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Kelo and the Castle: Multiscalar Property Rights Activism, Economic Development and Regional Governance in the United States

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Over the past decade and a half,, a diverse set of interests has converged around the idea of regionalism as a way to address a host of problems that fragmented local governments have long failed to attack in metropolitan America. Focusing on the regional scale has allowed public and private actors to propose innovative approaches to growth control, economic development, and redistribution. But as these variegated "new regionalisms" gained attention and popularity, the property rights and anti-tax movements concurrently advanced a very different agenda aimed at reducing the regulatory and tax capacity of the state. In this article, we argue that even though the property rights and anti-tax movements have seldom attacked regionalism directly, their recent successes at the federal, state, and local scales threaten to place significant limits on what regional governance can accomplish. By restricting the state's power to regulate land use and to tax, these movements undermine possibilities for effective collaboration on regional growth plans, they obstruct efforts to enhance regional infrastructure and preserve open space, and they hinder attempts to make affordable housing available throughout metropolitan areas. These movements thus circumscribe not only the equity- and environment-oriented regional strategies that rely heavily on state action, but also the growth-oriented regionalism that is more commonly initiated by public-private coalitions.

We begin by using the insights of social movement theory and critical geography to examine how property rights and anti-tax activists strategically adapted to changing political opportunities by drawing on the scale repertoires of various actors within their coalitions. Three case studies – regulatory takings laws in Oregon and Arizona, national post-*Kelo* property rights activism, and Colorado's TABOR – demonstrate how these activists have squeezed state capacity – often by mobilizing at one scale to shape decision-making at multiple scales. Although these movements have not experienced uniform success, they exhibit a striking ability to regroup after defeats and press their issues in multiple arenas. Regionalists, we show, have barely begun to respond with similarly versatile scalar strategies.

Scale and strategy in the property rights and anti-tax movements

Contemporary studies of regionalism in the United States typically situate their analyses in relationship to two earlier waves of regionalism (Dreier, Mollenkopf, Swanstrom 2001). In the 1920s, and again in the 1950s and 60s, arguments about the benefits of consolidating governments in metropolitan areas led to a variety of proposed reforms, which yielded little in the way of results. The most recent set of regionalist ideas and strategies, which emerged in the 1990s, are commonly compared and contrasted to these earlier efforts as a way to assess their prospects for success. For example, analysts contrast the current focus on governance – and its emphasis on creating new forms of public and private linkages – with the earlier emphasis on creating a single metropolitan government. They also highlight the interests of new actors, such as business, in regionalism, and point to the new purposes attached to regionalism, notably enhanced economic competitiveness . This attention to emphasizing what is new about the current wave of interest in regionalism has come at the expense of situating these regionalist efforts in the context of contemporary competing social movements whose activities have enormous implications for the potential success of all types of regionalism.

In this paper, we show that two interlinked movements in particular have framed the prospects for regionalism. The property rights and anti-tax movements took shape well before renewed interest in regionalism, but their successes in restricting the capacity of government have had a profound effect on the political context that regionalism's advocates confront. One of the most striking features of these movements has been their ability to operate at multiple scales

– what we call their "scalar capacities" – which depend on their mastery of the specific tools needed to be effective at diverse scales – their "scalar repertoires".

Here we build upon recent research in social movement theory and critical geography that provides complementary frameworks for understanding how, despite a series of obstacles and setbacks, property rights and anti-tax activists have successfully adapted to changing political circumstances. Social movement theory places political opportunities, framing processes, and mobilizing structures at the center of its analysis (McAdam, McCarthy, and Zald, 1996). Yet, as Marshall Ganz has argued, the ability to take advantage of political opportunities depends on a movement's "strategic capacity" (Ganz 2000). One key element of strategic capacity is what Elisabeth Clemens calls "organizational repertoires" (1993:763), the mobilizing tools and organizational forms on which movements rely.[1] Social movement literature has touched upon the scalar dimension of these capacities and repertoires, highlighting, for example, the distinctive strengths of federated movements – movements with linked national and state chapters – in the American political system (Skocpol 1992). But overall, they have done little to explain how social movements develop repertoires appropriate to different scales.

