002, the national legislature temporarily cut the tax rate of land value increment tax in half,\(^{128}\) in order to revive the real estate market. In 2005, the national legislature makes the tax cut permanent but adds a proviso that ACLV percentage should increase to 100% gradually.\(^{129}\) But for the huge tax relief which landowners get from the tax cut, it would be politically costly for local politicians to further increase the ACLV percentage. Furthermore, the new law not only gave local governments legal mandates to increase ACLV percentage but also gave the central government fiscal incentives and authority to monitor.\(^{130}\) In sum, the change in national tax policy contributes to the trend of increasing compensation percentage.\(^{131}\) The legal mandate has disciplined local government officials’ political calculus.

VI. GENERALITY OF THE TAIWAN EXPERIENCE

There are two major findings in this Article. First, the political interest theory better explains the behaviors of Taiwan’s government officials. Second, the \textit{ex ante} assessments by the government regime in Taiwan mostly results in inaccurate compensation (much more under-compensation than over-compensation). This Part explores whether the Taiwan experience is generalizable to the American context.

The first finding should be generalizable. Indeed, for Levinson and his followers, my finding should not be surprising. By showing that the theory is applicable in Taiwan, where politicians, like those in the U.S., also need campaign contributions to win re-elections and do not pay for any budget deficit or receive any budget surplus,

\(^{128}\) There is a sunset clause of two years. In 2004, the national legislature re-enacted the same clause with a sunset clause of three years. Equalization of Land Rights Act art. 40 (Taiwan).
\(^{129}\) Equalization of Land Rights Act art. 40 (Taiwan).
\(^{130}\) Equalizing ACLV with market value turns out to be a long process. The central government and the local governments have worked out a ten-year plan to attain this goal. Telephone interview with an official in DLA-MOI (Nov. 27, 2005).
\(^{131}\) Local governments would lose a large amount of tax revenues because of the tax cut. The law stipulates that the central government reimburses local governments for the losses. In order to reduce the losses that have to be reimbursed, the law mandates the increase of ACLV percentage, by which local governments could collect more taxes.
\(^{131}\) The national legislature or the national government does not change the tax policy because of takings compensation concern. During floor debate over the tax cut in national legislature, no government official or legislator mentioned the effect on condemnation compensation; rather, they fiercely debated over the fiscal impacts of the tax rate reduction. The transcripts of floor debates are available at Legislative Yuan Legal System, \url{http://lis.ly.gov.tw/lgcgi/lglaw} (last visited Dec. 5, 2006).
this Article strengthens Levinson’s claim that American politicians make decisions based on political costs and benefits.

The second finding should also be generalizable, but in the narrower sense that under such regime it is difficult to induce government officials to assess property value accurately. Whether such a regime, when transplanted from Taiwan to the U.S., would result in under- or over-compensation depends on other aspects of the legal and political environment as well. It is inappropriate to make a general case.

For example, an American local government could choose to use the assessed property value to both tax and compensate landowners, but theoretically it could only use the assessed property value to compensate and levy property tax based on another assessed property value. Apparently, the political costs and benefits implied in these two alternatives will be quite different.

Furthermore, local politics in America is distinct from that in Taiwan. The former, many commentators argued, is “majoritarian,” while the latter is “minoritarian.” In a populous Taiwan local jurisdiction, residents are heterogeneous. Some local factions own a lot of land parcels; there are also renters

132 It is not impossible. In fact, in Taiwan after 1977, there were two government-assessed property values! One, ACLV, was used to levy land value increment tax and compensate condemnees. The other, PALV, was used to levy land value tax. ACLV was on average three to four times as high as PALV.
133 It is reasonable to assume that American local politics would not change much even if adopting an ex ante assessment by the government regime.
135 Robert Ellickson neatly defines a majoritarian politics as “an individual’s influence over governmental decisions is proportionate to his voting strength at general elections.” See Ellickson, supra note 134, at 405.
136 Ellickson defines a minoritarian politics as “the strength of an interest group is purely a function of its ability to contribute money, manpower, or other political assets to election campaigns.” Note that Ellickson used the term “influence model of politics” instead. See id, at 407.
137 97% of American cities and towns have less than 10,000 people; 52% percent have population of less than 1000. By contrast, there are on average 915,061 residents in a Taiwan local jurisdiction. Taipei County, the most populous jurisdiction, has more people than twenty-four American States. Eight of twenty-five local governments in Taiwan, with more than one million people, are more populous than seven States. Twenty-two out of twenty-five jurisdictions have more than 100,000 residents. See Serkin, supra note 134, at 1631 n.24. Taiwan local governments’ population in 2000 can be found in Statistics Search, http://www.ris.gov.tw/docs/f4a.html (last visited Sep.2, 2007). American States’ population in 2000 can be found in http://www.census.gov/population/cen2000/phc-2/tab01.txt (last visited Sep.2, 2007).
and small home owners. Local factions dominate Taiwan local politics.

