Covert Confiscation: How Regimes Differ in Their Strategies of Expropriation

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Abstract

A substantial literature concludes that democracies are less likely to expropriate foreign direct investment (FDI) than autocracies. However, little attention has been paid to the strategies of expropriation regimes employ. We theorize that when democracies engage in forced divestment, they ought to utilize different methods than their autocratic counterparts. Using a dataset containing all expropriations of FDI that occurred in developing countries between 1960 and 2006, we show that rather than rely on outright nationalization, democracies are more likely to use methods such as forced sale or contract renegotiation, tools which are harder to detect, easier to justify, and may not require formal legislative approval. In fact, while democracies may be less likely than autocracies to nationalize foreign investment, they seem to be as likely as autocracies to engage in more subtle forms of confiscation. Our findings suggest that by bundling types of expropriation, scholars may be overlooking important differences in regime strategies.

1 Introduction

Foreign direct investment (FDI) can provide important benefits to developing countries, not only spurring productivity and growth but also encouraging the introduction of new technologies.[1] Yet in order to attract this potentially lucrative form of capital, governments must be able to credibly commit to uphold the property rights of foreign direct investors. A substantial literature stemming from the work of Olson (1993) and North and Weingast (1989) concludes that democracies have an inherent advantage when it comes to making such commitments. Proponents of this view argue that because democratic executives face greater political constraints than autocrats, democracies should, on average, provide better protections to foreign property owners (Doces 2010; Jensen 2003; 2006; 2008; Li 2009; Li and Resnick 2003). Such theories offer important predictions about the rate of expropriation of FDI across various forms of government, yet they are silent on the type of forced divestment in which these governments are likely to engage.[2]

As a result, the literature has tended to overlook what we believe is an important source of variation. Specifically, we demonstrate that even though all forced divestment may be undesirable from the perspective of the original property holder, there are substantial differences in how involuntary ownership transfer can be accomplished and the extent to which this is likely to be constrained by democratic institutions. Unlike the most overt forms of expropriation, such as nationalization, less conspicuous methods of forced divestment are less likely to require legislative approval, making constraints on the executive largely moot. In addition, subtler forms of breach may be difficult to distinguish from voluntary renegotiation. This not only allows governments to claim publicly that the terms were fair for the foreign investor, which could help reduce economic consequences and any concomitant

[1]The degree to which FDI has unambiguous positive effects remains heavily debated, with some scholars suggesting that in order for FDI to provide benefits, certain domestic preconditions may be necessary (see e.g. Hermes and Lensink 2003).

[2]One recent paper that does consider potential differences in strategies of takings across regimes focuses on democracies' potential to engage in transfer restrictions, as opposed to expropriation (Graham, Johnston and Kingsley 2018). Although this paper has some notable parallels to our own, like the other papers cited, it does not disaggregate expropriation types.

public backlash, but it may also allay the concerns of veto players that the act will lead other investors to pull out en masse. This suggests that two of the democratic mechanisms often assumed to play a central role in protecting foreign investors' property rights – legislative constraints and audience costs – may actually be far less effective at preventing more covert methods of confiscation.

In what follows, we show that different types of regimes do indeed employ different strategies of expropriation. Specifically, much as Kono (2006) has suggested that democracies use less conspicuous methods of trade protections, we demonstrate that democracies use less observable (or what we term "covert") methods of forced divestment, including contract renegotiation and forced sale. Such strategies allow democratic governments to enjoy the advantages of expropriation, while minimizing the bite of institutional impediments. By contrast, minimally constrained governments seem to prefer more open, or what we term "overt" forms of expropriation, such as nationalization. Overt expropriation is particularly desirable for governments with fewer checks on their authority, because it provides an immediate and sizable benefit to the state, without requiring any sort of extended show of negotiation with the aggrieved party. At the same time this expropriation strategy is also the most publicly visible and the most difficult to achieve in the face of institutional impediments, making it less attractive for politically constrained regimes.

In order to test our claims, we leverage existing data on all identified expropriations of foreign direct investment that occurred in a subset of 89 developing countries between 1960 and 2006. Through a combination of our own investigative efforts and reliance on prior coding by the researchers who originally recorded the expropriation acts, we have been able to categorize the types of breach that actually occurred across our dataset. We were then able to use information on government characteristics to investigate the correlates of these different types of breach. By focusing on expropriation specifically and not investment disputes or complaints more generally, we restrict attention to instances in which the transfer of assets from the foreign investor was the intent of the act in question, thereby guaranteeing a close alignment of theory and empirics. Although expropriation has declined as a tool of state since its peak in the mid-1970s (Minor 1994), it continues to play a central role in firms' investment decisions (Akhtaruzzaman, Berg, and Hajzler 2017), and recent years have witnessed a seeming resurgence of the strategy by governments. For example, in Venezuela, Hugo Chavez seized numerous foreign-owned companies, including a number of oil companies and a major international fertilizer producer between 2007 and 2011. Nicolás Maduro has similarly relied on expropriation in the past few years, even taking control of a General Motors factory in 2017. These recent examples suggest that expropriation remains a highly relevant source of risk for foreign investors, making it an important area of continued study.

Our empirical analysis of expropriations between 1960 and 2006 reveals that, in accordance with our theoretical expectations, democracies are less likely than autocracies to use overt forms of forced divestment, instead relying on more inconspicuous methods. Indeed, most of the difference between democracies and autocracies in their propensity to expropriate previously identified in the literature appears to be driven by overt expropriation. Given this finding, one might ask: why is it that democracies are less restrained in their use of covert expropriation than they are in their use of more obvious methods of seizure? We lay out a theory for why constraints on the executive and audience costs, two factors often assumed to play a central role in protecting against expropriation more generally (see e.g. Jensen 2003; 2006; 2008; Li 2009), may not do much to protect against covert expropriation specifically. Our empirical analysis offers support for our theoretical expectations, revealing that, conditional on expropriating at all, regimes with greater legislative constraints and vertical accountability are more likely to prefer covert methods of forced divestment relative to overt alternatives. In addition, using a panel of developing countries that includes both nations that did and did not expropriate during the period under study, we find evidence that although political constraints are effective at reducing conspicuous forms of expropriation, they have far less ability to prevent more covert methods.

Our findings provide important nuance to the long-standing conventional wisdom that democracies offer better property-rights protections to foreign direct investors than autocracies. We show that this may be less a difference of rate than of strategy, raising fundamental questions about whether it is really the case that institutionally constrained regimes are less likely to engage in all forms of expropriation or just some. Considering that less overt forms of forced divestment are, by definition, harder to observe, this suggests that the literature may have generally tended to overstate the democratic advantage in protecting foreign direct investments.

The rest of the paper proceeds as follows. In the next section we provide a brief overview of what is known about governments' propensity to violate the property rights of foreign direct investors. We then outline our theory for why we expect to see differences not just in the rates of property right violations but also in the types. Our theoretical section is followed by a description of our data and results. We then discuss our findings and conclude.

2 The Propensity to Expropriate

Governments have a variety of incentives to engage in the expropriation of foreign direct investment. In some cases the seizure of foreign assets may provide a short-term monetary windfall, which can then be used to refill dwindling state coffers in economic downturns, pay off government loyalists, or prop up an individual party or leader. In other instances, governments may simply decide that the contract that had been previously agreed upon with the foreign firm no longer serves government interests, either because it was agreed upon by a prior government or simply because times have changed. Expropriation may even be a way to satisfy certain domestic interests, who may value breach due to its potential for redistributing income from foreign to domestic interests. While there are numerous possible reasons governments may engage in expropriation, the act can generally be said to reflect the prioritization of short-term gains over long-term costs. And indeed, expropriation is far from costless in the medium- to long-term. Perhaps the most obvious cost is that the seizure of private assets can lead to a loss of investor confidence, resulting in reduced investment or disinvestment by investors worried that their principal will be vulnerable.[3] To the extent that FDI contributes to economic growth and technological transfers, a substantial

[3]See e.g. Wellhausen 2015.

reduction in these investments also means that a country may miss out on opportunities to acquire beneficial financial inflows and valuable technical knowledge. Perhaps equally concerning from an economic standpoint, expropriation can result in substantial efficiency losses, particularly if it occurs in technologically complex industries, as states are often less capable of managing a previously foreign-owned company than the actor from which they seized it. Finally, expropriation can contribute to political tensions, as foreign governments step up to defend the financial interests of domestically-headquartered multinationals who have been the victims of asset seizure. Such international political consequences were on full display following Argentina's decision to expropriate a Spanish energy company in 2012, a move that led to public reprimands by the Spanish Foreign Minister ("Argentina, Spain at odds" 2012).