Geographers have **emphasized** importance of the scalar dimension in their analysis of social movement efficacy. In his influential studies of the anti-gentrification protests centering on New York's Tompkins Square, Neil Smith (1992, 1993) concluded that an incipient movement lost momentum because it had failed to "jump scales," to build the scalar capacity necessary to operate beyond the scale of the neighborhood.[2] Other geographers observed that

[1] Footnote describing what we are and aren't borrowing from Clemens – probably are borrowing emphasis on the flexible use of repertoires, but not necessarily argument about relationship between repertoires and institutions…?
[2] Smith's broader theoretical point that scales were both pre-given and socially (re-)constructed anticipated long-running debates between those who emphasize structural constraints (Brenner) and those who emphasize the creative power of individuals and groups in re-making scales (Herod; Marston). This paper places greater analysis on the "pre-given" scales of state governance, because the social movements concerned most often direct their demands to the state. **[quote from Sheppard]**

movements can also build their scalar capacities by developing cross-scalar networks and through deliberately decentralized action; thus, moving "up" scales is less fundamental than the *strategic* ability to move *across* scales (Staeheli 1994; Leitner 2004). Some geographers have drawn from social movement theory to explain this strategic aspect. Byron Miller (1994) concludes that the Cambridge Peace Movement's shifts from local to national activism and back in the early 1980s were strategic responses to changing political opportunity structures; Hilda Kurtz (2002) examines how careful framing allowed a Louisiana environmental justice group to press claims at multiple scales of governance.

Scalar capacity is thus a key element of a movement's strategic capacity generally, and depends upon scale framing and repertoires. We define a scale repertoire as the range of mobilizing tools and organizational forms that a movement is able to use strategically at different scales. The tools and forms employed by the property rights and anti-tax movements have included local rallies targeted at state politicians; legal efforts in the state and federal courts; coalition-building activities (including conferences, etc.) at multiple scales; and information-sharing networks that do not map neatly into any scale of state governance. Such repertoires also, importantly, include the movements' understanding of relationships *among* scales and the effects of activism at one scale on another. Thus, in the 1990s, property rights advocates proposed state level legislation requiring the government to compensate landowners if the regulatory activity of *all* levels of government resulted in cumulative losses to property value above a certain threshold, placing some pressure on state/local governments to withdraw from federal mandates (Emerson and Wise, 1997). Similarly, as we will see below, Colorado's Taxpayers' Bill of Rights passed in a state referendum and capped the growth in state expenditures, but it also specified formulae for growth at county and local levels. Tax and regulatory capacity was thereby limited across multiple scales of government. These scalar strategies partly explain how taxpayer and property rights initiatives, while seldom attacking regional governance directly, can circumscribe opportunities for regionally coordinated action.

How did the property rights movement and the anti-tax movements become so adept at the strategic use of scale? In this section, we argue that three features of these movements have bolstered their capacity to be effective at multiple scales. First, their emergence as counter movements seeking to undermine the past gains of environmentalists, pro-spending liberals, and entrepreneurial urban regimes led movement elites to develop their repertoires at other scales, particularly at the state scale. Second, connections to a larger well-resourced conservative movement provided resources and information for developing these repertoires – promoting organizational innovation, disseminating policy strategies, and sustaining the movement's presence in multiple venues. Finally, these movements paired flexible scale repertoires with framing strategies that were supple enough to attract a diverse array of allies, thus creating the possibility for assembling distinct coalitions at different scales.

The literature on social movements has recognized counter movements as a distinctive form of mobilization. Counter movements **are likely to** emerge and endure in the context of federal systems which provide challengers with "political allies to aid mobilization and venues in which to press claims" (Meyer and Staggenborg 1996, 1637). The availability of alternative venues allows movements that have been solidly defeated in one arena to regroup and publicly press their claims in an alternative venue. Because the western property rights and anti-tax movements emerged as counter movements to environmentalists and pro-spending liberals, they had an appreciation of scale from the start. Liberal successes in national politics meant that these counter movements emerged initially in state and local venues. They later took advantage of new opportunities at the federal level during the Reagan Administration. But their limited success in rolling back environmental protections and limiting taxation at the national level meant that these movements were always active at multiple scales. The eastern property rights movement, as we shall see, had a somewhat different trajectory, but it too eventually became active at multiple scales.

All three movements also highlight the importance of connections to a larger conservative movement in fostering such capacities. General-purpose conservative organizations played an important role in building multiscalar capacities among property rights and anti-tax activists by reaching out to connect with local efforts, supplying research, disseminating policy models, pressuring state and local politicians, and offering legal support. Key organizations have included the American Legislative Exchange Council (ALEC), a multi-issue free-market oriented group, which for 25 years has sought to influence state politics by developing model legislation and convening like-minded state legislators into issue forums (Stankiewicz 2005 225-57) . Other organizations, notably the Institute for Justice, have specialized in legal support; whereas Americans for Tax Reform has focused on pressuring state and local politicians.

The third feature that complemented the development of diverse and flexible scalar repertoires in these movements was their framing strategies. Both movements adopted broad, culturally-resonant frames, invoking a Lockean vision of property rights and Jeffersonian ideals of small government and individual freedom. Such frames were not only supple enough to serve as a common banner for diverse sets of interests, they also allowed the movements to attach specific grievances to a sweeping anti-government agenda. Rather than serving as the impetus for redistributive reform, concerns such as abuse of eminent domain against African Americans or the pressure of rising property taxes on elderly homeowners served as entry points for building broader coalitions to endorse policies whose main impact is to protect the well-to-do from public claims.

