Covert Confiscation: How Governments Differ in Their Strategies of Expropriation

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Abstract

A substantial literature concludes that democratic-type institutional constraints help curb governments' propensity to expropriate foreign direct investment. However, little attention has been paid to the strategies of expropriation regimes employ. We theorize that more politically constrained regimes will utilize subtler expropriation methods, allowing them to overcome institutional impediments. Using data on expropriations in developing countries between 1960 and 2006, we show that rather than rely on overt nationalization, constrained regimes are more likely to use covert methods of expropriation, such as forced sale or contract renegotiation, tools which are harder to identify, easier to justify, and may sidestep legislative approval. Indeed, while more politically constrained regimes may be less likely to nationalize foreign investment than less constrained regimes, they are nearly as likely to engage in covert forms of confiscation, thereby introducing new questions about the extent to which institutional constraints really translate into improved property rights for foreign investors.

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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. Yet in order to attract this potentially lucrative form of capital, governments must be able to credibly commit not to expropriate the property of foreign direct investors. A substantial literature stemming from the work of Olson (1993) and North and Weingast (1989) concludes that regimes with more democratic-type institutional constraints have an inherent advantage when it comes to making such commitments. Proponents of this view argue that although all regimes may face similar temptations to expropriate, those governments that face increased checks on their authority through legislative oversight of the executive and public accountability should be less likely to act on those temptations (see e.g. 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 there is another element of variation on which these theories are largely silent: the type of expropriation.

While 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 curbed by institutional impediments. Unlike the most overt forms of expropriation, such as nationalization, less conspicuous methods of forced divestment, such as forced sale and contract renegotiation, may be difficult to distinguish from a voluntary agreement. This not only allows governments to claim publicly that the terms were fair, potentially reducing the economic consequences and any concomitant public backlash, but it may also allay the concerns of legislative veto players that the act will lead other investors to pull out en masse, a consideration that may be particularly important to legislators in so far as they have investments in foreign-owned companies and other stocks that may suffer reduced value as a result of domestic expropriations (Jha 2015). Moreover, intervention, a type of breach that is accomplished through extra-legal means, not

only provides the government cover through plausible deniability, but its accomplishment typically bypasses the legislature altogether, making legislative constraints on the executive entirely moot. This suggests that two of the primary mechanisms often assumed to play a central role in protecting foreign investors' property rights – legislative constraints and audience costs – may be far less effective at preventing methods of confiscation in which government culpability is less overt.

Therefore, much as Kono (2006) has suggested that democracies tend to use less conspicuous methods of trade protections, we theorize that more constrained governments ought to use less identifiable (or what we term "covert") methods of forced divestment. Such strategies allow politically constrained regimes to enjoy the advantages of expropriation, while minimizing the bite of institutional impediments. By contrast, minimally constrained governments should tend to rely upon more open, or what we term "overt" forms of expropriation, such as nationalization. Overt expropriation is desirable for governments with fewer checks on their authority, because it provides an immediate and sizable benefit that accrues directly 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, which should make it less viable for more politically constrained regimes.

In order to test our claims, we leverage existing data on actual expropriations of foreign direct investment that occurred in a substantial subset of 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 expropriatory acts, we have been able to categorize the types of breach that actually occurred across nearly all of our dataset. While scholars have observed a recent rise in "indirect expropriation," which frequently involves regulatory encroachment as opposed to intentional takings (Pelc 2017), we restrict our attention to instances in which the transfer of assets from the foreign investor was the objective of the act in question. We do this for several reasons.

First, it offers a particularly hard test of the theory. While regulatory or other policy

changes can harm foreign direct investors and do at times result in investment disputes, the intent of these acts is often to provide a public good, rather than to transfer value to the government.[1] Moreover, we might actually expect that regimes that are more accountable to the population may be more likely to put in place public interest legislation, even at the expense of foreign investors. By contrast, we intend to show that even when it comes to behavior that scholars broadly assume will be hindered by political constraints (expropriation), governments can still work around such constraints by simply using revised methods to attain the same end. Second, the focus on expropriations allows us to speak directly to the literature on political constraints and property rights, and it offers the opportunity to continue to build on work suggesting that the democratic advantage may be overstated (see e.g. Graham, Johnston, and Kingsley 2018). Finally, using acts of expropriation, rather than other types of harmful legislation or policies helps us to hold constant the motivation of the act in question, thereby ensuring a close alignment between theory and empirics. This, in turn, allows us to investigate a novel way in which institutional characteristics might lead states to pursue similar interests in dissimilar ways.

Our empirical results offer support for our theoretical expectations, revealing that, conditional on expropriating at all, regimes with greater legislative constraints and public 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 politically constrained regimes offer better property-rights protections to foreign direct investors than more autocratic alternatives. 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

[1]For example, one recent investment dispute involved Australia's plain packaging laws for cigarettes, laws that presumably were less motivated by a desire to reduce the wealth of multinational cigarette companies than by a desire to reduce instances of lung cancer in the Australian population.

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 identify as constituting state-led expropriation, this suggests that the literature may have generally tended to overstate the advantage conferred by legislative institutions in protecting foreign direct investments from encroachment.

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. Finally, we present 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 a contract that had been previously agreed upon no longer serves government interests. Expropriation may even be a way to satisfy certain domestic constituencies, who may value breach due to its potential for redistributing income from foreign to domestic actors. 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 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.[2] To the extent that FDI contributes to economic growth and technological transfers, a substantial reduction in these investments also means that a country may miss out on opportunities to acquire beneficial financial inflows

[2]See e.g. Wellhausen 2015.

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 may be less capable of managing a previously foreign-owned company than the actor from which they seized it.[3] 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 political institutions. Building off of Olson (1993) and North and Weingast (1989), who argued that democratic-type institutional constraints help to guarantee property rights more broadly, numerous scholars have sought to evaluate whether such constraints might similarly protect against expropriation of FDI in particular. There are several reasons why we might expect there to be a negative relationship between institutional constraints and expropriation of foreign investments.

First, greater institutional constraints on the executive should reduce the government's 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, at least some legislators ought to oppose it (see e.g. Wellhausen 2014, at p. 21), particularly those wealthy enough to hold assets in the form of investments (Jha 2015). This suggests that the greater the degree to which there exists political actors able to impose oversight on the executive, the more likely that the executive could face resistance to an 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

[3]See e.g. Opp 2012.

as long-term economic growth, certain sectors of the voting public, as well as private interest groups, ought to 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 even a majority of the public 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, leading to reduced job opportunities and stagnant growth, there is an increased risk that voters, particularly those that are financially savvy, may be inclined to punish officials 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 an additional role in dissuading certain legislators from voting in favor of an obvious expropriatory act. Notably, this could hold even in cases in which a large portion of the general population actually supported expropriation, since legislators will predominantly be worried about their own voters, as opposed to the population as a whole.

2.1 Evidence on the Propensity to Expropriate

Among those who have examined whether politically constrained regimes are in fact better able to commit not to expropriate foreign direct investment, many have found support. For example, a number of scholars have identified a positive relationship between the property rights protections afforded under democratic-type legal institutions and FDI inflows (see e.g. Jensen 2003; Nieman and Thies 2018; Li 2009; Staats and Biglaiser 2012; Li and Resnick 2003). In addition, several studies have shown a direct link between expropriation risk and institutional constraints. For example, Jensen (2008) finds that political risk firms charge lower expropriation insurance rates for investments in democracies and offers evidence that this is due to increased constraints on the executive in democratic regimes. Li (2009) concludes, using actual instances of expropriation, that democracies are less likely to

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

expropriate FDI overall, while also showing that leaders' time horizons play an important mediating role. 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. Finally, Graham, Johnston, and Kingsley (2018) find that veto players reduce expropriation risk, as assessed by a leading political risk firm.

At the same time, several recent studies have offered caveats. Perhaps most notably, the Graham, Johnston, and Kinglsey (2018) previously mentioned shows that although veto players do protect against expropriation risk, they fail to protect against transfer risk, an important form of creeping expropriation. In addition, using Jensen's political risk outcome, Fails (2012) shows that inequality has an important conditioning effect on executive constraints. Finally, Albornoz, Galiani, and Heymann (2012) find that democracies are actually more likely to expropriate in sectors that use labor less intensively.[5]

The literature cited above provides valuable insight into the extent to which a regime's institutional characteristics protect against the seizure of foreign direct investment. However, almost none of this work has attempted to evaluate whether different political institutions might contribute to different types of property violations.[6] In fact, there seems to be an implicit assumption across the vast majority of this work that any expropriatory act involving the wholesale, involuntary transfer of assets away from foreign investors is theoretically equivalent to any other.[7] We believe that the absence of theorizing on the motivations behind different forms of forced divestment leaves under-explored an important way in which regimes ought to diverge.