Given both the benefits and costs inherent to expropriation, what might explain a government's relative propensity to engage in it? An influential literature has focused on the role of institutions. Building off of Olson (1993) and North and Weingast (1989), who argued that the sorts of political constraints found in democracies help to guarantee property rights more broadly, numerous scholars have sought to evaluate whether democracy might similarly protect against expropriation of foreign direct investment in particular. There are several reasons why we might expect there to be a negative relationship between democracy and expropriation of foreign investments.

First, because democracies tend to have a higher number of constraints on the executive – in the form of institutional oversight and veto players – democracies should be curbed in their ability to pass new statutes (Tsebelis 1995; 2000), including those that allow for expropriation. Even if veto players alone are not always enough to constrain the state (Stasavage 2002), because expropriation can damage current and future financial relationships between domestic residents and foreign investors, at least some domestic leaders ought to have an interest in opposing it. As Wellhausen (2014) notes, "Different actors in the host government may. . . be more or less sensitive to the costs of foregone capital and any diplomatic pressure exercised on a targeted firms behalf" (21). This suggests that the greater the degree to which there exists political actors able to impose oversight on the executive, the more likely we might expect it to be that the executive could face resistance to any given expropriatory act and the more likely that the act would thus be prevented.

Second, to the extent that expropriation undermines current or future investment as well as long-term economic growth, the voting public may serve as a bulwark against it. This is not to say that voters will always oppose expropriation. On the contrary, there may be instances in which the public actually supports the confiscation of foreign assets at the time that the confiscation takes place.[4] Nevertheless, as expropriating governments lose the trust of foreign investors, thereby leading to reduced job opportunities for workers and stagnating economic growth, voters may be inclined to punish them at the polls. Jensen (2003; 2006; 2008) refers to this mechanism as "audience costs," positing that " If governments make agreements with multinational firms and renege on the contracts after the investment has been made, democratic leaders may suffer electoral costs" (Jensen 2006, 81). Concern about these electoral costs could then play a central role in dissuading expropriation in democracies, even if we might expect this constraint to be somewhat less binding on the whole than legislative oversight.

2.1 Evidence on the Propensity to Expropriate

Among those who have examined whether democracies do in fact provide better protections to foreign investors, many have found support. For example, a number of scholars have examined how FDI inflows relate to regime type, with the assumption that property rights protections ought to play an important role in determining these flows. On this front, Jensen (2003) concludes that the increased credibility that democracies offer due to the presence of veto players and audience costs has contributed to higher investment levels. Nieman and Thies (2018) show not only that property rights have allowed democracies to attract higher levels of FDI but that the marginal effect of property rights protections has been increasing over time. Likewise, work by Feng (2001), Li (2009), Doces (2010), Staats and

[4] The conditions under which this might hold are discussed in Albornoz, Galiani, and Heymann 2009.

Biglaiser (2012), and Madani and Nobakht (2014) all find positive effects of democracy or democratic-type constraints on FDI inflows, while Li, Owen, and Mitchell (2018) use metaregression analysis of prior studies such as these to conclude that property rights is a robust driver of the relationship between FDI and democracy that these studies observe. Moreover, even though not all scholars agree that democracy is an unmitigated good when it comes to attracting foreign capital (see e.g. Asiedu and Lien 2011; Zheng 2011; Busse 2004; Oneal 1994; Biglaiser and DeRouen 2006; Resnick 2001), even some of those who acknowledge that democracy can have a partially negative impact on FDI still view democracies' superior property rights as a draw to investors (Li and Resnick 2003).

Nevertheless, cross-border investments are determined by numerous factors outside of just expropriation risk, and these myriad factors may be difficult to fully disentangle. As a result, FDI inflows may not be the best indicator of a government's ability to credibly commit to protect foreign assets. A more direct measure would be actual or perceived risk of expropriation. Here there again seems to be some support for the hypothesis that democracies are more dependable. For example, Jensen (2008) investigates the premium charged by political risk firms to insure against expropriation, finding not only that these agencies charge lower rates for investments in democracies but that this is due to increased constraints on the executive in democratic regimes. Likewise, Li (2009) concludes, using actual instances of expropriation, that democracies are less likely to expropriate from foreign direct investors overall, while also showing that leaders' time horizons play an important mediating role. Finally, Wilson and Wright (2015) demonstrate that even in autocracies, legislatures can have a constraining effect on acts of expropriation, with this effect dependent on whether the autocracy is or is not a personalist regime.

At the same time, several recent studies have offered caveats. For example, using Jensen's political risk outcome, Fails (2012) shows that inequality has as an important conditioning effect on executive constraints. Albornoz, Galiani, and Heymann (2012) find that democracies are actually more likely to expropriate in sectors that use labor less intensively. Finally, in a piece with some notable parallels to the current study, Graham, Johnston, and Kingsley (2018) demonstrate that despite protecting against expropriation, democracies do not protect against a different form of taking, known as transfer risk.[5]

The literature cited above provides valuable insight into the extent and conditions under which a regime's institutional characteristics protect against the seizure of foreign direct investment. However, with the exception of Graham, Johnston, and Kingsley (2018), none of this work has attempted to evaluate whether different political institutions might contribute to different types of property violations. Rather, there seems to be an implicit assumption across the vast majority of this work that any contract breach that reaches a certain threshold and/or involves the involuntary transfer of assets away from foreign investors is theoretically equivalent to any other.[6] We believe that the absence of theorizing on the motivations behind different forms of forced divestment leaves unexplored an important way in which regimes ought to diverge. In the next section, we outline the theoretical reasons to expect that regime types will systematically vary not only in their propensity to expropriate but, perhaps equally importantly, in their strategies of acquisition.

3 Why Expropriation Type Should Differ Across Regimes

As previously outlined, because expropriation of foreign direct investment can have a negative impact on specific domestic actors, as well as on the economy as a whole, democratic or even autocratic leaders who have to navigate checks on their power ought to find it more difficult to engage in this type of behavior than those without commensurate institutional impediments. Yet here we introduce an important qualification that, to date, has received little attention from those seeking to explain patterns of forced divestment: not all expropriation is equally susceptible to domestic political constraints.

[5]In addition to the above-cited literature focusing on how government characteristics impact expropriation risk, some scholars have pointed to the importance of multinationals' characteristics. For example, Wellhausen (2014) demonstrates that shared nationality across multinational firms can provide a "shield" of protection against expropriation, and Johns and Wellhausen (2016) show how supply chain links can help firms protect themselves and one another from contract breach. In addition, Betz and Pond (2019) demonstrate how domestic firms leverage financial links with foreign firms to gain protection from expropriatory states.

[6]While work by Kobrin (1980) and Hajzler (2012) separates out expropriation types, their analysis predominantly focuses on differences across sectors, not governments.

For constraints on the executive to be effective, expropriation must occur through channels in which institutional constraints come into play. In addition, those in a position to constrain the executive must actually have the motivation to do so. Notably, as we will lay out in more detail below, not all types of expropriation are equally susceptible to institutional constraints, since not all types of expropriation require legislative approval. If certain types of expropriation can occur outside of channels over which veto players have control, it is unclear why veto players should be expected to constrain those types of expropriation.

Moreover, even in cases in which potential veto players must sign off on an expropriatory act, there should be some variation in their willingness to do so. Specifically, officials are most likely to block an expropriation if failure to do so would hurt their ability to stay in office. Officials' future office prospects, meanwhile, are likely to hinge on their reputations with key interest groups and the public more generally. Yet the damage to these dual reputations may not be equal across all expropriations. A working paper by Pelc and Kerner (2020) suggests that more flagrant acts of contract breach are more likely to harm future investments, suggesting that less obvious property rights violations may do far less damage to the economy as a whole and to those who rely on FDI specifically. This implies that veto players may be less likely to veto and harmed members of the public may be less likely to punish more subtle acts of expropriation.

More generally, to the extent that the public itself acts as a mitigating force against the executive engaging in expropriation, the public is most likely to play this role if they are able to observe the expropriatory act in question and conclude that it could contribute to bad economic outcomes or damage to the country's reputation with foreign investors.[7] Public observation, however, is most likely to occur through media coverage, and the media is most likely to cover particularly egregious and/or visible acts of expropriation, since these make for better reading or viewing. By contrast, while acts of ambiguous forced divestment may

[7] This is not to say that the public will always oppose expropriations in the first place. There undoubtedly are cases in which the public supports and perhaps even encourages expropriation. Nevertheless, to the extent that the public does disapprove of action that could undermine the country's reputation with foreign investors, this is only likely to be relevant if the public knows that the government is engaging in action that is damaging to the country's reputation.

receive some press, they make for far less sensational material, if they are covered at all. As a result, both the public and veto players, to the extent that they play a role, should exert more pressure to prevent highly visible methods of seizure.

