Government Takings: Determinants of Eminent Domain

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There is a well-documented link between institutions of secure property rights and economic development. The increasing use of eminent domain to transfer property from one private owner to another for private benefit, upheld in the Supreme Court's controversial *Kelo* decision, undermines the security of property rights. While previous research examines the effect of eminent domain use, this paper explores which factors explain varying levels of eminent domain use for private benefit across states. The author finds that corruption, election of state Supreme Courts, federalism, and economic freedom are important determinants of eminent domain use for private benefit. (*JEL* H70, H82, K11)

1. Introduction

"The law has placed the collective force at the disposal of the unscrupulous who wish, without risk, to exploit the person, liberty, and property of others. It has converted plunder into a right, in order to protect plunder."

- Frederic Bastiat (1998 [1850], p. 5)

The takings clause of the Fifth Amendment to the United States Constitution asserts, "nor shall private property be taken for public use, without just compensation" (U.S. Const. amend. V). However, the term "public use" has evolved to mean "public purpose," and today eminent domain is widely used to transfer property from one private owner to another rather than only for public projects (e.g., roads, schools). This practice of using eminent

domain for "private benefit" has been upheld by the U.S. Supreme Court in its ruling in *Kelo v. City of New London* (545 U.S. 469 [2005]). The implications of this Supreme Court decision are extensive and threaten the very institution and security of private property.

In *Public Power, Private Gain*, Dana Berliner (2003) estimates that between 1998 and 2002 there were >10,282 filed or threatened condemnations for private use or benefit. In light of the controversy surrounding the *Kelo* decision and governments' increasing abuse of eminent domain in general, this paper explores governments' use of eminent domain in the United States. Whereas the effects of eminent domain have been studied by other economists, the objective of this paper is to examine the determinants of eminent domain use. That is, what factors explain *why* eminent domain is used to transfer private property to private parties to a much greater extent within some states versus others?[1] My results suggest that corruption, the election of state Supreme Courts, the degree of federalism within a state, and economic freedom are important determinants of the degree to which eminent domain is used for private benefit within states.

The remainder of the paper is organized as follows. Section 2 presents a background of the use of eminent domain and outlines the evolution of the constitutional phrase "public use." Section 3 provides a description of the data and empirical methodology used in the paper, Section 4 presents the empirical results, and Section 5 performs robustness checks. Section 6 concludes the paper and discusses policy implications.

2. Background and Motivation

Eminent domain derives from the takings clause of the Fifth Amendment and was originally intended for the taking of private property to serve a "public use" and with "just compensation."[2] Epstein (1985) provides a comprehensive study of takings and the use of eminent domain in the United States. He defines property ownership as consisting of rights to the possession, use, and disposition of property. Clearly, the use of eminent domain interferes

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1. Note that I am not examining the use of eminent domain for traditional public purposes.

2. For an examination of the "just compensation" requirement of the takings clause, see Esposto (1996) and Innes (1997).

with these rights. As such, the U.S. Constitution places limits on the ability of government to use eminent domain. Specifically, eminent domain is restricted to the taking of private property solely for public use. Such uses include the provision of public goods like railroads, highways, or schools. In addition, state constitutions also limit the use of eminent domain to the taking of property for public use. The power of government to use eminent domain has expanded significantly over time, threatening property rights and individual liberty. The term "public use" has evolved to mean "public purpose," and today private property is more commonly being taken and transferred to other private parties for "public benefit." In effect, the current interpretation allows property to be taken from Individual A and transferred to Individual B if such action represents a "public benefit," for instance through increased tax revenues or employment in the area.