[5]Some scholars have also 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]Graham, Johnston, and Kingsley (2018) are a notable exception here, yet even Graham, Johnston, and Kingsley do not attempt to disaggregate expropriation types, leading them to conclude that veto players *do* protect against expropriation risk, broadly speaking.

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

In the next section, we outline the theoretical reasons to expect that countries under differing degrees of political constraints will systematically vary not only in their propensity to expropriate but also in their strategies of acquisition. We demonstrate that even when it comes to outright expropriation, an act that scholars have long-assumed is highly sensitive to institutional constraints, such constraints only act to curb the most flagrant and identifiable forms of this behavior, while doing little to prevent more covert methods.

3 Impact of Institutions on Expropriation Type

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 through public accountability and legislative oversight 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.

For such 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. Yet not all types of expropriation require legislative approval, making it unclear why legislators should be expected to constrain those types of expropriation for which they have no role. 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 or their own financial fortunes. Yet officials' future office prospects as well as their financial well-being may not be equally impacted by 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 potentially impacted voters may be less likely to punish acts of expropriation in which the government's culpability is less obvious.

More generally, to the extent that some portion of the public acts as a mitigating force against legislators supporting an expropriation (in cases in which legislators are involved), 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. This is not to say that the public will always oppose expropriations in the first place, nor is it to say that the public will be united in its opposition or support of the act. It is simply to say that to the extent that some portion of the public does disapprove of actions 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. Public observation, however, is most likely to occur through media coverage,[8] 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 receive some press, they make for far less sensational material, if they are covered at all. As a result, legislators who represent voters who may be financially harmed by expropriations, will be most dissuaded from offering their support in cases in which expropriations are most likely to be observed by their constituents.

This suggests that institutionally constrained regimes will 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 such governments 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

[8]See e.g. Brutger and Strezhnev's working paper discussing the important role of the media in conveying investor-state dispute (ISDS) cases to the public.

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. 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 often 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 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 expropriation 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, even in cases in which the legislature must sign off on such a sale, legislators are typically making that decision at a point at which the company has already conceded the field, making a forced sale easier to execute than formal expropriation in the presence of strong constraints on the executive.

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.[9] 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

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

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 subtle 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 what we term "overt" expropriation likely provides the fastest and greatest windfall for an actor facing few political impediments, since it requires no negotiation with the foreign company and entails a wholesale taking without adequate compensation. This form of expropriation may also be appealing to governments that only need to appeal to a narrow portion of the population (which also is likely to be the case in less constrained governments), since some portion of the public may directly benefit from and thus favor expropriation. At the same time, overt expropriation is also the most publicly visible and hardest to defend as either outside the government's control or desired by both parties.

On the flip side, while the remaining three types of expropriation or what we term the "covert" types may take longer to realize or (in the case of intervention) may not accrue fully to the central government, they can also more easily be accomplished in the presence of institutional constraints. Covert expropriation also has the appeal of being more difficult to identify as a violation of property rights by the government, potentially offering cover to actors worried about their constituents' or their own future investments. 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 excuse 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.

Because covert expropriation is less identifiable as such than overt forms and also less obviously violates legal norms, both legislative constraints and audience costs ought to play a reduced role in preventing it. Legislative constraints should have a lesser impact in part because legislators 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 legislators may be less likely to block covert expropriation is the fact that covert expropriation may only require them to approve the final deal, after a firm has already been browbeaten into agreeing to a change of contract or ownership, allowing these actors to pretend (or possibly even believe) that they are merely facilitating a mutually

agreeable outcome. In addition, because forced sales and contract renegotiations are framed as a mutually agreeable bargain, legislators who would otherwise oppose expropriation can be brought on board by making the forced divestment seem slightly more beneficial to the aggrieved party, even if, in reality, that party is still acting under duress. Indeed, such dynamics appear to have played out during the Bolivian Petrobras expropriaton, which was accomplished through a contract renegotiation (Hajzler 2012). Specifically, during the renegotiation process, members of the opposition party in the senate that otherwise might have blocked the action, seem to have been brought on board after making changes to the revised contracts that favored the foreign entity (Dow Jones 2007). Moreover, particularly in the case of intervention, legislators 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.

Likewise, to the extent that both the executive and legislative branches worry about members of their constituencies opposing expropriation and/or its financial consequences and then holding them accountable, here too the types of expropriation that we term covert ought to be less sensitive to this constraint. The logic here is similar to that for legislative constraints. Specifically, because the public is often less able to identify contract renegotiation and forced sale as a form of expropriation that is damaging to the economy and to their financial interests, they will also be less likely to vote against politicians who support it. In addition, in the case of intervention, because this occurs outside of legal channels, in the same way that government officials can claim plausible deniability to investors, they can also claim plausible deniability to voters, thereby partially reducing any electoral consequences. This is still not to suggest that all acts of expropriation will be met with resistance by the general public, but it does mean that to the extent that accountability to one's citizens makes certain acts of expropriation less palatable, this will hold most strongly in the case of nationalization, while being of far lesser significance when it comes to contract renegotiation, forced sale, and intervention.

The above discussion suggests that there are theoretical reasons to expect that when institutionally constrained regimes expropriate, they will gravitate towards covert methods, while being inhibited from using overt expropriation. By contrast, unconstrained autocracies may actually prefer overt expropriation, due to its potential to provide an immediate benefit through unilateral declaration. In addition, populist regimes that only need to appeal to a subset of the population and are not constrained by legislators facing divergent voting blocs may actually benefit from overt expropriation in cases in which the executive's selectorate supports such an action.

4 Data and Methods

In order to investigate the relationship between political constraints and strategies of expropriation, we leverage existing data on expropriations from several sources. Our earliest data come from Kobrin (1980), who records 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 involve the taking of only a single entity, while others entail the seizure of a large number of companies. While Kobrin acknowledges that this means that acts may vary 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 clear-cut 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, something that, if anything, ought to bias against a positive finding, since the more obvious it is that an act constitutes expropriation, the more institutional constraints ought to protect against it. At the same time, it is important to note that although governments obviously

have an incentive to dissemble about whether their actions constitute expropriation in cases in which they use a covert type, the acts are still on the legal record in the case of contract renegotiation and forced sale. Likewise, when it comes to determining that an act actually constitutes expropriation, across all three covert types, this evidence often emerges, if not from news sources, then from the company itself, which has an incentive to publicize that the act constituted an infringement in order to seek compensation. Given that all expropriations constitute a taking, regardless of where or how they are accomplished, companies' incentives to seek restitution should not look systematically different across different types of governments.

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.[10] Combined, the three datasets contain 628 acts of expropriation[11] 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. 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 a search of U.S. State Department documents, newspaper archives, academic papers, and investment dispute

[10]We should note that other data on expropriations does exist, but it is less well-suited to our current purpose. For example, recent work by Arel-Bundock, Peinhardt, and Pond (Forthcoming) provides an alternative dataset of expropriations. However, this data only includes expropriations covered under contracts issued by the US Overseas Private Investment Corporation, which is limiting. We also considered ISDS cases, as well as political risk measures such as those used by Graham, Johnston, and Kingsley. However, both of these alternatives have key weaknesses. Specifically, the ISDS data only goes back to 1987 and predominantly relates to "indirect expropriation" via regulatory changes (Pelc 2017). As a result, the temporal coverage is substantially reduced, and while it offers a rich selection of contract breaches, only a handful of these constitute expropriations in the true sense of the term. Likewise, the political risk data covers an even shorter time period and treats all acts that constitute actual expropriations as equivalent, thereby not allowing us to test our hypotheses.

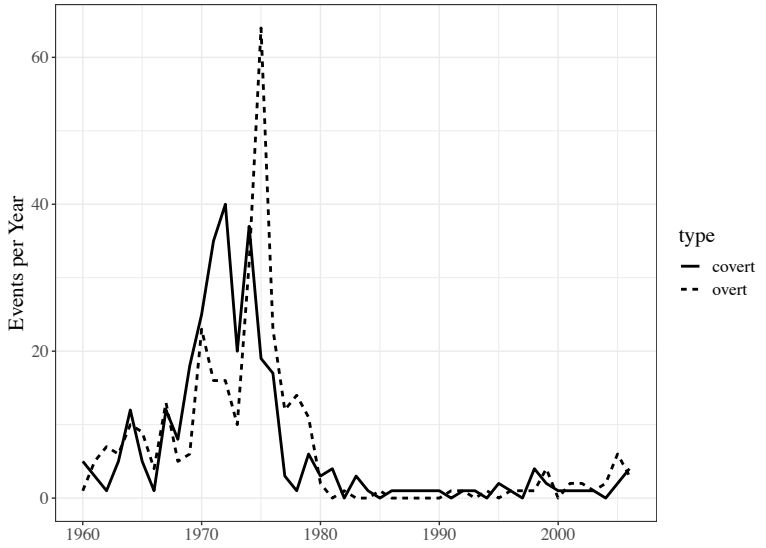
[11]Four of the acts from the Kobrin dataset did not include dates. Although we were able to determine the date for one of those acts, the remaining three had to be dropped from the dataset.