By contrast, a typical small American local government rules by a majority vote. Most residents are “homevoters”\(^{138}\) with similar interests. It is difficult to predict whether a \textit{median} homevoter will prefer to under- or over-assess \textit{ex ante} property value. A homevoter may tend to over-assess her property value if she thinks that a condemnation is likely and she can not influence the takings decision—for example, when the federal government is constructing a new highway. By contrast, a homevoter living in a wealthy suburb with good infrastructure in place does not have such incentives to over-assess property value. Chances are a median homevoter in different jurisdictions will make different assessment choices.

In American large cities, scholars have argued, politics tend to be minoritarian.\(^{139}\) Whether the regime would result in over- or under-compensation depends on how well condemnees organize themselves and the relative political influences of landowner groups and condemnee groups.\(^{140}\) In addition, as discussed above, the result of the regime depends on whether compensation and tax payment are based on the same government-assessed property value or different ones. The former design, relative to the latter, increases landowners’ incentives to oppose increasing compensation. How much assessed value for compensation deviates from fair market value also affects condemnees’ incentives to take political actions. I will examine these questions in my next paper on New York City’s takings compensation practices.

\section*{VII. Conclusion}

Since 1977, Taiwan uses an \textit{ex ante} assessment of land value by government regime to levy tax and pay condemnation compensation. Data between 2000 and 2007


\(^{139}\) \textit{See} Vicki Been, \textit{The Peril of Paradoxes—Comment on William A. Fischel, “Exploring the Kozinski Paradox: Why Is More Efficient Regulation A Taking of Property”,} 67 CHI.-KENT L. REV. 913, 920 (1991) (arguing that majoritarian model “does not capture the complexities of the politics of the major cities”); Ellickson, \textit{supra} note 134, at 408 (“Developer influence should be at its greatest in a large, complex local government whose voting population includes many tenants and whose homeowners represent a wide range of income classes.”); Serkin, \textit{supra} note 134, at 1630 (recognizing that large municipality is somewhat between minoritarian state and federal government on one side and the typical majoritarian small local governments on the other side); Fischel, \textit{supra} note 134, at 92-93 (arguing that communities of less than 100,000 people tend to be more majoritarian than those with more than 100,000 people).

\(^{140}\) Levinson has argued that because of condemnees’ small numbers and geographical proximity, it is relatively easy for condemnees to organize politically. Though Levinson admits that in many cases condemnees may still be politically over-powered by the beneficiaries of takings, another interest group. \textit{See} Levinson, \textit{supra} note 7, at 375-77.
show that the local governments as assessors fail to come up with accurate assessments, due to political pressure from big landowners/faction members. As a result, about two-thirds of Taiwanese condemnees were compensated with less than the market value of their properties. This case study also strengthens the case for Levinson’s political interest theory, while casting doubt on the empirical validity of the fiscal illusion theory.

Should American policymakers consider turning to the *ex ante* assessment by government method to increase assessment accuracy, this history of Taiwan provides a valuable lesson. If policy-makers choose to tinker with the current *ex post* assessment by government method, they should bear in mind that government officials who determine the amount of takings compensation care more about their political interests than the amount of compensation paid or the size of their agencies’ budget.
Figure 1 ACLV percentage in Taiwan, 2000 – 2007

Note: Each year has 25 observations, one for each jurisdiction. ACLV is the official land value. The year median (not shown) increases gradually from around 60% to 70%, fairly tracking the change of the year mean.