Among the first of several subsequent reinterpretations of the takings clause occurred in 1954 in the decision of *Berman v. Parker* (348 U.S. 26 [1954]). In this case, the District of Colombia transferred land to private developers for the elimination of slums. *Berman* permitted the condemnation of property for the redevelopment of blighted areas, regardless of whether the land was transferred to private individuals. In 1981, Detroit condemned a residential neighborhood to provide land for General Motors Corporation in *Poletown Neighborhood Council v. Detroit* (304 N.W. 2d 455 [1981]). This action was permitted by the Michigan Supreme Court on the basis of the public purpose of reducing unemployment and to "revitalize the economic base of the community." This decision was later reversed in *County of Wayne v. Hathcock* (684 N.W. 2d 765 [2004]). In *Hawaii Housing Authority v. Midkiff* (467 U.S. 229 [1984]), Hawaii was permitted to transfer land from landowners to tenants in order to reduce the "concentration of land ownership." Finally, in *Kelo v. City of New London* (545 U.S. 469 [2005]), the property of residents near Fort Trumbull State Park was acquired by eminent domain for the purpose of redevelopment. Specifically, the city's redevelopment plan included a hotel and shopping center, as well as research, office, and retail space to increase the tax base and to accompany a new facility constructed by the pharmaceutical company Pfizer. The Supreme Court decision in *Kelo* implies that eminent domain may be used to transfer private property from one set of individuals to another for private benefit. *Kelo* significantly relaxes the constraints originally placed on the use of eminent domain.

Recent literature examines the relationship between institutions of secure property rights and economic development (North, 1990; Boettke, 1994; Besley, 1995; Knack and Keefer, 1995; Mauro, 1995; Acemoglu, Johnson, and Robinson, 2001, 2002; Kerekes and Williamson, 2008). Greenhut (2004) specifically attributes the prosperity of the United States to secure property rights, arguing that secure property rights create incentives for investment in property. The use of eminent domain for private benefit undermines property rights and harms prosperity. Garrett and Rothstein (2007) illustrate that when eminent domain is used for private economic development, it results in a zero-sum game that retards economic growth.[3] Government intervention through the compulsory sale of private property interferes with and hampers development by introducing economic inefficiencies.[4] Benson (2005) argues that involuntary transfers of property produce deadweight losses, encourage rent-seeking, and lead to insecure property rights that result in common pool problems such as poor maintenance and over-exploitation of resources. Therefore, Benson contends that such transfers are inefficient and reduce wealth.

Secure private property rights are integral for development. Therefore, the increasing use of eminent domain by governments for private benefit may have serious negative consequences for economic growth. As such, it is important to investigate which factors make governments more likely to use eminent domain for private benefit. In this paper, I empirically analyze what political and economic characteristics result in eminent domain being used for private benefit more frequently within some states than others.

3. Data and Empirical Methodology

Berliner (2003) provides the only comprehensive source of data on eminent domain use for private benefit for all fifty U.S. states. Berliner's data, extracted from court papers and published accounts, cover the period

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3. *Myths and Realities of Eminent Domain Abuse*, a report by the Castle Coalition, argues that eminent domain imposes significant costs on communities and is unable to stimulate economic growth or eliminate "blight" as effectively as the private sector.

4.   One of the justifications often given for the use of eminent domain is that its use is necessary to obtain separately owned, contiguous parcels of land. However, Munch (1976) presents an economic analysis of eminent domain in which she illustrates that eminent domain is not necessarily more efficient than the free market at assembling land.

January 1, 1998, through December 31, 2002. Eminent domain use for purposes traditionally considered public use, such as roads or schools, is excluded. "Total" condemnations indicate the number of properties that have been affected by a government's use of eminent domain to benefit private parties.

As Table 1 shows, the extent of eminent domain use for private benefit varies widely across states. The data presented in Table 1 are total condemnations by state. The second and third columns in the table show total condemnations on a per housing unit and a per capita basis, respectively, along with the associated ranking for each state. Eminent domain is used most frequently within Maryland, Pennsylvania, Utah, New Jersey, Missouri, Kentucky, Kansas, and Florida. At the other end of the spectrum, within states such as Alaska, Delaware, Idaho, Montana, New Hampshire, New Mexico, South Dakota, and Wyoming, eminent domain is rarely (or never) used for private benefit.