This suggests that while it may be true that democratically elected leaders expropriate less overall, democracies and more heavily constrained autocracies should be particularly unlikely to engage in acts of expropriation that are highly visible, unambiguously rob the foreign entity of its stake, and require the approval of potential veto players. At the same time, it is far less clear that democracies (or constrained autocracies) should be heavily dissuaded from subtler forms of expropriation. This is an important observation. As it turns out, governments have a range of tools available to them when it comes to depriving foreign entities of the value of their investment, and these tools vary not only in their extent of encroachment but also in the degree to which they are visible to the public and provide the cloak of legitimacy. According to Kobrin (1980), who first coded acts of expropriation across a wide range of developing countries and who, himself, relied on previous distinctions, expropriation can be divided into four broad types.

Types of Expropriation

The first type of expropriation is *formal expropriation* or what we refer to as "overt" expropriation. Formal expropriation covers the most egregious forms of forced divestment, including nationalization and socialization. According to Kobrin, formal expropriation can be defined as "[t]he taking of foreign property directly by the government under the due process of local law. This generally entails an act of parliament or an executive order for which proper authority exists" (1980, 68). In other words, this form of expropriation involves the wholesale, government approved transfer of property from the foreign investor to the state, at times without compensation. As evidenced by the flurry of international news coverage following Hugo Chavez's decision to nationalize the oil industry, as well as following his nationalization of several firms in the agricultural industry, formal expropriation tends to be a highly public form of seizure. In addition, it typically requires the official acquiescence of the legislative branch.

The second type of expropriation is *intervention.* Intervention occurs through extra-legal means, either by public agents or by private actors. In some cases, governments subsequently legitimate the transfer, and in all cases, they do not step in to prevent it or provide immediate compensation, a decision that may stem from a desire to retain the property when the seizure is by a public agent or from a desire to appeal to the expropriating group when the seizure is by a private one. Unlike formal expropriation, intervention does not require the legal approval of the executive or legislative branches of government. In addition, even in cases in which elements of the government play a central role in the taking, the central authorities can, at times credibly, claim a lack of complicity. For example, in 2003, 25 policemen took over the offices of an American telephone operator in Cote d'Ivoire, leading a senior Bush administration official to accuse the government of "the worst treatment of an investor and the worst example of state-sponsored thuggery I have seen anywhere." In response, the Ivorian government issued a statement saying, "Cote d'Ivoire has never expropriated a foreign company, whatever the nationality, and has never had the intention to do so. The government deplores the incident that occurred between the protagonists and will take all necessary measures to deal appropriately and definitively with the issue" (Both quotes found in Kramer 2003). As this example and the above discussion ought to make clear, intervention is a fundamentally different act than formal expropriation, providing a theoretical reason to expect that it might follow a fundamentally different pattern.

The third type of expropriatory act is *forced sale.* This is when the government uses threats or other forms of intervention to compel a foreign owner to sell to the government at a price not reflecting the investment's true value. Like formal expropriation, this occurs through legal channels, but unlike formal expropriation, it provides the government with the ability to claim, however insincerely, that the sale was voluntary. Indeed, even scholars studying expropriation acknowledge that "[i]n forced sales of foreign property it may be quite difficult to distinguish between the bargaining posture of an investor who may be quite happy to "get out" and a legitimate forced divestment" (Kobrin 1980, 68). Forced sale may also entail a lower legal bar for the executive, particularly in cases in which the sale is accomplished not through writ but through threat of formal expropriation against the company or through the deliberate creation of a hostile investment environment. As a result, this form of seizure can largely bypass the legislator, making it easier to execute than formal expropriation, even in the presence of multiple veto players.

The final form of expropriation is *contract renegotiation*. This is when the state uses coercion or the threat of coercion to force the foreign entity to enter into a renegotiation of the original terms to which the two parties agreed.[8] Much like forced sale, expropriatory contract renegotiation may be difficult to pinpoint, as it provides the facade of an agreement between the host government and the foreign investor, thereby offering cover to the expropriator. Indeed, some scholars who have attempted to code acts of expropriation have noted that recorded instances of contract renegotiation may be underestimated, which "may be more the result of their low visibility than their infrequency in practice" (Hawkins, Mintz, and Provissiero 1976). In other words, contract renegotiation also differs in a crucial way from formal expropriation. Not only does it represent a more creeping form of breach, making it less newsworthy and/or easy to identify, but it offers a veneer of compromise and mutual acceptability that is typically lacking with nationalization.

The discussion of these four types of expropriation should make it clear that they can vary significantly in their mode of accomplishment, degree of visibility, and susceptibility to institutional constraints via either audience costs or legislative oversight. In particular, formal or "overt" expropriation is likely to provide the fastest and greatest windfall for an actor facing few political constraints, since it requires no negotiation with the foreign company and entails a wholesale taking without adequate compensation. Overt expropriation is also likely to be the most detrimental to foreign investors, and it is easily the most publicly visible and hardest to defend as either outside the government's control or desired by both parties. On the flip side, the remaining three types of expropriation or what we term the "covert" types can more easily be accomplished in the presence of audience costs and legislative constraints.

[8] Notably this excludes acts that are sometimes termed "creeping expropriation" such as regulatory changes that may be expensive for the firm but fall short of a full transfer of value to the state.

Covert expropriation should be less susceptible to audience costs because it is often more difficult to observe and is a less obvious instance of intentional reneging by the government. Governments seem to appreciate and indeed play into the difficulty of labeling covert expropriation for what it is. Whereas denial of complicity may serve as a useful cover in cases of intervention, when it comes to contract renegotiation and forced sale, governments often fall back on legalistic rhetoric to mask the breach that has occurred. For example, in defending its decision to raise levies on foreign-owned Bauxite mines by 470% in 1974, the Jamaican Prime Minister painted himself as "entirely responsive" to discussions with the companies regarding their future and noted that additional contract changes would "of course, be subject to negotiation" (Riding 1974). Subsequently, the Jamaican Prime Minister justified further encroachments against the companies by stating: "The companies have failed to prove that Jamaica's position is unjust or based on faulty logic. In the light of this, the Government has decided to exercise its sovereign right to impose just and equitable taxation" (Neita 2014). A more recent incident involving Bolivia offers an additional illustration of how governments can use covert forms of expropriation while still offering a facade of mutual agreement. After a state takeover of four energy companies, Bolivia's Energy Minister reassured reporters, "This is not a forced sale because since May 1, 2006, the companies have sent various letters where they accepted the nationalization decree. The sale is not compulsive and is being done within negotiated parameters" (Quiroga 2008). These examples suggest that forced sale and contract renegotiation allow states to dissemble about whether a breach of contract has occurred. These forms of expropriation additionally allow governments to claim to respect the rule of law, even while engaging in an act that represents the repudiation of a formal agreement. Moreover, in cases in which the expropriation was accomplished through intervention, the government can use plausible deniability, thereby limiting the deterrent effect of audience costs. All of this suggests that, relative to overt expropriation, audience costs should play a reduced role in preventing covert expropriation.

The reduced role for audience costs also ties into why we might expect executive constraints to act less forcefully to curtail covert expropriation. With legislators and other officials less concerned about being held accountable, they may be more willing to vote in favor of covert expropriation in situations in which their approval is required. Qualitative evidence provides support for this hypothesis. For example, in 2012, Kyrgyzstans parliament blocked an attempt to nationalize a gold mine owned by Canadian mining company Centerra Gold. At the same time, the legislative body did allow a special commission to work on implementing a revised contract with the company that would have served the government's interests (Dzyubenko 2012). Potentially more important than the fact that veto players may be less likely to block covert expropriation is the fact that covert expropriation can, in many instances, be accomplished in such a way that veto players need not initiate the process at all but simply must approve the final deal, after a firm has already been browbeaten into agreeing to a change of contract or ownership. Moreover, particularly in the case of intervention, veto players can be entirely sidelined, as this form of expropriation is not accomplished through a formal legislative act at all. Because of this, constraints on the executive may often prove less binding or entirely irrelevant when it comes to using covert expropriation.

The above discussion suggests that there are theoretical reasons to expect that when democracies (or constrained autocracies) expropriate, they will gravitate towards covert expropriation, while being particularly dissuaded from using formal or what we term overt expropriation. By contrast, unconstrained autocracies may actually prefer overt expropriation, due to its potential to provide an immediate benefit through unilateral declaration. The remainder of the paper seeks to test these expectations empirically.