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 this, 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 expropriations over time. While it is clear that expropriations peaked between 1970 and 1980, 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 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 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 also 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 is the fact that the two types closely mirror each other temporally. This provides reassurance that the different strategies 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 during

Figure 1: Expropriation Events by Year



the time period studied.

Our independent variables of interest aim to capture first the extent to which the executive is constrained via the legislative branch and second the extent to which officials are constrained by the public via potential audience costs. In order to capture the first of these, 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.

In order to capture the role of audience costs, we use VDem's measure of *vertical accountability*, which "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." Our theory suggests that audience costs should play a larger role in preventing overt expropriation, relative to

[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).

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 explore the relationship between these two types of political constraints and overt expropriation, we employ two primary strategies. Our central analysis estimates the relationship between political constraints 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 legislative constraints and audience costs and overt expropriation among states that choose to seize assets. Our theory predicts that the more constrained a regime is, the less likely it should be 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 politically constrained regimes 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 the two types of political constraints and both covert and overt expropriation and to test the difference between these two coefficients.

In the body of the paper we show panel results using a subset of developing countries that includes only country-years with U.S. FDI stock available (Tomz and Wright 2010).[13] While this may miss some country-years where there was investment by non-U.S. sources, this metric ensures that we only evaluate 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 there was no potential

[13]This data extends back to 1929 and ends in 2004, which requires dropping the most recent two years of data.

for expropriation to occur. 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' earlier patterns of expropriation. In total, this produces an unbalanced panel dataset with 4,241 observations. In the Appendix, we demonstrate that results hold using alternate forms of the panel, including dropping the FDI constraint, using a panel of all developing countries, and using only countries that Kobrin coded as having used expropriation, as these are the countries about which we can be sure he had information. We also show results hold controlling for lagged FDI inflows, since this may affect the decision to expropriate. We also show that our results hold when excluding intervention as a form of expropriation, in case this method follows a different logic than contract renegotiation and forced sale.

We also incorporate a number of other relevant controls. The first control we include is lagged GDP per capita and its squared term, since wealth should be correlated with both expropriation and institutions. 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 negatively impacts development (Li 2009). To account for the possibility that states that expropriate have fewer investors, we control for a measure of expropriation history in the panel, which is the number of acts that occurred in a given country since 1960. We additionally control for region. The next control is democracy, for which we use the dichotomous polity score (Center for Systemic Peace 2020). While democracy is undoubtedly correlated with legislative constraints and audience costs, controlling for it allows us to separate out the effects of the two types of constraints most thought to reduce the propensity for expropriation and the role of democracy more generally. Finally, in the conditional analysis, we control for sector and decade fixed effects, while in the Appendix we show the results continue to hold when using year fixed effects.

5 Results

Our theory predicts that when states expropriate, more constrained governments should be less likely to use overt methods. We thus begin by analyzing whether – conditional on expropriating – those regimes with higher legislative constraints and greater public accountability gravitate towards the types of expropriation that offer, among other things, plausible deniability and legalistic cover.

In order to assess the impact of legislative constraints and audience costs on expropriation type, we use our expropriation event-level dataset. We employ a logistic regression in which the outcome variable captures whether the state utilized overt (1) or covert (0) expropriation methods, and we analyze whether legislative constraints and vertical accountability, as measured by VDem, can explain this choice.[14]

Our results, displayed in Tables 1 and 2, demonstrate that, conditional on expropriating, regimes that have stronger legislative constraints and more vertical accountability are significantly more likely to rely on covert methods of seizure, such as forced sale, contract renegotiation, and intervention. This is true even when controlling for regime type, suggesting that even among autocracies or democracies government oversight is negatively associated with 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%.[15]

Importantly, this means that all expropriating states are not equal. While previous literature has predominantly 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 politically constrained regimes expropriate, they tend towards methods that are less clearly identifiable as state-sponsored acts of expropriation. In the Appendix, we show that results are broadly consistent, though significantly noisier, when using Henisz's Political Constraints Index (POLCON) rather than the VDem measure of legislative constraints

[14]Our Appendix includes robustness checks capturing alternative measures of constraints on the executive.
[15]Marginal effects are calculated using first differences for the bivariate model.

Table 1: Overt expropriation and legislative constraints

	(1)	(2)	(3)	(4)
Legislative Constraints	-2.102^{***}	-1.976^{***}	-1.877^{***}	-2.384^{***}
	(0.600)	(0.545)	(0.576)	(0.836)
Democracy				0.656
				(0.640)
GDP per capita		−1.442	−1.666	−1.698
		(1.256)	(1.622)	(1.649)
GDP per capita squared		0.067	0.070	0.072
		(0.074)	(0.090)	(0.092)
Extractive sector		−0.144	−0.188	−0.180
		(0.339)	(0.383)	(0.384)
Financial sector		0.256	0.199	0.159
		(0.353)	(0.354)	(0.358)
Manufacturing sector		−0.085	−0.145	−0.151
		(0.319)	(0.352)	(0.365)
Services sector		0.003	−0.005	−0.030
		(0.574)	(0.601)	(0.601)
Utilities sector		−0.184	−0.180	−0.166
		(0.346)	(0.376)	(0.373)
Constant	0.676^{***}	7.780	8.724	9.035
	(0.224)	(5.325)	(6.815)	(6.947)
Decade/Region FE	*N*	*N*	*Y*	
Observations	578	576	576	572
Log Likelihood	-374.438	-360.340	-355.711	-352.391
Akaike Inf. Crit.	752.877	738.680	743.423	738.782

Note: *p<0.1; **p<0.05; ***p<0.01

Robust standard errors clustered at country level

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

Table 2: Overt expropriation and vertical accountability

	(1)	(2)	(3)	(4)
Vertical Accountability	-0.706^{***}	-0.648^{***}	-0.693^{***}	-0.829^{***}
	(0.198)	(0.189)	(0.216)	(0.254)
Democracy				0.499
				(0.527)
GDP per capita		−0.826	−1.326	−1.308
		(1.240)	(1.564)	(1.576)
GDP per capita squared		0.029	0.046	0.043
		(0.073)	(0.087)	(0.088)
Extractive sector		−0.104	−0.101	−0.071
		(0.336)	(0.381)	(0.379)
Financial sector		0.246	0.274	0.260
		(0.368)	(0.355)	(0.360)
Manufacturing sector		−0.086	−0.099	−0.082
		(0.319)	(0.353)	(0.364)
Services sector		0.097	0.109	0.118
		(0.574)	(0.610)	(0.612)
Utilities sector		−0.193	−0.168	−0.148
		(0.351)	(0.380)	(0.376)
Constant	0.024	4.727	6.878	6.855
	(0.170)	(5.242)	(6.568)	(6.634)
Decade/Region FE	*N*	*N*	*Y*	*Y*
Observations	579	577	577	573
Log Likelihood	-374.037	-361.232	-354.377	-350.949
Akaike Inf. Crit.	752.073	740.463	740.754	735.897

Note: *p<0.1; **p<0.05; ***p<0.01

Robust standard errors clustered at the country level

Expropriation event analysis, using logit models. Results show that audience costs significantly constrain overt expropriation among expropriating states.

(Henisz 2000).[16] We additionally show our findings are robust to controlling for lagged FDI inflows, since the amount of FDI coming into the country may affect the likelihood of expropriation, and to controlling for periods of instability and regime change, when expropriation may be more likely.

These results provide evidence that when constrained regimes decide to expropriate, they are less likely to use overt methods. This suggests that countries with strong political constraints pursue expropriation using fundamentally different strategies than those without them. Yet we may also want to know whether legal institutions constrain covert expropriation from happening more generally and whether these constraints operate differently for overt relative to covert expropriation. Indeed, our theory suggests that whereas institutional constraints should do little to rein in covert expropriation, they should be much more effective at preventing overt strategies.

We thus analyze a panel dataset of country-years with U.S. FDI stock available to identify how legislative constraints impact the decision to use different forms of expropriation. This can also help reveal the degree to which overt expropriation, relative to more covert forms, explains the established relationship between institutionally constrained regimes and confiscation. First, we use OLS with the dependent variable equal to the number of expropriation events of different types (any, overt, or covert) as the dependent variable.