What factors explain why governments within some states are more likely to use eminent domain for private benefit than in others? To address this question empirically requires the use of a Poisson regression model to explicitly account for the count nature of the dependent variable, which renders ordinary least squares inconsistent, and introduces heteroscedasticity into the model. The basic Poisson model (see Greene, 2000) estimated here is:

$$\ln L = \ln\left(\frac{e^{-\lambda_i}\lambda_i^{y_i}}{y_i!}\right) \tag{1}$$

where $y_i = 0, 1, 2, 3, \ldots$ is the list of possible values taken by the dependent variable, and λ_i is the average number of occurrences within the given space. In the Poisson model, λ_i takes the form

$$\ln \lambda_i = \beta\prime x. \tag{2}$$

Given the nonlinear nature of the model, maximum likelihood is the favored estimation approach. The likelihood function (L) for Equation (1) in log form can be written, using Equation (2), as:

$$\ln L = \ln\left(\frac{e^{-\lambda_i}\lambda_i^{y_i}}{y_i!}\right) \tag{3}$$

Table 1. Total Condemnations for Private Use or Benefit

State	Total Condemnations	Rank	Total Condemnations per Total Housing Units	Rank	Total Condemnations per Total Population	Rank
Alabama	8	32	4.1	31	1.8	31
Alaska	0	42	0	42	0	42
Arizona	21	23	9.6	28	4.1	28
Arkansas	41	21	35	17	15.3	17
California	858	4	70.2	13	25.3	14
Colorado	137	13	75.8	11	31.9	11
Connecticut	92	15	66.4	14	27	13
Delaware	0	42	0	42	0	42
Florida	2,122	2	290.6	3	132.8	3
Georgia	0	42	0	42	0	42
Hawaii	5	34	10.9	27	4.1	27
Idaho	0	42	0	42	0	42
Illinois	17	26	3.5	33	1.4	36
Indiana	55	20	21.7	22	9	21
Iowa	4	36	3.2	36	1.4	37
Kansas	162	11	143.2	8	60.3	8
Kentucky	168	9	95.9	9	41.6	9
Louisiana	5	34	2.7	38	1.1	38
Maine	2	38	3.1	37	1.6	33
Maryland	1,237	3	576.6	1	233.6	1
Massachusetts	9	31	3.4	35	1.4	35
Michigan	311	8	73.4	12	31.3	12
Minnesota	92	15	44.5	16	18.7	16
Mississippi	3	37	2.6	39	1.1	39
Missouri	455	6	186.3	6	81.3	4
Montana	0	42	0	42	0	42
Nebraska	12	28	16.6	24	7	24
Nevada	18	25	21.8	21	9	22
New Hampshire	0	42	0	42	0	42
New Jersey	640	5	193.3	5	76.1	5
New Mexico	0	42	0	42	0	42
New York	146	12	19	23	7.7	23
North Carolina	1	40	0.3	41	0.1	41
North Dakota	1	40	3.5	34	1.6	34
Ohio	421	7	88	10	37.1	10
Oklahoma	23	22	15.2	26	6.7	25
Oregon	2	38	1.4	40	0.6	40
Pennsylvania	2,625	1	500	2	213.7	2
Rhode Island	77	18	175.1	7	73.5	7

Continued

Table 1. Continued

State	Total Condemnations	Rank	Total Condemnations per Total Housing Units	Rank	Total Condemnations per Total Population	Rank
South Carolina	7	33	4	32	1.7	32
South Dakota	0	42	0	42	0	42
Tennessee	66	19	27.1	19	11.6	19
Texas	129	14	15.8	25	6.2	26
Utah	167	10	217.3	4	74.8	6
Vermont	15	27	51	15	24.6	15
Virginia	85	17	29.3	18	12	18
Washington	11	30	4.5	30	1.9	30
West Virginia	20	24	23.7	20	11.1	20
Wisconsin	12	28	5.2	29	2.2	29
Wyoming	0	42	0	42	0	42

