An Analysis on Eminent Domain and the Supreme Court

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Introduction

Eminent Domain - The right of a government to take private property for public use so long as compensation is made to the property owner.


Case Facts:
- The city of New London seized private property and compensated the owner but sold it to a private real estate developer.
- With a 5-4 vote, the Supreme Court voted in favor of New London and stated that the potential economic benefit of the real estate project would be a form of public use.

- Public use was reinterpreted to instead mean “public purpose”.
- The developer’s plans later fell through which led to the project failing. To this day, the Kelo property is an empty wasteland which has not fulfilled its duty of public purpose.

Method and Research Design

The Certiorari Stage

- 235 eminent domain petitions from 1984-2015 sampled from Westlaw. A first logistic regression is used to model certiorari votes.
- Dependent Variable – Petition is granted a writ
- Independent Variables:
  1. Supreme Court Ideology
  2. Lower Court Winning Party (Public or Private)
  3. Lower Court Disagreement
  4. The Parties Involved in the Case

The Merit Stage

- 91 eminent domain cases that the Supreme Court heard from 1946-2014 are analyzed. A logistic regression is used to model whether a taking is allowed in the case.
- Dependent Variable – Whether the government or private entity wins at the Supreme Court
- Independent Variables:
  1. Supreme Court Ideology
  2. Lower Court Winning Party (Public or Private)
  3. Lower Court Disagreement
  4. The Parties Involved in the Case

Results

The Certiorari Stage

Do the Independent Variables Increase the Likelihood of a Petition Being Granted a Writ of Certiorari?

<table>
<thead>
<tr>
<th>Variable</th>
<th>Effect</th>
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<tbody>
<tr>
<td>Supreme Court Ideology**</td>
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<tr>
<td>Private Party Wins at the Lower Court***</td>
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<tr>
<td>Lower Court Disagreement*</td>
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<tr>
<td>The Parties Involved in the Case* (Business Being Involved as Opposed to an Individual)</td>
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</tbody>
</table>

*** = Significant at the 95% Confidence Level
** = Significant at the 90% Confidence Level
* = Significant at the 85% Confidence Level

The Merit Stage

Do the Independent Variables Influence the Likelihood That the Government Wins at the Supreme Court?

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* = Significant at the 85% Confidence Level
\ = Not Significant at a Conventional Confidence Level

Conclusions

- The Supreme Court is more likely to allow the government to take private property.
- There is evidence that the Supreme Court seeks lower court cases which vote against the public entity in order to reverse the decision at the merit stage.
- Ideology, which is traditionally determinative of Supreme Court decisions, is significant at the certiorari stage but not the merit stage.
- These results indicate that the Supreme Court’s role in deciding these cases, for the most part, is to uphold the government’s power of eminent domain.

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