Tables 3 and 4 show that legislative constraints and vertical accountability, respectively have a particularly strong role in constraining overt methods of expropriation. Both measures 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 institutions and confiscation. While the correlation between each of these variables and overt methods of expropriation is large and statistically significant, however, the relationship between them and covert expropriation is considerably smaller and insignificant. This suggests that political constraints do indeed have a particularly constraining effect on more overt methods of expropriation.

[16]POLCON focuses on both the number veto points and the distribution of preferences, making it somewhat less theoretically relevant for our analysis.

Table 3: Legislative constraints and expropriation type, panel using OLS

	All	Overt	Covert
	(1)	(2)	(3)
Legislative Constraints	−0.152*	−0.126**	−0.025
	(0.081)	(0.053)	(0.041)
Democracy	−0.010	0.006	−0.016
	(0.037)	(0.025)	(0.020)
GDP per capita	−0.072	−0.089	0.017
	(0.167)	(0.135)	(0.067)
GDP per capita squared	0.005	0.005	−0.0003
	(0.009)	(0.008)	(0.004)
Expropriation History	0.002	0.002	0.0001
	(0.002)	(0.002)	(0.001)
Constant	0.497	0.517	−0.020
	(0.709)	(0.585)	(0.280)
Region FE	*Y*	*Y*	*Y*
Observations	3,826	3,826	3,826
R^2	0.008	0.007	0.005
Adjusted R^2	0.006	0.005	0.003

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

Table 4: Vertical accountability and expropriation type, panel using OLS

	All	Overt	Covert
	(1)	(2)	(3)
Vertical Accountability	−0.089**	−0.069**	−0.021
	(0.038)	(0.029)	(0.015)
Democracy	0.028	0.030	−0.002
	(0.039)	(0.029)	(0.018)
GDP per capita	0.024	−0.016	0.040
	(0.185)	(0.142)	(0.075)
GDP per capita squared	−0.002	0.0002	−0.002
	(0.011)	(0.008)	(0.004)
Expropriation History	0.002	0.002	0.0001
	(0.002)	(0.002)	(0.001)
Constant	0.071	0.192	−0.121
	(0.786)	(0.611)	(0.310)
Region FE	*Y*	*Y*	*Y*
Observations	3,830	3,830	3,830
R^2	0.010	0.009	0.006
Adjusted R^2	0.008	0.007	0.003

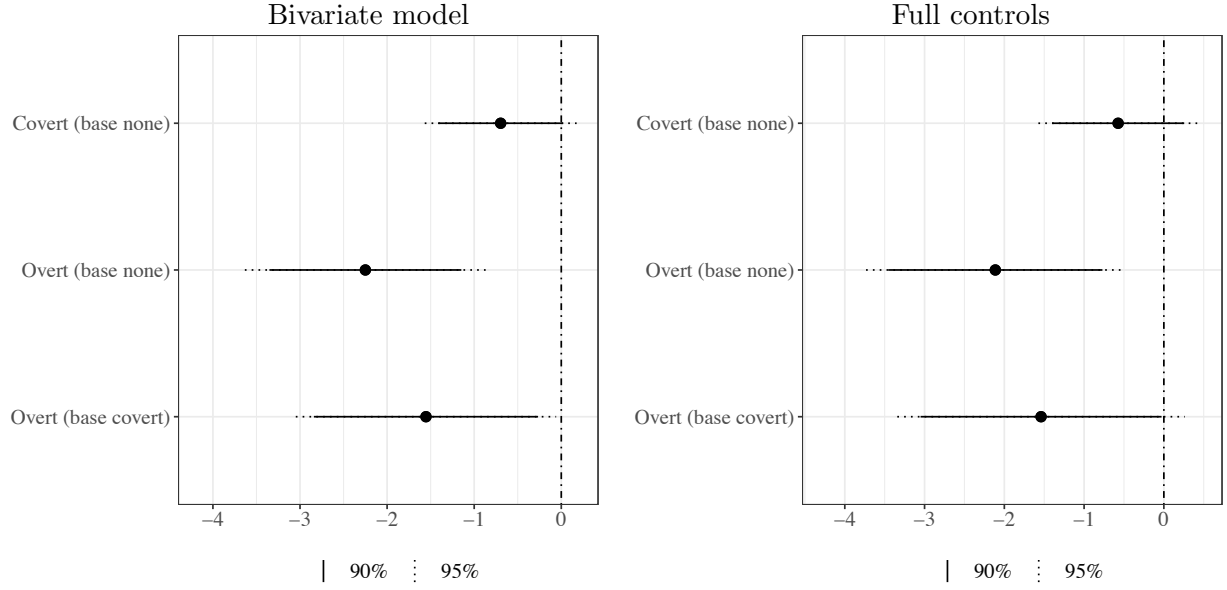
Note: *p<0.1; **p<0.05; ***p<0.01
Robust standard errors clustered at the country level

At the same time, the OLS model has a significant weakness in that the "overt" and "covert" models pool the alternative type of expropriation with none, making this an imperfect stand-alone estimate. In order to overcome some of the weaknesses in the OLS model, we also employ multinomial logit, which allows us to estimate the relationship between different forms of expropriation and legislative constraints. While this makes it possible to simultaneously estimate the relationship between legislative constraints 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 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.[17] This allows us to estimate three quantities of interest. First, we are interested in the likelihood more institutionally constrained regimes use overt expropriation (relative to no expropriation), compared to less constrained regimes. Second, we are interested in the likelihood more constrained regimes use covert expropriation (relative to no expropriation), compared to less constrained regimes. Third, we are interested in the difference between these first two quantities, which measures whether the propensity to engage in different types of expropriation is significantly different.

Figured 2 and 3 present our results for legislative constraints and vertical accountability, respectively. They demonstrate that both legislative constraints and vertical accountability are significantly 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)"). Moreover, the difference between these coefficients is statistically significant ("overt (base covert)") in both bivariate models and is significant in the multivariate model for legislative constraints, while falling just shy of

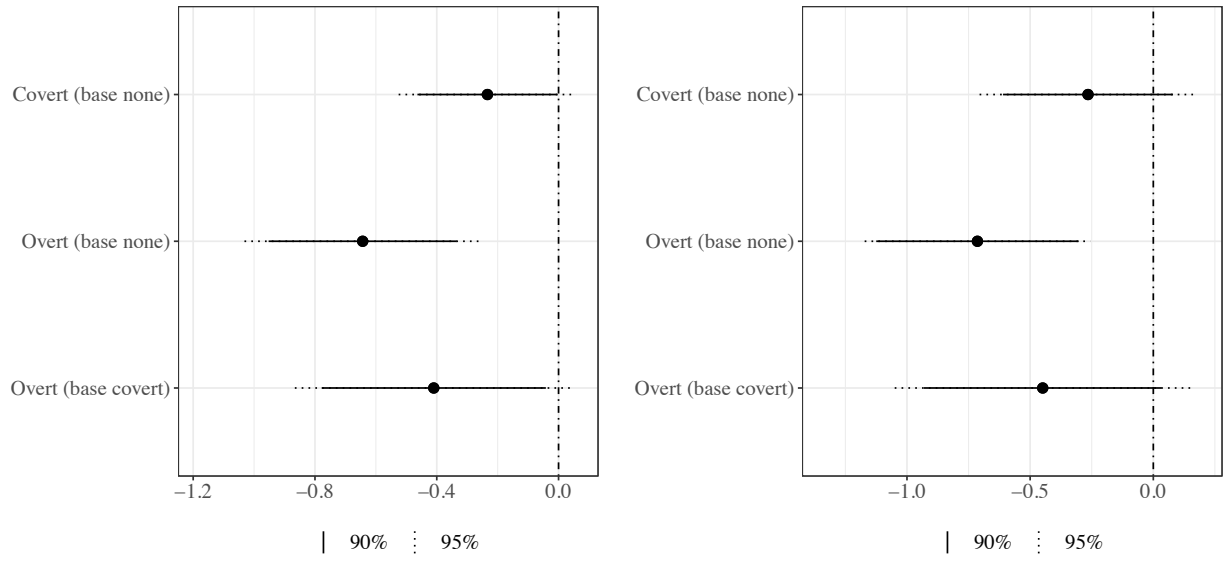
[17]In years that include both overt and covert expropriations, we bin the observations into the overt category. We do so because we consider overt expropriation to be a stronger form of confiscation: if a country uses nationalization, they show a greater willingness to overcome any legislative constraints and alienate investors. That said, 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: 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.