4 Data and Methods

In order to investigate the relationship between regime type and strategies of expropriation, we leverage existing data on expropriation from several different sources. Our earliest data come from Kobrin (1980), who recorded all acts of forced divestment in a subset of developing countries between 1960 and 1976. Kobrin defines an act of expropriation as "the forced divestment of any number of firms in a single industry in a single country in a given year" (72). This means that some acts will involve the taking of only a single entity, while others may entail the seizure of a large number of separate companies. While Kobrin acknowledges that this means that acts may vary greatly in the value and number of firms expropriated, this unit of analysis most accurately captures each individual decision to expropriate. Kobrin collected his data through the systematic search of a large number of secondary sources, including U.S. State Department reports, business periodicals, and newspapers. To the extent that Kobrin's reliance on secondary sources might introduce bias into the data, it ought to bias towards more frequent observations of the most visible instances of expropriation relative to their use in practice. Considering that the covert forms of expropriation are less easily identifiable, we expect that the dataset ought to include the most flagrant examples of these covert types of expropriation, something that, if anything, ought to bias against a positive finding, since the more visible an act of expropriation is (covert or otherwise), the more constrained democracies ought to be in engaging in it. In addition, the potential for under-recording the more covert forms of expropriation could also mean that scholars, more generally, have underestimated the frequency with which intervention, forced sale, and contract renegotiation occur. That said, it is important to note that although governments obviously have an incentive to hide expropriations, evidence of expropriation, almost universally, emerges not from the government but from the aggrieved party. As a result, holding the type and severity of expropriation constant, there is no reason to expect that there would be systematic bias in revelations of expropriation across different regime types.

In addition to the data from Kobrin, we also include data from Minor (1994), who used Kobrin's same coding and search techniques to update the expropriation database through 1992. Finally, we incorporate data from Hajzler (2012), who built off of Kobrin and Minor's work to bring the data up to date through 2006. All three of these datasets represent the most comprehensive available documentation of expropriations.[9] We are unaware of any

[9] Recent work by Arel-Bundock, Peinhardt, and Pond (Forthcoming) provides an alternative dataset of expropriations. However, this data is less suited to the current study, as it only includes expropriations covered under contracts issued by the US Overseas Private Investment Corporation. Moreover, due to omitted information in the Kobrin and Minor data, it would be impossible to determine which expropriations in the Arel-Bundock, Peinhardt, and Pond data overlap, making its use as a supplement to our data challenging.

other work that can offer a superior account of these acts. Combined, the three datasets contain 628 acts of expropriation[10] over 47 years, perpetrated across 89 countries.

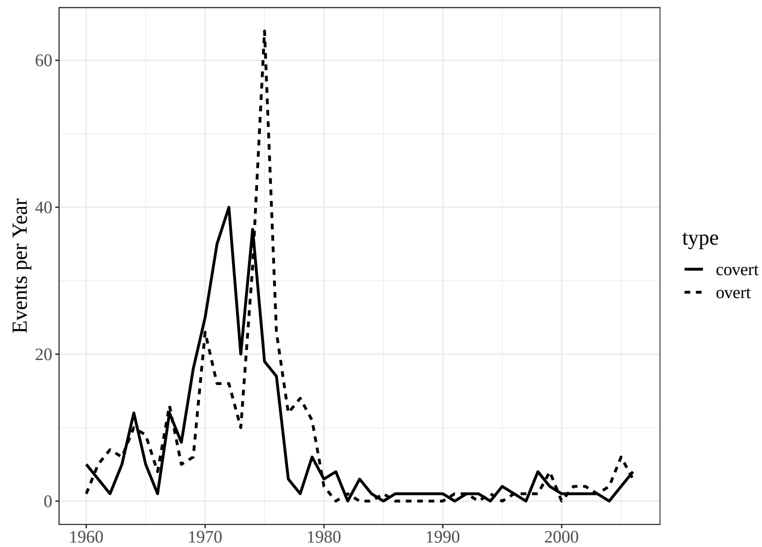
As for the type of expropriation, two of the three authors (Hajzler and Kobrin) include this in their data, with Hajzler noting that his definitions of type are consistent with Kobrin's.[11] Unfortunately, Minor omits expropriation type entirely, while Kobrin is missing type in approximately 14% of the cases. This means that, combined, expropriation type was previously coded for 85% of acts. Using Kobrin's definitions to ensure consistency, we were able to directly identify expropriation types for another 8% of cases through an internet search of U.S. State Department documents, newspaper archives, academic papers, and investment dispute cases. This meant that we were able to confirm expropriation type for 93% of the 628 acts. For models in which we use the expropriation act as the unit of analysis, we only relied on the 93% of expropriation events for which type had been definitively coded, while dropping events in which type was unknown. However, for our panel analysis, which explores the relative propensity of democracies to engage in different forms of expropriations, dropping these acts might bias the results, if missingness is not at random. In order to protect against such bias, we implemented multivariate imputation, using R's mice package (van Buuren and Groothius-Oudshoorn 2011).

Figure 1 provides an overview of the data, plotting the number of overt and covert expropriation acts over time. While it is clear that expropriations peaked between 1970 and 1980, we can see that following a lull in the 1980s and 1990s, they have begun to rise again in the 2000s. Although it is not within the scope of this paper to assess what accounts for these temporal patterns, previous work has suggested that the decline in expropriation throughout the last two decades of the 20th century may be partially attributable to governments already having expropriated everything there was to expropriate, governments' disillusionment with what expropriation actually won them, as well as increased appreciation for the returns to

[10] Four of the acts from the Kobrin dataset did not include dates. Although we were able to determine the date for one of those acts, the remaining three had to be dropped from the dataset.

[11] Some coding decisions suggest that Hajzler may have used a broader definition of contract renegotiation. To ensure that this does not drive results, we report results excluding Hajzler's data (thereby omitting the years 1989 to 2006) in the Appendix.

Figure 1: Expropriation Events by Year



foreign direct investment (Kobrin 1984; Minor 1994). We address the possibility that FDI may be lacking in certain countries at certain times in our panel analyses by using only country-years with known FDI stock. As for the more recent rise in forced divestment, this could relate in part to renewed opportunities for seizure. Prior work has also suggested that price fluctuations may influence expropriation timing in the affected sector (Guriev, Kolotilin, and Sonin 2011).

What is more relevant for our purposes than the overall prevalence of expropriation over time is the fact that the two types of expropriation closely mirror each other temporally, ebbing and flowing in tandem. This provides reassurance that the different strategies of expropriation are not due to broader temporal trends that may be unrelated to domestic institutions. As for the relative frequency of these two types of expropriation, we find that roughly half of the expropriation acts (54.5%) fall into the overt category, as compared to 45.5% that fall into the covert category. In other words, both overt and covert types occur at roughly similar rates, though overt expropriation is a bit more common.

In order to evaluate the impact of regime type on expropriation strategy, we primarily relied on Polity scores (Center for Systemic Peace 2018). Countries that received a Polity score of +6 or higher were coded as democracies; those that received a score below this value were coded as non-democracies. Results are robust to alternate measures of democracy, including the Boix-Miller-Rosato Dichotomous Coding of Democracy and the Cheibub, Gandhi and Vreeland Democracy and Dictatorship coding (see Appendix for results).

We also draw on a measure of legislative constraints. Our theory suggests that governments will be more likely to engage in overt, relative to covert, expropriation if the executive is less constrained by government agencies, since overt expropriation should require legislative approval, so long as a legislator exists. In order to capture legislative constraints, we used a metric from the Variations of Democracy (VDem) project. *Legislative constraints* is a composite index from 0 to 1 answering the following: "To what extent are the legislature and government agencies e.g., comptroller general, general prosecutor, or ombudsman capable of questioning, investigating, and exercising oversight over the executive?"[12] With this we can test the degree to which legislative oversight constrains different methods of expropriation.

Our last independent variable captures the potential for audience costs, which we interpret as the ability of the public to hold the government accountable. Our theory suggests that audience costs should play a larger role in preventing overt expropriation, relative to covert, because this form of expropriation is particularly visible to the public and also especially difficult to defend as in the interest of future economic growth and consistent with respect for property rights. To proxy for the potential for audience costs, we use VDem's measure of *vertical accountability*: "Vertical accountability captures the extent to which citizens have the power to hold the government accountable. The mechanisms of vertical accountability include formal political participation on part of the citizens such as being able to freely organize in political parties and participate in free and fair elections, including for the chief executive." This metric allows us to evaluate whether the degree to which citizens are able to hold their government accountable is linked to states' strategies of expropriation, as predicted in our theory.