Source: Author's calculations from Berliner (2003) and U.S. Census Bureau (2000).

or

$$\ln L = \sum_{i=1}^{n}(-\lambda_i + y_i\ln\lambda_i - \ln y_i!). \tag{4}$$

   Estimating the previous equation will provide coefficient estimates, and finding $\frac{\partial E[y_i|x]}{\partial x}$ provides the marginal effects. These measure the impact of each explanatory variable on the occurrence of eminent domain use for private benefit. I examine variables that might be expected to explain eminent domain condemnations for private benefit based both on traditional uses of eminent domain and on the unique political economy of each state. Descriptive statistics and sources for all variables are given in the Appendix.

   Since blight is often cited as a traditional justification for eminent domain use, I include the following measures of the housing stock in each state: the percent of housing units that are vacant, the median house value (measured in thousand dollars), and the percentage of housing units that are owner occupied. Following *Berman v. Parker* (348 U.S. 26 [1954]), eminent domain is permitted for the elimination of blighted areas, even when the property is transferred to private individuals. Therefore, a higher percentage of housing units that are vacant is expected to increase the incidence of eminent domain as these properties are more likely to be truly blighted or dilapidated. Lower median house values are associated with lower-quality housing and are expected to increase

the incidence of eminent domain, implying a negative coefficient on median house value. Similar to the percentage of vacant housing units, lower median house values may increase the incidence of eminent domain as developers argue that these properties are blighted. A higher proportion of owner-occupied housing units is expected to increase the incidence of eminent domain because owner-occupied housing is more difficult to purchase on the open market than is commercial property. This is due to the personal or sentimental values that owners attach to their property, causing the minimum selling price to be higher than the market value. Being more difficult to acquire through private negotiation, these properties are more often subject to eminent domain, and owners fight more strongly against the taking.

Many government officials maintain that eminent domain is necessary in highly populated or more urban environments, so I include both the state population (measured in hundred thousands) and the percentage of the population living in urban areas. I expect both variables to positively influence eminent domain use.

In addition to these measures associated with traditional explanations for why eminent domain use for private benefit might differ across states, I also include several measures of the political or institutional environment in each state. These variables include corruption, the election of the Supreme Court justices, federalism, and economic freedom. Corruption is measured as the average number of public officials convicted on federal corruption charges per year between 1976 and 2002 (per 100,000 population) taken from Glaeser and Saks (2006). Suzette Kelo, the plaintiff in the infamous *Kelo v. City of New London* (545 U.S. 469 [2005]) case, in a personal interview with a colleague, suggested including this measure as she believes that the high corruption level in New London was the primary factor driving the abuse of eminent domain for private benefit in her case.[5] According to this "Kelo hypothesis," corruption rates are expected to be positively correlated with eminent domain use.

To further examine the political environment, I consider the election of state Supreme Court justices and the degree of federalism within each state. Whether the members of a state Supreme Court are elected (versus appointed) is included as a dummy variable that equals one if elected and zero otherwise. This variable is expected to have a negative sign,

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5. Personal interview, October 8, 2006.

indicating that an elected judiciary is less likely to condemn property for the benefit of private parties than an appointed judiciary. The reasoning behind this expected negative sign is that an appointed judiciary is more insulated from its constituents, while voters hold an elected judiciary more accountable for its actions. Therefore, an elected judiciary may be less likely to undermine the property rights of its constituents, such as by using eminent domain to transfer private property to other individuals. Federalism is calculated as local expenditure divided by state and local expenditure and is a measure of the relative power of local versus state governments. Traditionally, decentralization is viewed as a constraint on government. Therefore, I expect the coefficient on the federalism variable to be negative. When more decisions are made at the local level, it is more likely that private property rights will be respected and less likely that eminent domain will be used other than for traditional public purposes. However, there may be some equally logical reasons to expect a positive sign, as increased local power might alternatively lead to increased eminent domain use.[6]