Figure 3: 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.

this threshold for the vertical accountability multivariate model.[18] Taken together, our results suggest that states with higher levels of political constraints in the form of legislative oversight and vertical accountability are significantly less likely to use overt versus covert methods of expropriation.

6 Conclusion

Despite an extensive literature on how regimes differ in their overall propensity to protect the property of foreign direct investors, there has been limited attention paid to whether regime 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 same political constraints that are generally assumed to protect foreign direct investment do not bind equally tightly across all forms of expropriation. Rather, institutionally constrained regimes appear to have almost as much leeway to engage in covert forms of expropriation as do their non-constrained counterparts. Specifically, while vertical accountability and legislative checks on the executive play a central role in curbing the most visible and undeniable forms of government-led forced divestment, they do relatively little to impede 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 democratic-type political constraints 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 politically constrained regimes do indeed provide better protection against overt takings, it is far from clear that they provide any better guaran-

[18]The slightly weaker results on vertical accountability likely reflect the fact the legislative constraints are a more consistent impediment to overt, relative to covert, expropriation, whereas the fact that the public may at times support overt expropriation makes vertical accountability a less consistent constraint across the board.

tees against more subtle methods. Notably, this conclusion follows logically from the very theories advanced by those suggesting that institutional constraints ought to lead countries to expropriate less: the same institutional protections that theoretically ought to discourage governments from engaging in expropriation, or other forms of property rights violations, also ought to encourage them to use means of appropriation that can be defended as outside the control of the state or welcomed by the aggrieved party when they do decide to engage in seizure.

Second, to the extent that the protection of property rights more generally is a function of whether or not property violations occur through official, highly visible channels, politically constrained regimes may have far more leeway to violate 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 legislative veto players, legal institutions may do little to prevent them. Considering that less overt confiscations are, by definition, harder to pinpoint as forced divestment, 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 differentially constrained regimes 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 governments from their worst inclinations so much as force them to pursue those inclinations in less obvious ways.

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Supplementary Appendix for Covert Confiscation: How Governments Differ in Their Strategies of Expropriation

January 28, 2021

Contents

Appendix A: Supplementary Information

A.1 Summary Statistics

Table A1: Summary Statistics (Conditional Analysis)

Statistic	N	Mean	St. Dev.	Min	Max
Overt Expropriation	582	0.545	0.498	0.000	1.000
Democracy	618	0.175	0.380	0.000	1.000
Legislative Constraints	621	0.227	0.282	0.000	0.875
GDP per capita	625	4,808.470	10,423.910	232.680	119,231.200

Table A2: Summary Statistics (Panel Analysis)

Statistic	N	Mean	St. Dev.	Min	Max
Total Expropriation	4,207	0.129	0.790	0	25
Overt Expropriation	4,207	0.067	0.598	0	25
Covert Expropriation	4,207	0.061	0.421	0	12
Democracy	3,785	0.270	0.444	0.000	1.000
Legislative Constraints	3,894	0.346	0.306	0.000	0.955
GDP Per Capita	4,207	6,280.132	10,770.340	175.410	124,998.000
Expropriation History	4,207	4.159	6.686	0	35

A.2 Robustness to Excluding Intervention

Since in some cases private actors carry out intervention, a form of covert expropriation, there may be concerns that it follows a fundamentally different logic than forced sale or contract renegotiation. Here we show that our conditional analysis results hold when excluding it entirely.

Table A3: Regime and expropriation type, excluding intervention

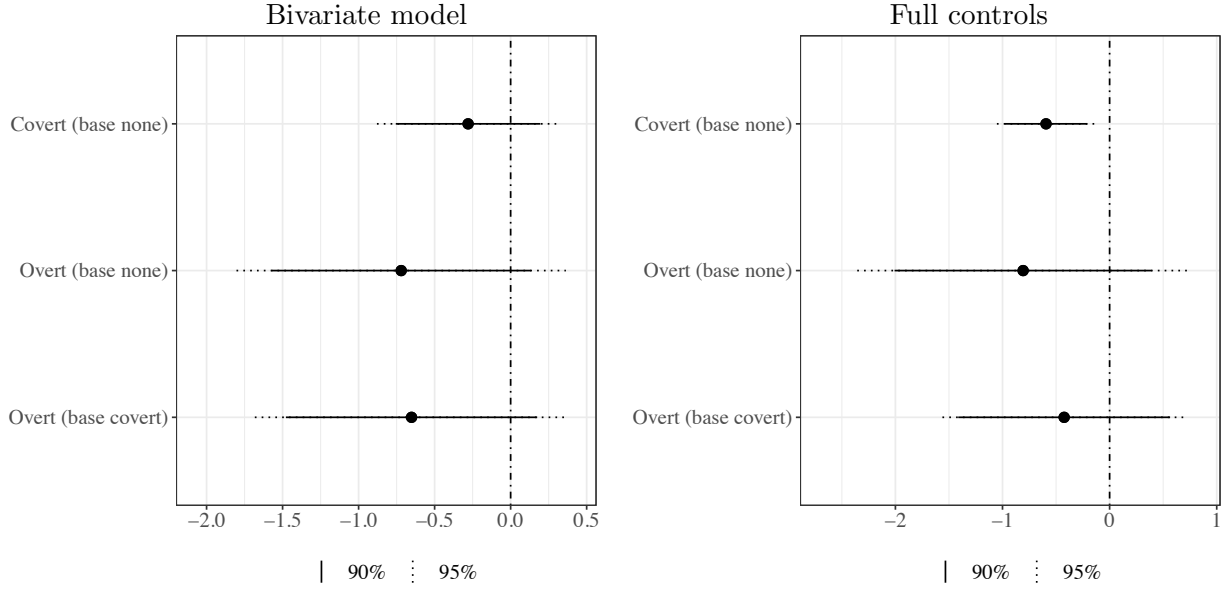
	(1)	(2)	(3)	(4)
Legislative Constraints	−2.217***	−2.141***	−2.099***	−2.783***
	(0.616)	(0.557)	(0.580)	(0.907)
Democracy				0.878
				(0.681)
GDP per capita		−1.828	−2.402	−2.426
		(1.266)	(1.762)	(1.760)
GDP per capita squared		0.091	0.113	0.114
		(0.075)	(0.098)	(0.098)
Extractive sector		−0.238	−0.231	−0.244
		(0.357)	(0.410)	(0.411)
Financial sector		0.219	0.232	0.160
		(0.374)	(0.377)	(0.384)
Manufacturing sector		0.183	0.203	0.159
		(0.326)	(0.369)	(0.380)
Services sector		0.418	0.483	0.376
		(0.616)	(0.708)	(0.714)
Utilities sector		−0.100	−0.049	−0.060
		(0.373)	(0.397)	(0.401)
Constant	0.901***	9.486*	11.890	12.289*
	(0.231)	(5.292)	(7.397)	(7.407)
Decade/Region FE	*N*	*N*	*Y*	*Y*
Observations	532	530	530	527
Log Likelihood	-336.031	-321.344	-315.803	-313.275
Akaike Inf. Crit.	676.062	660.689	663.605	660.551

Note: *p<0.1; **p<0.05; ***p<0.01
Robust standard errors

A.3 Recoding the Multinomial DV

In the body of the paper, multinomial results are coded such that a country-year is treated as overt expropriation if both overt and covert types are used. Since overt expropriation is a more forceful method, we consider this the best specification. In Figure A1 we show results coded differently – such that country-years where a regime uses both covert and overt types is coded as covert – which gives a lower bound on the effect size. Since autocracies are much more likely to use overt expropriation in general and much more likely to use both types in a give year, our results become noisier but are substantively similar.

Figure A1: Legislative constraints and expropriation, multinomial recoding



Legislative constraints and expropriation, using multinomial logit, and coding years where both overt and covert expropriation occur as covert. 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.