To explore the relationship between regime type and overt expropriation, we employ two

[12]The original VDem coding drops country-years where there is no legislature, meaning that the minimum value is greater than zero. Results presented here re-code these values as zero. However, results hold when using the original coding (Appendix A.3).

primary strategies. Our central analysis estimates the relationship between democracy and overt expropriation, conditional on a state using expropriation at all. To do this, we draw on an expropriation event-level dataset of all 628 acts identified by Kobrin, Hajzler, and Minor. This allows us to identify the relationship between democracy and overt expropriation among states that choose to seize assets. Our theory predicts that, relative to autocracies, when democracies expropriate they should be less likely to use overt types of confiscation, instead turning to more covert methods.

Second, we draw on a panel dataset of country-years to identify whether democracies are less likely to use both overt and covert expropriation, or whether their behavior differs across these two types. First, we use Ordinary Least Squares with the number of different types of expropriation (any type, overt, and covert) in a country-year as the dependent variable. Second, we draw on multinomial logistic models, where the dependent variable is coded as 0 for country-years with no expropriation events; 1 for country-years with covert expropriation; and 2 for country-years that saw overt expropriation. While this bins the number of events in a country-year, multinomial logit allows us to estimate the relationship between democracy and both covert and overt expropriation, and to test the difference between these two coefficients.

In the body of the paper we show results using a subset of developing countries that includes only country-years with U.S. FDI stock available (Tomz and Wright 2010). While this may miss some country-years where there was investment by non-U.S. sources, this metric ensures that we are only evaluating observations for which there was some FDI to expropriate. Failure to account for the existence of FDI, by contrast, might lead us erroneously to conclude that a country decided not to expropriate when, in fact, there was no potential for expropriation to occur. For this reason, we have decided to err on the side of caution and just retain country-years for which we know FDI was present. We additionally exclude European countries and Cuba, both of which Kobrin did not cover in his initial data collection, meaning we do not have information about these countries' patterns of expropriation. In the Appendix, we demonstrate that results hold using alternate forms of the panel:

using all developing countries, and using only countries that Kobrin coded as having used expropriation in his initial data collection effort, as these are the countries about which we can be sure he had information. In total, this produces an unbalanced panel dataset with 4,241 observations.

We also incorporate a number of other relevant controls. The first is lagged GDP per capita and its squared term, since wealth should be correlated with both expropriation and democracy. GDP per capita offers a metric of development standardized for the size of the economy, and we include its squared term because evidence suggests its relationship with expropriation is non-linear (Jodice 1980). We lag these variables in case expropriation events negatively impact development (Li 2009). To account for the reasonable possibility that states that expropriate have fewer investors, we control for a measure of expropriation history, which is the number of acts that occurred in a given country since 1960. We additionally control for region. Finally, in the conditional analysis, we control for sector and decade fixed effects.

5 Results

Our theory first predicts that when states expropriate, democracies should be less likely to use overt methods: legislative constraints and audience costs restrain their capacity to nationalize overtly. We thus begin by analyzing whether – conditional on using expropriation – democracies are less likely to employ overt methods or what Kobrin terms "formal expropriation." This allows us to understand whether democracies that expropriate use different tools than autocracies. We can thus understand whether democracies differ from dictatorships not just in whether they expropriate, but in how they expropriate. To evaluate this, we analyze our dataset of expropriation events.

A descriptive analysis of the data provides preliminary support for our theory: overt acts make up 37.2% of expropriations by democracies, versus 58.2% of those by autocracies ($p < .001$[13]). Of course, this association could easily be driven by other factors that sim-

[13] Determined using t-tests

ply correlate with democracy. Therefore, in order to more rigorously test the relationship between democracy and the type of expropriaton in which regimes engage, we implement a logistic regression, using as our dependent variable whether the expropriation event was an overt type. Table 1 demonstrates that, conditional on a state using expropriation, democracies are significantly less likely to use overt types than autocracies. These results hold when controlling for lagged GDP per capita and its squared term, the sector that the expropriation targeted, and decade and region fixed effects. Our findings show that when democracies expropriate, they are approximately 21.0% less likely to use overt expropriation than autocracies.[14]

Table 1: Regime and expropriation type

	(1)	(2)	(3)
Democracy	-0.853^{***}	-0.553^{**}	-0.707^{**}
	(0.225)	(0.230)	(0.276)
GDP per capita		-1.450^{*}	-1.619^{**}
		(0.749)	(0.812)
GDP per capita squared		0.068	0.064
		(0.046)	(0.049)
Extractive sector		-0.115	-0.167
		(0.334)	(0.350)
Financial sector		0.270	0.198
		(0.397)	(0.416)
Manufacturing sector		-0.079	-0.131
		(0.338)	(0.348)
Services sector		-0.049	-0.029
		(0.507)	(0.520)
Utilities sector		-0.235	-0.180
		(0.346)	(0.360)
Constant	0.332^{***}	7.420^{**}	8.129^{**}
	(0.093)	(2.995)	(3.279)
Decade/Region FE	*N*	*N*	*Y*
Observations	576	574	574
Log Likelihood	-389.455	-375.412	-366.297
Akaike Inf. Crit.	782.910	768.823	764.594
Note:			*p<0.1; **p<0.05; ***p<0.01
			Robust standard errors

Analysis of expropriation event data (logit). Results show democracy is negatively correlated with overt forms of expropriation. When democracies use expropriation, they are more likely to use subtler methods like contract renegotiation and forced sale.

Importantly, this means that all expropriating states are not equal. While previous

[14] Marginal effects are calculated using first differences, for the bivariate model.

literature has focused on differences in the rate of expropriation, these results show that regimes also differ in the *type* of expropriation deployed. This analysis demonstrates that when democracies use expropriation, they tend towards less overt methods – such as contract renegotiation or forced sale – rather than formal expropriation.

In the Appendix, we conduct a variety of robustness checks for these results. First, we demonstrate that these findings hold when using alternate measures of democracy, thereby confirming that the results are not solely a function of the decision to use polity. To ensure that the findings are not the result of any one particular type of covert expropriation – potentially suggesting that we erroneously grouped different forms of expropriation – in the Appendix, we demonstrate results hold when comparing formal expropriation to each of the three covert methods. We then demonstrate results hold when controlling for lagged FDI inflows: while this reduces our sample, this helps to confirm that the decision to use overt versus covert expropriation is not due to the differential availability of seizable assets. Finally, we demonstrate that results hold when controlling for periods of instability and regime change, since governments going through transitions may be more likely to seize foreign assets (Kobrin 1980).

While these results provide evidence that when states decide to expropriate, democracies are less likely to use overt methods, they do not tell us about the broader extent to which democracies are or are not constrained from using different types of expropriation at all. In other words, we know that democracies will prefer to use covert methods, should they expropriate, but we do not know whether democratic institutions do or do not constrain covert expropriation from happening. Nor, for that matter, have we tested whether democracy makes it less likely that countries will use overt expropriation, relative to not expropriating at all. Yet our theory suggests that whereas democracy should do little to rein in covert expropriation, it should be far more effective at preventing more overt strategies. This further implies that much of the established relationship between regime type and expropriation should be driven by overt types, since legislative constraints and respect for rule of law should make democracies particularly constrained in their use of outright nationalization.

Past literature has identified a negative relationship between democracy and expropriation overall but has not explored the degree to which these results are driven by states being constrained from using overt expropriation specifically.

We thus analyze a panel dataset of country-years with U.S. FDI stock available to identify how democracy impacts the decision to use different forms of expropriation. We are interested in the degree to which overt expropriation, relative to more covert forms, explains the traditional relationship between democracy and confiscation. First, we use OLS with the dependent variable as the number of expropriation events of different types (any type, overt, or covert) as the dependent variable. This most closely mimics past analyses of the relationship between democracy and expropriation, and allows us to exploit variation in the levels of different forms of expropriation.

Results in Table 2 provide evidence that much of the previously identified relationship between democracy and expropriation is due to more overt types. Our findings confirm a negative overall relationship between regime type and confiscation, as expected. However, the relationship between overt methods and regime type is large and statistically significant, while the correlation between democracy and covert types of expropriation is considerably smaller and statistically insignificant.[15] In line with our theory, this suggests that democracy has a particularly strong constraining effect on full-scale nationalization. At the same time, this model has a significant weakness in that the "overt" and "covert" models pool the alternative type of expropriation with none, which makes this a highly imperfect stand-alone estimate.