Over time, then, the property rights and anti-tax movements have demonstrated a considerable capacity for taking advantage of political opportunities by drawing upon activists' diverse and multiscalar organizational repertoires. The movements' leading intellectuals and lawyers have drawn together different coalitions of elite and grassroots activists to advance their agenda through the various channels – the courts, the legislature, the executive, the media. They have also adapted to obstacles by changing their scale of mobilization, with eastern property rights activists, for example, moving from the Reagan administration and county activism to a focus on state legislatures in the early 1990s, then to a primarily legal strategy at multiple scales, and finally back to the state and federal legislature in the wake of *Kelo*.

The Countermovements in Action: Three case studies

Property rights groups and anti-tax activists have recently backed three types of legislation that restrict state capacity and limit the prospects for regional governance: state regulatory takings laws requiring government to compensate owners for any reduction in property value resulting from regulation; post-*Kelo* statutory redefinitions of blight and public use that prevent government takings for economic development; and state taxpayer bills of rights (TABORs) that cap the growth of governmental expenditures. Regulatory takings laws and TABORs are far more stringent than their antecedents – the Wise Use-era regulatory takings and the tax and expenditure limitations (TELs) of the 1970s, 1980s, and 1990s. The recent anti-regulatory and anti-tax measures are also complementary: regulatory takings require the extensive compensation of property owners, while TABORs restrict the expenditure needed to compensate them. Government can be thus "squeezed" towards abdicating its regulatory function. Several libertarian organizations and donors have accordingly backed both TABORs and takings legislation across the country, though no state has yet passed both TABOR and a stringent compensation law.[3]

Nevertheless, each type of legislation has been adopted in at least one state. Our studies of the political struggles surrounding adoption and implementation illustrate the development of scalar repertoires in each movement, the successful employment of these repertoires in particular campaigns, and the impact on governing capabilities at various scales, including regional governance. First, we consider regulatory takings legislation in Oregon, which has forced the state and local government to waive most of its land-use regulations, thus undermining the most advanced example of regional governance in the country. Oregon's unique efforts to blend environmental, growth, and equity regionalism are all threatened by these legal changes We then turn to the national and state-level campaigns for new restrictions on eminent domain powers – usually through the redefinition of "blight" and "public use" – that have gathered momentum in the wake of the Supreme Court's controversial *Kelo* decision (2005). Although eminent domain has a flagrant history of abuse in metropolitan areas, efforts to shape regional growth patterns are severely handicapped without some tool to claim land for public purposes. Finally, we examine Colorado's enactment of the nation's only Taxpayer Bill of Rights, and its subsequent suspension in the face of massive and unpopular budget cuts. At their worst, such tax limits block the development of infrastructure essential to regional growth and coherence. Even when they do not obstruct new infrastructure, they make it virtually certain that such projects rely heavily on regressive financing.

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[3] Libertarian Howard Rich was a noteworthy backer of both in the 2006 election cycle.

All three reforms directly or indirectly limit the tools available for the varied forms of regional governance. This includes not just those efforts such as "equity" or "environmental" regionalism that rely heavily upon direct state action, but also "growth" regionalism approaches that emphasize public-private partnerships and private-sector voluntarism. Together these three cases demonstrate that a broad retreat from activist government is a movement away from both regional government and regional governance and a move toward an ungoverned region whose trajectory is determined by the interests and decisions of private actors.

Regulatory takings laws in Oregon

There have been several "branches" of property rights activism in the US during the last thirty years. The "western" branch that focused on rural primary producers gained considerable attention for successfully organizing the Wise Use movement of the 1980s and 1990s, which set the stage for important regulatory takings measures that Oregon's voters approved in 200X. These measures began to unravel the most farreaching and well-institutionalized form of regionalism in the country.

Beginning in the mid-1960s, the increasingly restrictive environmental regulation of private lands and the preservationist turn in the management of federal public lands had fomented widespread resentment in primary production-dependent communities. Nevertheless, the first organized response to these new conditions - the Sagebrush Rebellion of the 1970s and 1980s - was led by a narrow group of think tanks and industry large trade groups, and the movement was attacked as a bald-faced corporate maneuver. Anxious to project a more populist profile, the organizers of the Wise Use Movement in the 1980s, Ron Arnold and Alan Gottleib ,went to great lengths to legitimate its grassroots credibility, building ties to small producers through state and local property rights activists while drawing on the resources of elite national-level groups. The diversity of the movement's constituent groups, and their organizational repertoires, were critical to its success. Environmentalists cast doubt upon the Wise Use's supposedly grassroots character by tracing the funding of its various organizations to industry associations and conservative foundations. But as McCarthy (1999) has shown, the movement was in fact quite strong among small producers, even if local activism depended upon the strategic assistance of regional and national groups.