A.4 Alternate Panel Constructions

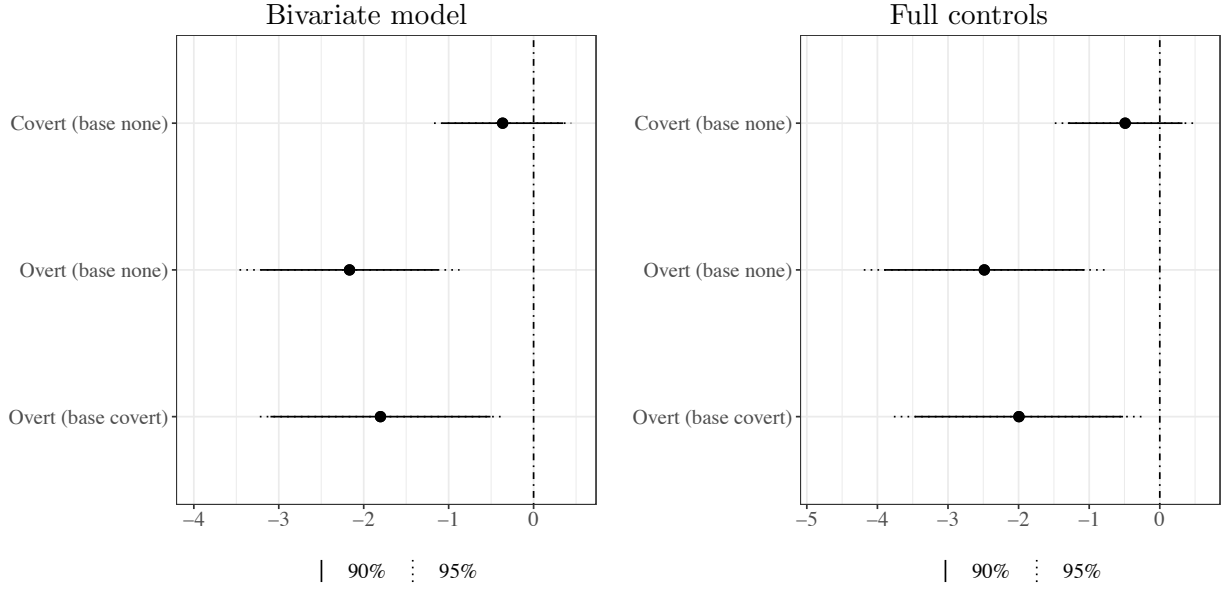
In the main paper, we present the results of a panel analysis using only country-years with available US FDI stock, in order to exclude cases where there were no foreign assets to seize. Here we demonstrate that our panel results hold using two alternate constructions: using a full panel of developing countries (excluding Europe and Cuba), and using only countries included as having expropriated in Kobrin's original data.

Table A4: Regime type (full panel) and expropriation type, panel using OLS

	All	Overt	Covert
	(1)	(2)	(3)
Legislative Constraints	−0.162**	−0.142***	−0.020
	(0.067)	(0.044)	(0.033)
Democracy	0.005	0.022	−0.017
	(0.031)	(0.022)	(0.016)
GDP per capita	−0.052	−0.079	0.027
	(0.130)	(0.108)	(0.052)
GDP per capita squared	0.004	0.004	−0.001
	(0.007)	(0.006)	(0.003)
Expropriation History	0.003	0.002	0.001
	(0.002)	(0.002)	(0.001)
Constant	0.370	0.450	−0.080
	(0.542)	(0.457)	(0.214)
Region FE	*Y*	*Y*	*Y*
Observations	5,122	5,122	5,122
R^2	0.008	0.007	0.007
Adjusted R^2	0.006	0.005	0.005

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

Figure A2: Full panel of developing countries, multinomial logit



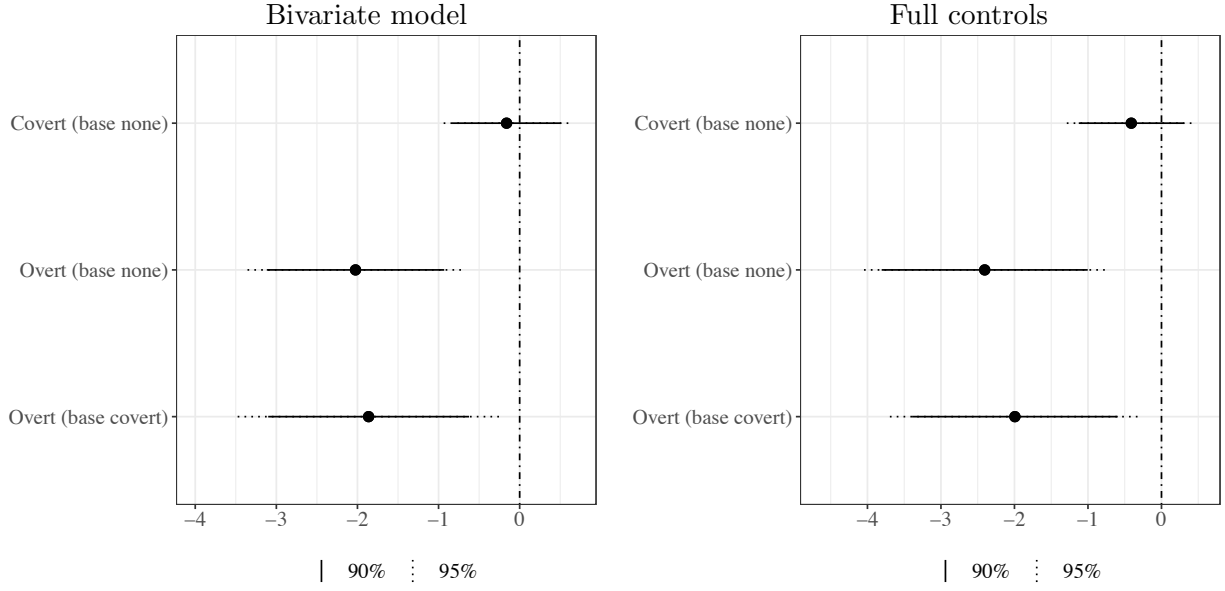
Legislative constraints and expropriation, using multinomial logit, including all developing countries except those in Europe and Cuba. Bivariate = no controls; full controls = democracy, GDP per capita and its squared term, history of expropriation, and region fixed effects. "Base none" compares covert 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.

Table A5: Regime type (Kobrin countries) and expropriation type, panel using OLS

	All	Overt	Covert
	(1)	(2)	(3)
Legislative Constraints	−0.208**	−0.189***	−0.019
	(0.089)	(0.058)	(0.044)
Democracy	0.018	0.027	−0.010
	(0.047)	(0.034)	(0.023)
GDP per capita	−0.070	−0.135	0.065
	(0.176)	(0.143)	(0.072)
GDP per capita squared	0.004	0.007	−0.003
	(0.010)	(0.008)	(0.004)
Expropriation History	−0.002	−0.0005	−0.002*
	(0.002)	(0.002)	(0.001)
Constant	0.576	0.774	−0.197
	(0.738)	(0.609)	(0.298)
Region FE	*Y*	*Y*	*Y*
Observations	3,477	3,477	3,477
R^2	0.008	0.009	0.005
Adjusted R^2	0.006	0.007	0.003

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

Figure A3: Including only Kobrin countries, multinomial logit



Legislative constraints and expropriation, using multinomial logit, including only countries covered in Kobrin's data. 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.

A.5 Alternative Legislative Constraints Coding

The original variable that we use from VDem (*v2xlg_legcon*) drops countries that do not have a legislature, i.e. when *v2lgbicam* is zero. This means that the minimum value for legislative constraints is .19. In the body of the paper we replace these values with zero, reflecting the fact that countries with no legislatures face no legislative constraints. This section demonstrates that results hold when using the original VDem coding.

Table A6: Overt expropriation and legislative constraints (original VDem coding)

	(1)	(2)	(3)	(4)
Legislative constraints	−1.855**	−1.700**	−1.533**	−2.335**
	(0.762)	(0.721)	(0.697)	(1.003)
Democracy				0.979
				(0.762)
GDP per capita		−0.529	−0.688	−0.797
		(1.729)	(2.367)	(2.340)
GDP per capita squared		0.007	0.016	0.019
		(0.100)	(0.134)	(0.133)
Extractive sector		−0.318	−0.371	−0.344
		(0.390)	(0.419)	(0.421)
Financial sector		−0.134	−0.272	−0.334
		(0.449)	(0.452)	(0.450)
Manufacturing sector		−0.724**	−0.793**	−0.784**
		(0.334)	(0.354)	(0.369)
Services sector		−0.378	−0.457	−0.472
		(0.648)	(0.610)	(0.618)
Utilities sector		−0.576	−0.583	−0.541
		(0.425)	(0.433)	(0.435)
Constant	0.556	4.576	4.882	5.778
	(0.361)	(7.249)	(9.843)	(9.736)
Decade/Region FE	*N*	*N*	*Y*	*Y*
Observations	367	367	367	365
Log Likelihood	-242.342	-231.563	-226.243	-222.602
Akaike Inf. Crit.	488.684	481.127	484.486	479.204

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

We also evaluated our results using Henisz's Political Constraints (POLCON) data. POLCON is a less precise measure of our independent variable of interest, since it is not looking at legislative constraints, which ought to act as the key impediment against over expropri-