In order to overcome some of the weaknesses in the OLS model, we also employ multinomial logit, an extension of logistic regression that allows us to estimate the relationship between different forms of expropriation and regime type. While this allows us to simultaneously estimate the relationship between democracy and the different types of expropriation, unlike OLS it flattens the number of events in a country-year into bins, thereby reducing the sample size and treating multiple expropriations in a given year as a single event. Our

[15] The Appendix shows our results largely hold when controlling for year fixed effects as well, though some coefficients (including those for the overall effect) become statistically insignificant.

Table 2: Regime type and expropriation type, panel using OLS

	All	Overt	Covert
	(1)	(2)	(3)
Democracy	−0.078**	−0.054**	−0.024
	(0.036)	(0.023)	(0.019)
GDP per capita	−0.083	−0.064	−0.019
	(0.163)	(0.140)	(0.060)
GDP per capita squared	0.005	0.003	0.002
	(0.009)	(0.008)	(0.004)
Expropriation History	0.001	0.002	−0.0002
	(0.002)	(0.002)	(0.001)
Constant	0.526	0.395	0.131
	(0.697)	(0.608)	(0.251)
Region FE	*Y*	*Y*	*Y*
Observations	3,785	3,785	3,785
R^2	0.006	0.005	0.004
Adjusted R^2	0.004	0.003	0.003

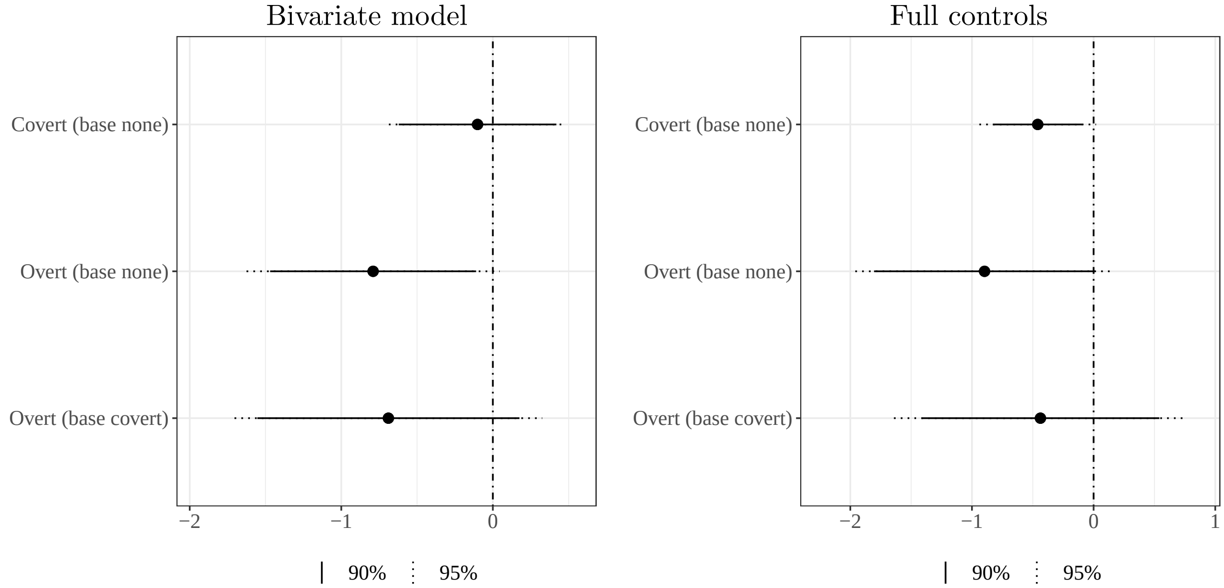
Note: *p<0.1; **p<0.05; ***p<0.01
Robust standard errors clustered at the country level

dependent variable is a categorical measure of expropriation taking 0 if no expropriation occurred in a given country-year, 1 if covert expropriation only was used, and 2 if overt expropriation occurred.[16] This allows us to estimate three quantities of interest. First, we are interested in the likelihood democracies use overt expropriation (relative to no expropriation) compared to autocracies. Second, we are interested in the likelihood democracies use covert expropriation (relative to no expropriation) compared to autocracies. Third, we are interested in the difference between these first two quantities, which measures whether the propensity to engage different expropriatory measures is significantly different.

Figure 2 shows that democracies are considerably less likely to use overt types of expropriation than autocracies ("overt (base none)"). They are also somewhat less likely to use more

[16] In years that include both overt and covert expropriation events, we bin the observations into the overt category. We do so because we consider overt expropriation to be a stronger form of confiscation: if a country uses nationalization, they show greater willingness to bypass legislatures and alienate investors. Binning these observations into the covert type would ignore this stronger signal and its potentially greater economic consequences. It should be noted that recoding these country-years as covert does make the panel findings insignificant (though substantive effects are similar to those in the main body of the paper), in part because in 86% of cases where both types are used the government is an autocracy. Because of the need to collapse expropriations in years in which more than one occurred, the logistic results offer an imperfect picture and should primarily be interpreted as suggestive in combination with the OLS and conditional results.

Figure 2: Democracy and expropriation, multinomial logit



Democracy and expropriation, using multinomial logit. Bivariate = no controls; full controls = democracy, gdp per capita and its squared term, history of expropriation, and region fixed effects. "Base none" compares covert and overt expropriation country-years to country-years with no expropriation events; "Base covert" compares no and overt expropriation country-years to country-years with covert expropriation. Results show a negative relationship between democracy and both covert and overt expropriation, though the coefficients for overt expropriation are significantly larger. Comparing overt and covert directly shows no statistically significant difference.

covert types of expropriation, although these results are smaller in magnitude and less consistent ("covert (base none)"). The relative sizes of these coefficients suggests, in line with our theory, that democracy constrains overt types of expropriation more than covert, providing evidence that the negative relationship between democracy and expropriation more broadly is driven primarily by overt methods. While the difference between these two coefficients falls short of statistical significance ("overt (base covert)"), meaning we cannot definitively determine whether democracies engage in overt versus covert expropriation at different rates overall, the coefficient is substantively large, suggesting the noisiness of the estimate may partially be the result of expropriation still being a relatively rare event.[17] Results, therefore, provide evidence that much of the negative relationship between democracy and expropriation is the result of democracies being constrained from overt expropriation. Combined with the results above, showing that when democracies expropriate they are more likely to use

[17]The lack of significance is likely also a function of the fact that the panel, by construction drops observations in cases in which more than one expropriation occurred in a single year, while limiting the results to country-years in which FDI was present further reduces the sample, thereby reducing the overall power of the model.

covert forms of forced divestment, these findings provide evidence that democracies differ from dictatorships not only in whether they use expropriation, but in the types of methods they employ.

Together, these findings suggest that the negative relationship between expropriation and democracy is largely driven by more overt methods. In the Appendix, we demonstrate that results hold when controlling for lagged FDI inflow, to account for the amount of seizable goods, and for regime instability and coups, in case transitioning states are more likely to use overt expropriation.

Legislative Constraints

The results above show that (1) when democracies expropriate, they are less likely than autocracies to rely on overt forms of expropriation like nationalization and (2) much of the relationship previously identified between democracy and expropriation reflects liberal regimes being less likely to use formal expropriation. In this section we test the proposed mechanism that governments are impeded from using formal expropriation by the degree to which leaders face constraints on their power – and thus their ability to use overt types of confiscation. To test this, we use the *legislative constraints* variable from VDem. This captures the degree to which the head of state faces some degree of oversight from government agencies.

To show that the relationship between democracy and overt expropriation is driven in part by variation in legislative constraints, we first reanalyze our expropriation-event dataset. Conditional on a state expropriating, those countries that face greater legislative constraints are less likely to use overt methods (Table 3). This is true even when controlling for regime type, suggesting that even among autocracies or democracies government oversight is negatively associated with overt expropriation. Indeed, including legislative constraints eliminates or even reverses the effect of democracy, suggesting that such constraints explain a great deal of the relationship between regime type and overt expropriation. To put the legislative constraint results more concretely, moving from the first to the third quantile of legislative constraints is associated with a reduction in the likelihood of relying on overt expropriation of 24.3%.[18] Again, this shows that countries that do and do not face constraints on the executive tend to use fundamentally different methods of expropriation.