Lastly, I include each state's overall score in the *Economic Freedom of North America* index (Karabegovic and McMahon, 2005). This index of institutional quality attempts to measure the degree to which state governments restrict their activities to basic functions, refraining from using the power of government to engage in redistributive politics and excessive takings. Importantly, while this index does have a subcategory called "takings and discriminatory taxation," no measure of eminent domain use is included. This index is measured on a scale of 0 to 10, with a higher score indicating a higher degree of economic freedom.[7] Since a higher economic freedom score indicates that a state is less likely to engage in redistribution, I expect

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6. For example, local governments may compete with one another to attract new development by offering low-price land obtained through eminent domain versus competing on the basis of tax discrimination.

7. The Economic Freedom index is made up of three categories: the size of government, takings and discriminatory taxation, and labor market freedom. Each category includes various components. Each component within a category and each category are equally weighted to construct the overall index. For example, the category "takings and discriminatory taxation" includes measures of tax revenues as well as the top marginal income tax rate and the income threshold at which it applies. States receive a higher score on the index when there are fewer government regulations and less government intervention in the form of taxes and spending (Karabegovic and McMahon, 2005).

this variable to be negatively correlated with eminent domain use for private benefit. I perform all regressions both with and without the economic freedom variable.

4. Empirical Results

Table 2 shows the results of the Poisson estimations, both including and excluding economic freedom. The three housing stock measures all perform as expected, with more vacant housing units, lower housing values, and a higher percentage of houses that are owner occupied leading to more eminent domain use for private benefit. On average, a state where average home values were $10,000 lower had approximately eight additional condemnations for private benefit over this period. A state with a one percentage point higher rate of owner-occupied housing had approximately seven more condemnations, and a state with a one percentage point higher rate of vacant housing had roughly ten more condemnations. Population and urban population also perform as expected, with both leading to higher rates of eminent domain use for private benefit. An additional one million residents were associated with approximately four additional condemnations, while a one

Table 2. Factors Impacting Total Condemnations for Private Use or Benefit

Poisson Regression Results (Marginal Effects)

Dependent Variable: Total Condemnations for Private Use or Benefit

	(1)	(2)
Supreme Court elected	−45.71*** (34.36)	−47.40*** (35.47)
Corruption rate	124.31*** (26.85)	143.46*** (30.17)
Economic freedom	−10.77*** (15.90)	—
Federalism (% local)	−0.78*** (8.67)	−1.71*** (18.48)
Median house value	−0.83*** (33.45)	−0.80*** (33.44)
Owner occupied (%)	6.47*** (36.49)	7.02*** (39.10)
Population	3.84*** (29.41)	4.61*** (33.00)
Urban population (%)	2.94*** (35.31)	2.89*** (35.88)
Vacant housing units (%)	10.62*** (15.28)	9.21*** (12.05)
Observations	50	50
Log likelihood	−3,846.58	−3,979.62

Note: Absolute *t*-statistics in parentheses.
*** denotes significance at the 1% level.

percentage point higher rate of urbanization was associated with approximately three additional condemnations.

The political economy variables are also highly significant. States in which Supreme Court justices are elected, rather than appointed, are significantly less likely to use eminent domain for private benefit. Having an elected Supreme Court was associated with approximately forty-five fewer condemnations over this period. In accordance with Suzette Kelo's personal conjecture, the corruption of public officials is a significant variable, both statistically and economically. A state with one additional federal corruption conviction (per one hundred thousand residents) was likely to condemn between 124 and 143 additional properties for private benefit. The federalism variable is negative and significant, with a 1% increase in local expenditure as a share of state and local expenditure resulting in approximately one less condemnation. Finally, when included, economic freedom was significant and negative as expected. On average, a state scoring one unit higher on this index condemned approximately eleven fewer properties. The inclusion of economic freedom did not significantly alter the magnitude or signs of the other coefficients.