Table A7: Overt expropriation and political constraints

	(1)	(2)	(3)	(4)
Political Constraints	−1.318*	−0.856	−0.981	−0.614
	(0.678)	(0.657)	(0.737)	(1.069)
Democracy				−0.383
				(0.677)
GDP per capita		−1.276	−1.428	−1.487
		(1.384)	(1.618)	(1.628)
GDP per capita squared		0.058	0.053	0.057
		(0.080)	(0.090)	(0.090)
Extractive sector		−0.143	−0.208	−0.164
		(0.342)	(0.379)	(0.385)
Financial sector		0.222	0.131	0.195
		(0.366)	(0.361)	(0.369)
Manufacturing sector		−0.100	−0.173	−0.112
		(0.340)	(0.363)	(0.367)
Services sector		−0.125	−0.119	−0.057
		(0.601)	(0.644)	(0.653)
Utilities sector		−0.237	−0.200	−0.175
		(0.366)	(0.397)	(0.397)
Constant	0.340*	6.681	7.333	7.513
	(0.201)	(5.866)	(6.783)	(6.824)
Decade/Region FE	*N*	*N*	*Y*	*Y*
Observations	571	569	569	566
Log Likelihood	-386.057	-373.729	-365.221	-362.504
Akaike Inf. Crit.	776.114	765.457	762.443	759.009

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

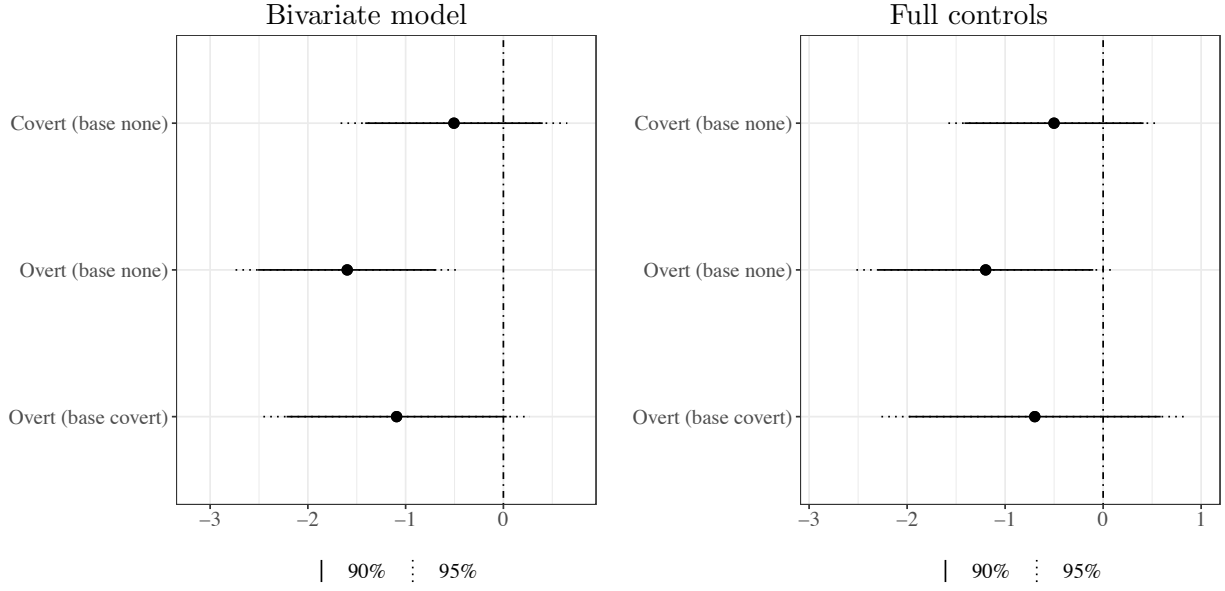
ation, but rather the number of independent branches of government and party positions across those branches. For the conditional expropriation results, we find that the coefficients retain their signs throughout, but political constraints only reaches a level of significance in the bivariate model. Nevertheless, as seen in both the OLS and multinomial logit panels, even with this alternate measure, the results follow a consistent pattern to those found in the body of the paper.

Table A8: Political constraints and expropriation type, panel using OLS

	All	Overt	Covert
	(1)	(2)	(3)
Political Constraints	−0.121*	−0.075*	−0.045
	(0.064)	(0.039)	(0.035)
Democracy	−0.029	−0.020	−0.009
	(0.024)	(0.019)	(0.011)
GDP per capita	−0.028	−0.060	0.032
	(0.163)	(0.126)	(0.071)
GDP per capita squared	0.002	0.003	−0.001
	(0.009)	(0.007)	(0.004)
Expropriation History	0.001	0.001	−0.0001
	(0.002)	(0.002)	(0.001)
Constant	0.303	0.381	−0.078
	(0.694)	(0.549)	(0.292)
Region FE	*Y*	*Y*	*Y*
Observations	3,740	3,740	3,740
R^2	0.007	0.005	0.006
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

Figure A4: Political constraints and expropriation, multinomial logit



Political constraints (Henisz) 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.

A.6 Controlling for FDI

To ensure that our results are not an artifact of a country having more seizable goods, we demonstrate results hold when controlling for lagged FDI inflow.

Table A9: Overt expropriation and legislative constraints, controlling for FDI

	(1)	(2)	(3)	(4)
Legislative Constraints	−1.849***	−1.774***	−1.876***	−2.295**
	(0.600)	(0.613)	(0.654)	(0.918)
Democracy				0.464
				(0.654)
GDP per capita		−0.896	−0.946	−1.060
		(1.614)	(2.064)	(2.116)
GDP per capita squared		0.036	0.037	0.043
		(0.092)	(0.114)	(0.117)
Extractive sector		−0.086	−0.173	−0.171
		(0.423)	(0.477)	(0.480)
Financial sector		−0.056	−0.086	−0.112
		(0.436)	(0.443)	(0.449)
Manufacturing sector		−0.084	−0.119	−0.101
		(0.419)	(0.446)	(0.456)
Services sector		−0.094	0.006	0.017
		(0.691)	(0.718)	(0.725)
Utilities sector		−0.131	−0.141	−0.130
		(0.439)	(0.479)	(0.478)
FDI (log)	0.066	1.015	−0.265	−0.573
	(1.733)	(1.989)	(2.480)	(2.715)
Constant	−0.165	−5.119	8.351	12.117
	(17.996)	(20.837)	(25.762)	(28.052)
Decade/Region FE	*N*	*N*	*Y*	
Observations	399	399	399	397
Log Likelihood	-263.073	-257.490	-254.050	-251.788
Akaike Inf. Crit.	532.146	534.980	540.100	537.576

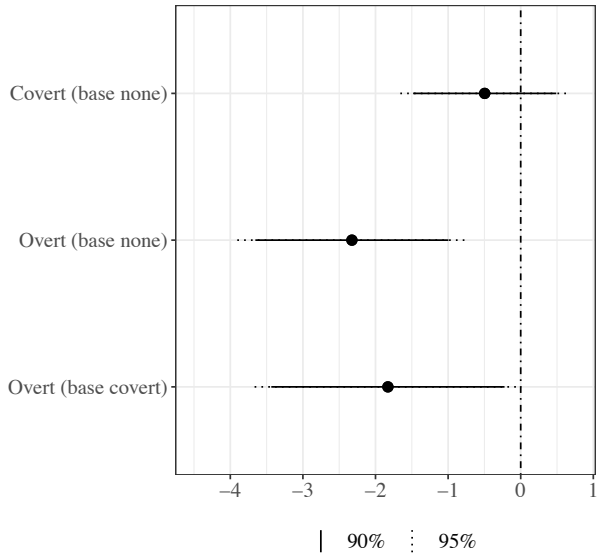
Note: *p<0.1; **p<0.05; ***p<0.01
Robust standard errors clustered at country level

Table A10: Legislative constraints and expropriation type, panel using OLS, controlling for FDI

	All	Overt	Covert
	(1)	(2)	(3)
Leglsiatlve Constraints	−0.167**	−0.127***	−0.040
	(0.066)	(0.039)	(0.040)
Democracy	0.006	0.011	−0.005
	(0.031)	(0.022)	(0.018)
FDI (log)	−0.206**	−0.063	−0.143*
	(0.100)	(0.043)	(0.083)
GDP per capita	0.025	−0.003	0.028
	(0.140)	(0.114)	(0.059)
GDP per capita squared	−0.001	0.0001	−0.001
	(0.008)	(0.007)	(0.003)
Expropriation History	0.003**	0.003**	−0.00004
	(0.002)	(0.001)	(0.001)
Constant	2.169*	0.769	1.399
	(1.139)	(0.588)	(0.870)
Region FE	*Y*	*Y*	*Y*
Observations	3,179	3,179	3,179
R^2	0.013	0.012	0.008
Adjusted R^2	0.010	0.009	0.005

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

Figure A5: Legislative constraints and expropriation types, controlling for FDI



Legislative constraints and expropriation, using multinomial logit and controlling for FDI. Controlling for 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.