Table 3: Overt expropriation and legislative constraints

	(1)	(2)	(3)
Legislative Constraints	-2.102^{***}	-2.651^{***}	-2.384^{***}
	(0.323)	(0.459)	(0.499)
Democracy		0.812^{**}	0.656
		(0.339)	(0.414)
GDP per capita		-1.736^{**}	-1.698^{*}
		(0.812)	(0.875)
GDP per capita squared		0.081	0.072
		(0.050)	(0.053)
Extractive sector		−0.091	−0.180
		(0.344)	(0.360)
Financial sector		0.256	0.159
		(0.397)	(0.418)
Manufacturing sector		−0.066	−0.151
		(0.343)	(0.356)
Services sector		0.015	−0.030
		(0.535)	(0.524)
Utilities sector		−0.130	−0.166
		(0.354)	(0.367)
Constant	0.676^{***}	9.166^{***}	9.035^{**}
	(0.113)	(3.259)	(3.559)
Decade/Region FE	*N*	*N*	*Y*
Observations	578	572	572
Log Likelihood	-374.438	-355.619	-352.391
Akaike Inf. Crit.	752.877	731.238	738.782
Note:			*p<0.1; **p<0.05; ***p<0.01 Robust standard errors

Expropriation event analysis, using logit models. Results show that legislative constraints on the executive significantly constrain overt expropriation among expropriating states.

We next re-estimate our panel analysis, to identify whether legislative constraints affect the overall propensity of states to engage in different forms of expropriation. Our theory suggests that institutional constraints should have a particularly strong effect in restraining overt expropriation. Executives that do not face government agency oversight do not need to justify forced divestment, while subtler forms of expropriation may be less likely to require legislative approval and may even appear more acceptable to political actors.

[18] Based on the bivariate model.

Figure 4 shows that legislative constraints have a particularly strong role in constraining overt methods of expropriation. Legislative constraints are negatively correlated with expropriation overall even when controlling for democracy – and in fact, they appear to explain much of the previously identified relationship between regime type and confiscation. While the correlation between legislative constraints and overt methods of expropriation is large and statistically significant, however, the relationship between institutional constraints and covert types is considerably smaller and insignificant. This suggests that institutional constraints do indeed have a particularly constraining effect on more overt methods of expropriation.

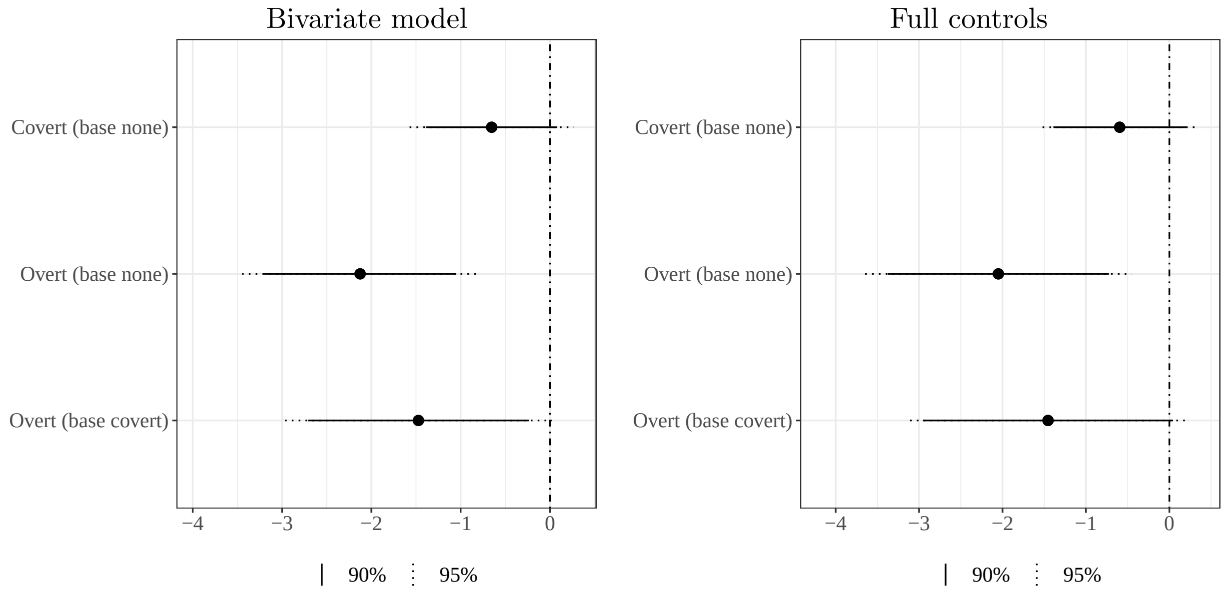
Table 4: Legislative constraints and expropriation type, panel using OLS

	All	Overt	Covert
	(1)	(2)	(3)
Legislative Constraints	-0.153^{*}	-0.134^{**}	-0.018
	(0.082)	(0.055)	(0.040)
Democracy	-0.010	0.006	-0.016
	(0.037)	(0.024)	(0.021)
GDP per capita	-0.071	-0.053	-0.018
	(0.167)	(0.143)	(0.061)
GDP per capita squared	0.004	0.003	0.002
	(0.009)	(0.008)	(0.004)
Expropriation History	0.002	0.002	-0.0002
	(0.002)	(0.002)	(0.001)
Constant	0.494	0.366	0.128
	(0.710)	(0.616)	(0.252)
Region FE	*Y*	*Y*	*Y*
Observations	3,781	3,781	3,781
R^2	0.008	0.007	0.004
Adjusted R^2	0.005	0.005	0.002

Note: *p<0.1; **p<0.05; ***p<0.01
Robust standard errors clustered at the country level

Figure 3 re-estimates the results of a multinomial logit panel analysis, demonstrating that legislative constraints are negatively associated with overt, but not covert, methods of expropriation. Overt expropriation is considerably less likely in states with higher levels of legislative constraints ("overt (base none)"), while the effect for covert expropriation is smaller and not statistically significant ("covert (base none)"). Unlike for the general democracy results, moreover, the difference between these coefficients is statistically signifi-

Figure 3: Legislative constraints and expropriation, multinomial logit



Legislative constraints and expropriation, using multinomial logit. Bivariate = no controls; full controls = democracy, GDP per capita and its squared term, history of expropriation, and region fixed effects. "Base none" compares covert and overt expropriation country-years to country-years with no expropriation events; "Base covert" compares no and overt expropriation country-years to country-years with covert expropriation. Results show legislative constraints predominantly restrain the use of overt expropriation.

cant ("overt (base covert)"), suggesting that states with higher levels of legislative constraints are significantly less likely to use overt versus covert methods of expropriation. This result is suggestive and adds further support to the theory. Specifically, given that we expect institutional constraints to play the largest role in constraining democratic regimes, and given that democracy is a measure of far more than just these constraints on executive action, democracy is arguably a far noisier measure of the mechanism. The fact that legislative constraints gives such robust results (even more so than democracy) is, therefore, reassuring.

In the Appendix, we show that these results hold when controlling for lagged FDI inflows and different measures of regime instability, as well as when using OLS rather than multinomial logit. Together, the results presented thus far suggest that democracy appears to constrain overt, but not covert, methods of expropriation: because covert types are less overt and can be accomplished without legislative approval, government oversight appears to do little to restrain their use.

Audience Costs

A second mechanism explaining why democracies may be more constrained from using overt versus covert expropriation is audience costs: where members of the public are better able to hold the government accountable, it may dissuade the regime from reneging on promises to foreign investors. covert expropriation should be less likely to provoke audience costs because it is more difficult for the public to observe and a less clear example of intentional reneging by the government. To test this, we use the VDem measure of *vertical accountability*, which measures the degree to which the head of state can be held accountable by citizens. We expect that higher levels of vertical accountability will be associated with lower levels of overt expropriation, and have little or no relationship with more covert forms of expropriation.

We first re-analyze the expropriation event level dataset to include vertical accountability as our central independent variable. Results in Table 5 demonstrate that conditional on a state expropriating, vertical accountability is negatively correlated with the use of overt expropriation. This holds when controlling for democracy, providing evidence that these mechanisms explain variation in expropriation even within regime types. Substantively, moving from the first to the third quartile of the VDem measure reduces the likelihood of overt expropriation by 27.8%.[19] These results provide suggestive evidence that among states that expropriate, audience costs – here proxied by vertical accountability – constrain the use of overt expropriation. This aligns with our theory that states where leaders are more accountable to the public will rely more on less overt methods of expropriation.

We next analyze our panel dataset. OLS results in 6 demonstrate that vertical accountability is negatively correlated with expropriation overall, and again appears to explain much of the relationship between democracy and confiscation. However, the relationship between vertical accountability and overt expropriation is large and statistically significant, while the relationship with covert methods is considerably smaller and statistically insignificant. Much of the overall negative relationship between expropriation and vertical accountability

[19]Based on the bivariate model.