5. Robustness Checks

In this section, I check the sensitivity of the results presented in Table 2 to both alternative dependent variables and additional control variables. First, while the dependent variable used in Table 2 is the total number of eminent domain condemnations for private use, the Berliner data construct this total by adding two component measures: filed condemnations and threatened condemnations. When a property is threatened with eminent domain, the owner may either give in to the demand and divest of the property or may choose to fight the action which subsequently results in a court filing to seize the property. Berliner's filed condemnations data are the number of instances in which the government or private parties filed actions in court to transfer private property for private benefit. Total condemnations include both these filed condemnations and threatened condemnations that did not result in a court filing. While the total is the best measure of overall eminent domain use for private benefit, the nonfiled threatened condemnations are much harder to measure and thus are more likely to be subject to measurement errors. Because filed condemnations are based on

court records, these are more accurately measured, but the drawback is a more limited measure (only 36% of all eminent domain threats result in filings). Table 3 presents the results obtained using only the count of filed condemnations.

The results using this alternative measure are largely unchanged. Because the number of filed condemnations is less than the total number of condemnations used before, we should expect each coefficient to be smaller in magnitude when using filed condemnations as the dependent variable. This is true for each of the variables except population, which actually increases in magnitude. The federalism variable becomes insignificant but only in the regression that includes economic freedom. Nonetheless, the results in Table 3 suggest that the estimates presented in Table 2 are robust to alternative measures of state eminent domain use.

I also perform these regressions on the remaining subcomponent, threatened condemnations, and the results of these regressions are presented in Table 4. The results are similar in sign, magnitude, and statistical significance when using threatened condemnations rather than the total. The most

Table 3. Factors Impacting Filed Condemnations for Private Use or Benefit

Poisson Regression Results (Marginal Effects)

Dependent Variable: Filed Condemnations for Private Use or Benefit

	(1)	(2)
Supreme Court elected	−3.39*** (11.17)	−3.64*** (10.69)
Corruption rate	15.41*** (10.92)	21.67*** (13.36)
Economic freedom	−2.43*** (11.74)	—
Federalism (% local)	−0.007 (0.22)	−0.28*** (6.53)
Median house value	−0.06*** (10.24)	−0.05** (7.79)
Owner occupied (%)	1.28*** (14.25)	1.74*** (17.29)
Population	6.32*** (11.94)	9.68*** (15.16)
Urban population (%)	0.20*** (11.50)	0.14*** (8.68)
Vacant housing units (%)	4.49*** (15.12)	4.79*** (14.73)
Observations	50	50
Log likelihood	−1,319.51	−1,398.22

Note: Absolute *t*-statistics in parentheses.
*** denotes significance at the 1% level.

Table 4. Factors Impacting Threatened Condemnations for Private Use or Benefit

Poisson Regression Results (Marginal Effects)

Dependent Variable: Threatened Condemnations for Private Use or Benefit

	(1)	(2)
Supreme Court elected	−47.01*** (29.76)	−47.88*** (30.30)
Corruption rate	79.66*** (17.93)	83.38*** (18.53)
Economic freedom	−3.90*** (5.07)	—
Federalism (% local)	−0.10 (1.08)	−0.36*** (4.27)
Median house value	−0.69*** (28.03)	−0.68*** (27.70)
Owner occupied (%)	4.42*** (36.60)	4.48*** (37.46)
Population	2.72*** (23.92)	2.93*** (26.54)
Urban population (%)	3.00*** (33.71)	3.05*** (34.29)
Vacant housing units (%)	6.47*** (7.03)	6.90*** (7.09)
Observations	45	45
Log likelihood	−3,255.35	−3,267.48

Note: Absolute *t*-statistics in parentheses.
*** denotes significance at the 1% level.

notable change is that federalism again becomes insignificant in the regression that includes economic freedom.