Source: Department of Land Administration, Ministry of the Interior, Taiwan.141

Figure 2 Extra proportion in Taiwan, 2000 – 2007

Note: The median (not shown) in all years is 40%. The year 2000 has 24 observations. Data for 2001 are not available. There are 25 observations each year after 2002. All observations above 100% are from the two poorest, small-island counties. Five of the 25 jurisdictions have two or three extra proportions in one year. In order to visualize the data and not give these jurisdictions unequal weights, I use the mean of the extra proportions as the representative extra proportion in this figure and in the figures that follow. One of those 5 jurisdictions has used a range of extra proportions (e.g., 110%–400%) in two years. For the same reason, I use the mean of the extra proportions as the representative extra proportion in this figure and in the figures that follow.

Source: Department of Land Administration, Ministry of the Interior, Taiwan (unpublished data).
Figure 3 Compensation Percentage in Taiwan, 2000 – 2007

Note: The year median (not shown) ranges from 82 to 103. The year 2000 has 24 observations. Data for 2001 are not available. There are 25 observations each year after 2002. Compensation percentage below 100% means that stipulated compensation is below government-assessed market value.

Source: Data from Figure 1 and Figure 2.
Figure 4 Number of jurisdictions over- and under-compensating in Taiwan, 2000 – 2007

N of jurisdictions over- and under-compensating by year

Note: 174 jurisdiction-year observations in the figure (one jurisdiction in one year counted as one observation). The number beside the bar represents the number of under- or over-compensation. In total, 110 observations (63%) are under-compensation (i.e. compensation percentage < 100%), while 64 observations (37%) are over-compensation (i.e. compensation percentage >= 100%).

Source: Data from Figure 3.
Figure 5 Distribution of compensation percentage in Taiwan, 2000 – 2007

**Note**: 174 jurisdiction-year observations in the graph (one jurisdiction in one year counted as one observation). In this graph, only data whose compensation percentage $\geq 105\%$ are categorized as over-compensation, and only data whose compensation percentage $< 95\%$ are categorized as under-compensation. Accordingly, there are 32 over-compensation observations (18\%) and 90 under-compensation observations (52\%). The compensation percentages of 52 cases (30\%) fall between 95\% and 105\%. The median compensation percentage is 94.7\%.

**Source**: Data from Figure 3.
Figure 6 Number of takings plots by compensation percentage, 2000–2007

Note: Compensation percentage of 90% includes data from 85% to 95%, and so on. Takings cases for 2001 are not included in the graph due to missing compensation percentages. The number above the bar indicates the exact number of taken plots. The total number of land parcels taken = 266,940. About 14% of the cases have compensation percentage higher than or equal to 105%. About 63% of the cases have compensation percentage lower than or equal to 95%. 23% of the cases fall in the 100% bar.

Source: Data from Figure 3 and Department of Land Administration, Ministry of the Interior, Taiwan.142

Appendix: Term explanations and relationships

**PRICE**

- **Stipulated compensation:**
  - ACLV \* (extra proportion +100%)
  - The legal formula to calculate takings compensation.

- **Real market value:**
  - Unknown; approximated by government-assessed market value.

- **Government-assessed market value:**
  - (1) = Preliminary district land value.
  - (2) = The median of the investigated transaction price.

- **ACLV:**
  - The official land value for each land. Land Evaluation Committee adjusts preliminary district land value to determine ACLV.

- **Extra proportion:**
  - The additional fraction of ACLV given to condemnees at local governments’ discretion.

**ACLV percentage**

\[
\text{ACLV percentage} = \frac{\text{ACLV}}{\text{government-assessed market value}}
\]

**Compensation percentage**

\[
\text{Compensation percentage} = \frac{\text{ACLV percentage} \times (\text{extra proportion} + 100\%)}{\text{government-assessed market value}}
\]

\[
\text{Compensation percentage} = \frac{\text{Stipulated compensation}}{\text{government-assessed market value}}
\]

\[
\text{Compensation percentage} = \frac{[\text{ACLV} \times (\text{extra proportion} + 100\%)]}{\text{government-assessed market value}}
\]