Table 5: Overt expropriation and vertical accountability

	(1)	(2)	(3)
Vertical Accountability	-0.706^{***}	-0.855^{***}	-0.829^{***}
	(0.104)	(0.150)	(0.159)
Democracy		0.717^{**}	0.499
		(0.337)	(0.369)
GDP per capita		-0.909	-1.308
		(0.782)	(0.877)
GDP per capita squared		0.030	0.043
		(0.048)	(0.053)
Extractive sector		-0.039	-0.071
		(0.345)	(0.361)
Financial sector		0.246	0.260
		(0.407)	(0.426)
Manufacturing sector		-0.063	-0.082
		(0.346)	(0.359)
Services sector		0.146	0.118
		(0.524)	(0.533)
Utilities sector		-0.142	-0.148
		(0.357)	(0.370)
Constant	0.024	5.076	6.855^{*}
	(0.090)	(3.124)	(3.560)
Decade/Region FE	*N*	*N*	*Y*
Observations	579	573	573
Log Likelihood	-374.037	-356.516	-350.949
Akaike Inf. Crit.	752.073	733.032	735.897
Note:			*p<0.1; **p<0.05; ***p<0.01 Robust standard errors

Expropriation event analysis, using logit models. Results show that legislative constraints on the executive significantly constrain overt expropriation among expropriating states.

appears driven by constraints on overt expropriation in particular.

Table 6: Vertical accountability and expropriation type, panel using OLS

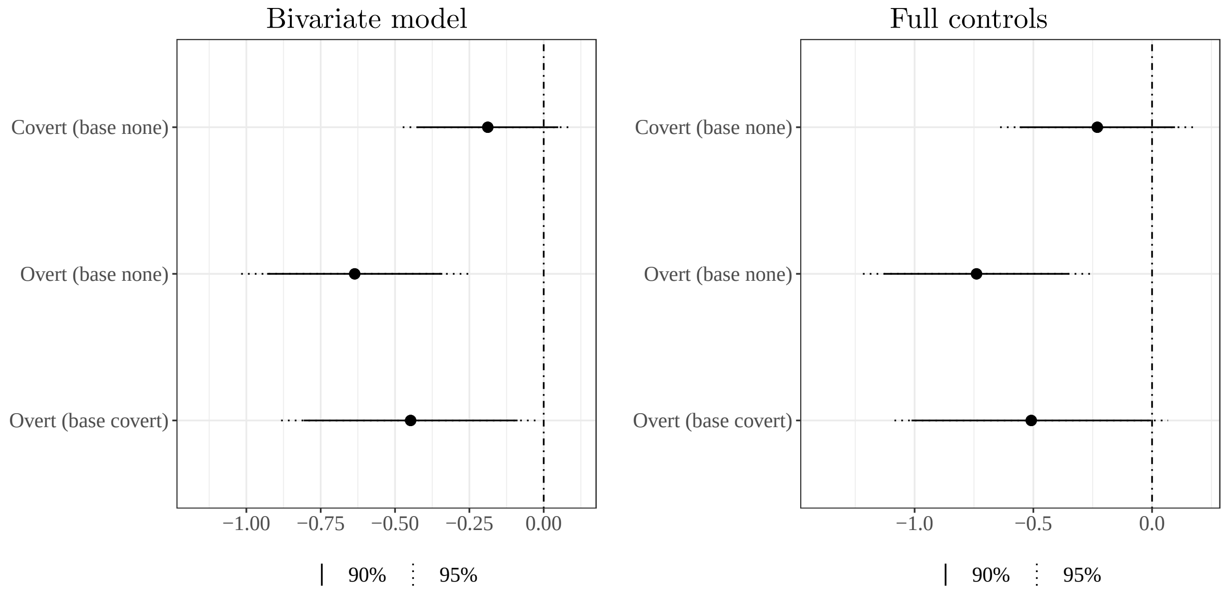
	All	Overt	Covert
	(1)	(2)	(3)
Vertical Accountability	−0.090**	−0.075**	−0.014
	(0.038)	(0.031)	(0.013)
Democracy	0.027	0.034	−0.007
	(0.039)	(0.031)	(0.018)
GDP per capita	0.026	0.028	−0.002
	(0.186)	(0.155)	(0.065)
GDP per capita squared	−0.002	−0.002	0.001
	(0.011)	(0.009)	(0.004)
Expropriation History	0.002	0.002	−0.0002
	(0.002)	(0.002)	(0.001)
Constant	0.061	0.004	0.057
	(0.789)	(0.662)	(0.270)
Region FE	*Y*	*Y*	*Y*
Observations	3,785	3,785	3,785
R^2	0.010	0.010	0.005
Adjusted R^2	0.008	0.008	0.003

Note: *p<0.1; **p<0.05; ***p<0.01
Robust standard errors clustered at the country level

The results of our multinomial logit analysis (Figure 4) again show that vertical accountability is negatively correlated with overt expropriation ("overt (base none)"), while the relationship with covert expropriation ("covert (base none)") is considerably smaller and not statistically significant. As with legislative constraints, the difference between these two coefficients is statistically significant ("overt (base covert)"): in other words, higher levels of vertical accountability is associated with states using overt expropriation less than covert expropriation. These results provide evidence that audience costs constrain overt – but not covert – methods of confiscation. In the Appendix, we show that results hold when controlling for lagged FDI inflows and for periods of regime instability and coups.

Consistent with our expectations, the results evaluating the impact of legislative oversight and audience costs demonstrate that constraints on government play a stronger role in restraining overt expropriation compared to other, less obvious forms of forced divestment. Our theory suggests that these results are a function of the fact that when regimes do not face legislative constraints or high audience costs, they are better able to pursue overt ex-

Figure 4: Vertical accountability and expropriation, multinomial logit



Vertical accountability and expropriation, using multinomial logit. Bivariate = no controls; full controls = democracy, GDP per capita and its squared term, history of expropriation, and region fixed effects. "Base none" compares covert and overt expropriation country-years to country-years with no expropriation events; "Base covert" compares no and overt expropriation country-years to country-years with covert expropriation. Results show respect for having a legitimizing ideology is positively associated with overt, but not covert, expropriation, and this difference is significant.

propriation, a strategy that has the appeal of providing a large and immediate benefit. By contrast, regimes that face greater legislative constraints and/or audience costs must hide behind subtler forms of breach. Taken together, our findings offer evidence that democracies differ from autocracies not just in terms of *whether* they expropriate but also *how* they expropriate.

6 Conclusion

Despite an extensive literature on how democracies and autocracies differ in their overall propensity to protect the property of foreign direct investors, there has been limited attention paid to whether institutional characteristics might also explain the strategies of expropriation in which different regimes engage. Our theoretical discussion and empirical results demonstrate the importance of considering strategy alongside propensity. Specifically, we show that the political constraints that are generally assumed to protect foreign direct investment in democracies do not bind equally tightly across all forms of expropriation. Rather, democracies appear to have almost as much leeway to engage in covert forms of expropriation as do their non-democratic counterparts. Indeed, while legislative checks on the executive and the potential for audience costs play a central role in curbing the most visible forms of forced divestment, they do relatively little to contain less overt acts of expropriation. These findings not only contribute to the literature on regime type and expropriation, specifically, but they also contribute to the literature on institutions and property rights, more generally.

First, our findings offer an important caveat to the conventional wisdom that democracies will offer better property right protections of foreign direct investment (Jensen 2003; 2006; 2008; Li 2009; Li and Resnick 2003). We demonstrate that the truth may not be this simple. While democracies do indeed provide better protection against overt takings, it is far from clear that they provide any better guarantees against more subtle methods. Notably, this conclusion follows logically from the very theories advanced by those suggesting that democracies ought to expropriate less: the same constraints that theoretically ought to discourage democracies from engaging in expropriation, or other forms of property rights violations, also ought to encourage them to use more subtle means of appropriation when they do decide to engage in seizure.

Second, to the extent that the protection of property rights in democracies is a function of whether or not property violations occur through official, highly visible channels, democracies may have far more leeway to encroach on property rights than previously thought. Indeed, our findings suggest that so long as property encroachments are covert and/or do not require the approval of veto players, democratic institutions may do little to prevent them. Considering that less overt confiscations are, by definition, harder to observe, this suggests the possibility that the literature has generally tended to overestimate the positive relationship between institutional constraints and property protections more broadly.

Finally, our results highlight that there are often important differences across regimes not only in outcomes but in strategies. This is a point that Kono (2006) makes in relation to trade barriers, and it is one that we echo in relation to the treatment of FDI. The broader conclusion seems to be that although democracies and autocracies frequently seek similar results, they may not be able to achieve them using the same methods. In the case of expropriation, we have provided evidence that political constraints may not protect democracies from their worst inclinations so much as force them to pursue those inclinations in less obvious ways.

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