Next, I explore additional control variables, including population density, the percentage of manufacturing, population growth, the percentage of federally owned land in each state, and an alternative measure of federalism. Recall that one argument for the use of eminent domain is that it is more necessary in highly populated or more urban areas. To further examine this effect, I run the model with population density versus urban population. In separate model specifications, I include manufacturing and population growth to capture relative congestion and urbanization across states. I expect each of these variables to be positively related to eminent domain use. I also include the percentage of land within a state that is federally owned. The percentage of federally owned land may be negatively related to the use of eminent domain, as government has more land at its disposal in states where this percentage is higher. Lastly, I include an alternative measure of federalism, calculated as the total number of local governments within a state. Again, I expect a negative sign indicating that a higher degree of

Table 5. Factors Impacting Total Condemnations for Private Use or Benefit; Robustness Regressions

Poisson Regression Results (Marginal Effects)

Dependent Variable: Total Condemnations for Private Use or Benefit

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Supreme court elected	−58.07***	−58.12***	−44.20***	−46.59***	−44.81***	−44.13***	−45.48***	−47.12***	−36.00***	−29.82***
	(37.08)	(37.33)	(32.92)	(33.51)	(33.38)	(33.62)	(34.32)	(35.36)	(33.28)	(29.95)
Corruption rate	155.41***	155.23***	143.44***	173.28***	116.85***	112.18***	119.36***	137.90***	124.59***	131.39***
	(27.46)	(27.59)	(28.20)	(32.30)	(23.26)	(23.06)	(25.80)	(28.90)	(27.80)	(28.89)
Economic freedom	0.30 (0.30)	—	−25.32***	—	−9.22***	—	−10.58***	—	−17.03***	—
			(24.06)		(11.32)		(15.80)		(22.93)	
Federalism (% local)	−0.68***	−0.65***	−0.70***	−2.40***	−0.75***	−1.15***	−0.78***	−1.68***	—	—
	(4.33)	(4.95)	(6.03)	(18.93)	(8.37)	(12.82)	(8.70)	(18.34)		
Median house value	−1.11***	−1.11***	−1.16***	−1.01***	−0.82***	−0.78***	−0.80***	−0.78***	−0.88***	−0.65***
	(37.00)	(37.77)	(36.73)	(34.90)	(32.91)	(33.05)	(32.59)	(32.35)	(34.45)	(34.85)
Owner occupied (%)	9.35***	9.35***	9.55***	9.97***	6.23***	6.03***	6.38***	6.61***	7.22***	7.59***
	(46.58)	(46.67)	(39.50)	(39.62)	(33.24)	(33.44)	(36.21)	(38.66)	(37.23)	(38.88)
Population	8.55***	8.54***	5.46***	6.54***	3.75***	4.01***	3.86***	4.61***	4.26***	4.21***
	(42.33)	(42.94)	(32.78)	(34.39)	(28.66)	(29.57)	(29.50)	(32.97)	(32.25)	(33.54)
Urban population (%)	—	—	2.02***	2.02***	2.93***	2.88***	2.87***	2.80***	3.05***	2.72***
			(27.75)	(26.09)	(35.06)	(35.06)	(34.50)	(34.78)	(36.42)	(35.64)
Vacant housing units (%)	4.46***	4.54***	−9.04***	−8.22***	10.39***	9.08***	10.25***	8.65***	13.10***	13.13***
	(3.66)	(3.81)	(8.10)	(6.48)	(14.98)	(12.77)	(14.66)	(11.28)	(17.78)	(16.75)
Federalism (# local)	—	—	—	—	—	—	—	—	−0.004***	−0.0004***
									(15.37)	(13.87)

Continued

Table 5. Continued

Poisson Regression Results (Marginal Effects)