A.7 Controlling for Coups/Regime Change

Countries experiencing changes in regime may be more likely to use strong expropriation. To ensure our results are not the result of democratic breakdowns alone, we demonstrate that results hold when controlling for years of regime change or regime instability (as defined by polity) or when controlling for coups, a measure from VDem.

Table A11: Overt expropriation and legislative constraints, controlling for interregnum years

	(1)	(2)	(3)	(4)
Legislative Constraints	−2.005***	−1.898***	−1.800***	−2.318***
	(0.610)	(0.556)	(0.585)	(0.842)
Democracy				0.663
				(0.643)
GDP per capita		−1.414	−1.610	−1.673
		(1.292)	(1.685)	(1.741)
GDP per capita squared		0.066	0.068	0.071
		(0.075)	(0.094)	(0.097)
Extractive sector		−0.108	−0.161	−0.169
		(0.339)	(0.383)	(0.382)
Financial sector		0.231	0.163	0.087
		(0.355)	(0.355)	(0.354)
Manufacturing sector		−0.080	−0.150	−0.160
		(0.322)	(0.350)	(0.360)
Services sector		−0.052	−0.049	−0.096
		(0.567)	(0.586)	(0.593)
Utilities sector		−0.165	−0.170	−0.168
		(0.346)	(0.374)	(0.370)
Interregnum	0.834	0.631	0.648	0.924
	(0.748)	(0.808)	(0.840)	(0.875)
Constant	0.621***	7.582	8.436	8.879
	(0.236)	(5.474)	(7.093)	(7.351)
Decade/Region FE	*N*	*N*	*Y*	
Observations	575	573	573	572
Log Likelihood	-371.820	-358.792	-354.293	-350.978
Akaike Inf. Crit.	749.640	737.585	742.586	737.957

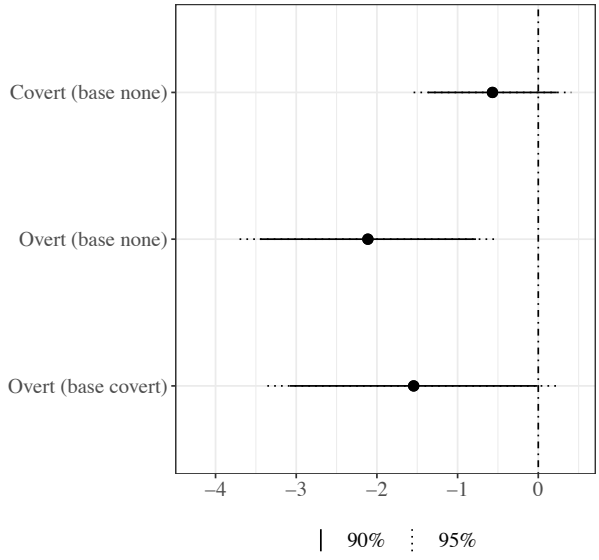
Note: *p<0.1; **p<0.05; ***p<0.01
Robust standard errors clustered at country level

Table A12: Legislative constraints and expropriation type, panel using OLS, controlling for interregnum years

	All	Overt	Covert
	(1)	(2)	(3)
Legislative Constraints	−0.151*	−0.127**	−0.024
	(0.081)	(0.053)	(0.041)
Democracy	−0.011	0.007	−0.018
	(0.037)	(0.025)	(0.021)
Interregnum	−0.012	0.029	−0.041**
	(0.082)	(0.079)	(0.018)
GDP per capita	−0.075	−0.083	0.008
	(0.171)	(0.140)	(0.068)
GDP per capita squared	0.005	0.005	0.0001
	(0.010)	(0.008)	(0.004)
Expropriation History	0.002	0.002	0.00004
	(0.002)	(0.002)	(0.001)
Constant	0.509	0.488	0.021
	(0.729)	(0.607)	(0.283)
Region FE	*Y*	*Y*	*Y*
Observations	3,826	3,826	3,826
R^2	0.008	0.007	0.006
Adjusted R^2	0.005	0.005	0.003

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

Figure A6: Legislative constraints and expropriation types, controlling for interregnum years



Legislative constraints and expropriation, using multinomial logit and controlling for interregnum years. Controlling for 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.

Table A13: Overt expropriation and legislative constraints, controlling for coups

	(1)	(2)	(3)	(4)
Legislative Constraints	−2.152***	−2.010***	−1.923***	−2.455***
	(0.621)	(0.556)	(0.590)	(0.853)
Democracy				0.702
				(0.654)
GDP per capita		−1.435	−1.655	−1.681
		(1.241)	(1.612)	(1.646)
GDP per capita squared		0.067	0.071	0.072
		(0.073)	(0.090)	(0.092)
Extractive sector		−0.116	−0.161	−0.171
		(0.335)	(0.379)	(0.381)
Financial sector		0.279	0.222	0.158
		(0.355)	(0.353)	(0.356)
Manufacturing sector		−0.081	−0.141	−0.156
		(0.320)	(0.351)	(0.364)
Services sector		0.014	0.002	−0.037
		(0.576)	(0.600)	(0.601)
Utilities sector		−0.168	−0.172	−0.171
		(0.346)	(0.375)	(0.373)
Coup	−0.325	−0.229	−0.212	−0.115
	(0.465)	(0.442)	(0.443)	(0.455)
Constant	0.712***	7.723	8.646	8.945
	(0.234)	(5.278)	(6.792)	(6.943)
Decade/Region FE	*N*	*N*	*Y*	*Y*
Observations	575	573	573	571
Log Likelihood	-372.346	-359.067	-354.340	-351.357
Akaike Inf. Crit.	750.691	738.134	742.680	738.714

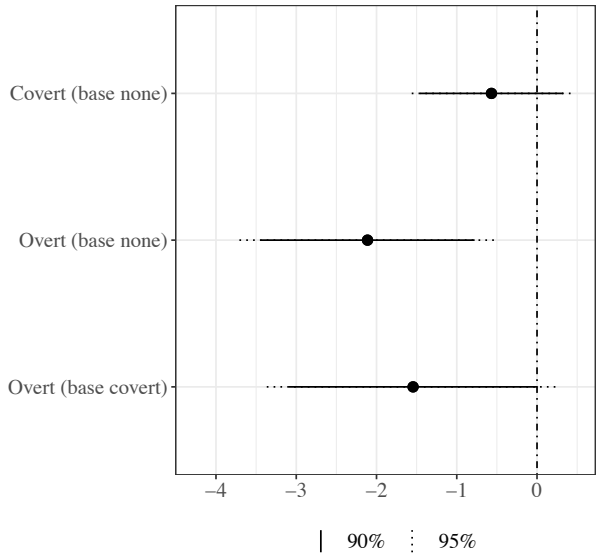
Note: *p<0.1; **p<0.05; ***p<0.01
Robust standard errors clustered at the country level

Table A14: Legislative constraints and expropriation type, panel using OLS, controlling for coups

	All	Overt	Covert
	(1)	(2)	(3)
Democracy	−0.151*	−0.127**	−0.024
	(0.081)	(0.053)	(0.041)
Coup	−0.011	0.007	−0.018
	(0.037)	(0.025)	(0.021)
GDP per capita	−0.012	0.029	−0.041**
	(0.082)	(0.079)	(0.018)
GDP per capita squared	−0.075	−0.083	0.008
	(0.171)	(0.140)	(0.068)
Expropriation History	0.005	0.005	0.0001
	(0.010)	(0.008)	(0.004)
Constant	0.002	0.002	0.00004
	(0.002)	(0.002)	(0.001)
Constant	0.509	0.488	0.021
	(0.729)	(0.607)	(0.283)
Region FE	*Y*	*Y*	*Y*
Observations	3,826	3,826	3,826
R^2	0.008	0.007	0.006
Adjusted R^2	0.005	0.005	0.003

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

Figure A7: Legislative constraints and expropriation types, controlling for coups



Legislative constraints and expropriation, using multinomial logit and controlling for coup years. Controlling for 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.

A.8 Year Fixed Effects

Here we show results including year fixed effects in the panel models. Since expropriation is still a relatively rare event, this does reduce the statistical significance of our findings for the democracy and expropriation – including the established finding that democracy is negatively correlated with expropriation overall – but does not influence the findings in our mechanisms.

Table A15: 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*
Year 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