Dependent Variable: Total Condemnations for Private Use or Benefit

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Population density (%)	0.11*** (39.38)	0.11*** (3.81)	—	—	—	—	—	—	—	—
Manufacturing (%)	—	—	−5.24*** (22.73)	−4.07*** (18.74)	—	—	—	—	—	—
Population growth	—	—	—	—	−0.18*** (3.21)	−0.56*** (11.83)	—	—	—	—
Federal land							−0.09*** (4.67)	−0.11*** (4.85)		
Observations	50	50	50	50	50	50	50	50	50	50
Log likelihood	−4,870.79	−4,870.84	−3,251.94	−3,621.05	−3,841.46	−3,911.09	−3,835.05	−3,967.23	−3,692.67	−4,086.32

Note: Absolute *t*-statistics in parentheses.
*** denotes significance at the 1% level.

decentralization acts as a constraint on government and will result in fewer eminent domain takings.

The results including these additional control variables are presented in Table 5, using total condemnations as the dependent variable. The results on the main variables of interest are similar in both sign and magnitude and are robust to these additional control variables. The single coefficient that is substantively altered is for the economic freedom variable when population density versus urban population is included in the model. In this regression, economic freedom changes sign and looses significance. Population density, the percentage of federal land, and the alternative federalism variable each have the expected sign. The coefficients on manufacturing and population growth are both negative.

6. Conclusion

This paper provides an initial examination of possible determinants of eminent domain use across states. The results suggest that in addition to traditional explanations of eminent domain use, several political economy variables are also important in explaining why eminent domain is used more frequently in some states than others. In particular, I find that eminent domain use for private benefit is utilized more widely in states with: (1) higher rates of corruption, (2) appointed Supreme Court justices, (3) less fiscal decentralization, and (4) lower economic freedom. The corruption result is consistent with Suzette Kelo's own conjecture that higher levels of public sector corruption are a significant factor in explaining this behavior across states. Future research should explore alternative model specifications to examine the robustness of these results.

Following the controversial U.S. Supreme Court ruling in *Kelo v. City of New London*, many states have enacted restrictions on their own use of eminent domain for private benefit. Several recent articles examine eminent domain takings and the backlash following *Kelo* (Ruhl, 2005; Berliner, 2006; Sandefur, 2006; Lopez and Totah, 2007; Somin, 2009). The results of this paper suggest that the states most in need of additional restrictions in the post-*Kelo* world are those with high levels of corruption or centralization or those with appointed Supreme Court justices.

Appendix

Data Description and Sources

Variable	Description	Mean	SD
Total condemnations (1)	Total condemnations for private use or benefit (1998–2002)	205.64	502.34
Filed condemnations (1)	Filed condemnations for private use or benefit (1998–2002)	74.44	351.94
Threatened condemnations (1)	Threatened condemnations for private use or benefit (1998–2002)	145.78	414.01
Supreme court elected (2)	Dummy; takes (1) when Supreme Court justices of state Supreme Courts elected	0.42	0.49
Corruption rate (3)	Corruption rate = number of convictions of public officials for public corruption (1976–2002) relative to average population in the state (1976–2002)	0.28	0.13
Economic freedom (4)	Overall score (2000)	7.07	0.68
Federalism (% local) (5)	Local direct expenditure divided by sum of state and local direct expenditure (%) (1999–2000)	51.22	8.66
Median house value ($) (5)	Thousands of dollars (2000)	117,990	39,422
Owner occupied (%) (5)	(%) (2000)	47.19	5.01
Population (5)	Total population, hundred thousands (2000)	5,616,997	6,123,411
Population density (5)	Population density per square mile of land (%) (2000)	181.90	250.15
Urban population (%) (5)	(%) (2000)	71.69	14.75
Vacant housing units (%) (5)	(%) (2000)	2.17	0.85
Federalism (# local) (6)	Total number of local governments	1,750.50	1,487.86
Manufacturing (%) (7)	(%) (2000)	12.71	4.8
Population growth (%) (5)	Population growth 1990–2000 (%)	13.84	11.16
Federal land (%) (8)	(%) (1996)	14.34	4.8
Housing units (5)	Total housing units (2000)	2,312,596	2,388,130

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