Particularly important at the local level was a "county supremacy" strategy which sought to establish a legal basis for autonomous local land use planning.[4] Regional and national organizations such as the National Federal Lands Council were instrumental in devising and popularizing this county-level approach, and it quickly came to dominate Wise Use politics across the West. Local Wise Use activism had an impact on national land management policy, successfully discouraging Bruce Babbitt from raising grazing fees, preventing Bill Clinton from elevating the EPA to a cabinet-level post, and deterring federal authorities from enforcing federal law on the ground (Jacobs 1998: 34; McCarthy 2001).

These successes drove a growing convergence with an "eastern" branch of the property rights movement, which had been pressing to expand the government's liability for regulatory takings – reductions in current or potential property value resulting from government regulations. Composed primarily of activist libertarian lawyers (and discussed at greater length in the next section), this branch of the movement had met with mixed success at the national level since coalescing in the early 1980s. On the one hand, William Rehnquist's elevation to Chief Justice

[4] Violence, and more often threats of violence, against federal officials and environmentalists was also an key strategy for local resistance, successfully attracting media attention and limiting federal government regulation and environmental activism during the height of Wise Use activism (McCarthy 1999:181ff, 244ff.; 2001). County supremacists argued that the language of environmental laws and the Constitution required the federal government to yield to "local custom and culture" in the implementation of federal regulation. Officials in Catron County, New Mexico pioneered this strategy by passing a series of ordinances that produced a land use plan declaring resource use the "custom and culture" of the county, and empowered the sheriff to arrest and imprison those violating county land use practices (including federal officials and unregistered environmentalists; see McCarthy 1999).

and Antonin Scalia's appointment had allowed its legal experts to move an anti-regulatory agenda through the Supreme Court in the late 1980s and early 1990s, expanding the range of categorical takings and limiting government demands on property. But leading activists lost the access they had briefly gained as appointees in Reagan's Departments of Interior and Justice, where they had most notably authored Executive Order 12,630, directing government agencies to assess the possible takings costs of all proposed new federal laws, and regulations. The administration of George H. W. Bush proved far less receptive to property rights advocacy, and the Clinton administration was still less sympathetic. Federal agencies, moreover, found it so difficult to implement Order 12,630 that it remained a dead letter (Emerson and Wise 1997; Jacobs, 2003). Nor could activists look to Congress; during the 1994 campaign, Republican congressional leaders vowed to deliver greater property protections in their Contract with America, but failed to move an assertive agenda forward once in power (Jacobs 2003).

They therefore began to shift their efforts to the state scale and work with the western branch of the movement, expanding the Wise Use agenda to include state-level regulatory takings legislation. Existing Wise Use groups were well-positioned to access state legislatures and find sponsors for legislation; environmental groups had not developed the organizational capacity to monitor state legislation and mobilize opposition in state political arenas (Jacobs 1998:40; Jacobs 2003; Lund 1995; Marzulla 1995). Property rights groups successfully mobilized support for a variety of regulatory takings bills in the states between 1992 and 1996, ranging from largely procedural measures to those requiring the extensive compensation for regulatory takings (Emerson and Wise 1997; Pendall 2002). These state campaigns drew grassroots legitimacy from local-scale Wise Use activism, while the legislation itself was shaped by national-scale models and organizations: model compensation bills, for example, were drafted by the American Legislative Exchange Council and Defenders of Property Rights (Emerson and Wise 1997).[5] Wise Use began to decline in the mid-1990s, after the Idaho Supreme Court rejected the county supremacy strategy; the Oklahoma City bombing made the movement's violent tactics a liability; and international trade issues drew away a sizable segment of the movement's base (McCarthy 1999:195-8; 2001).

Wise Use activism in many states, however, did develop enduring linkages between state activists, national organizations, and corporate interests that have paved the way for renewed regulatory takings activism in the 2000s. This was particularly the case in Oregon, where industry-backed, anti-environmentalist community organizing has been sustained and successful. (Ramos 1995; Rampton 2004). Oregonians in Action (OIA), which had started as a local property rights group in 1981 and flourished during the heyday of Wise Use, spearheaded the first of the recent regulatory takings campaigns: Measure 7, which passed in 2000 but invalidated on a technically, and Measure 37, which passed in 2004 and has withstood legal challenges.

These measures, however, represent the birth of a somewhat different counter movement, focused on Oregon's exceptionally stringent land-use laws rather than federal environmental restrictions. Measure 37 enables landowners to file claims against the state for any reduction in property value caused by a regulation that has been put in place since they acquired the property; the state also has the option of waiving the regulation, and in fact, the language of the initiative provides incentives for the state to waive rather than pay. The political base of Oregon's Wise Use movement had centered on timber companies and workers aggrieved by national environmental regulations, and indeed, timber companies were among Measure 7's key backers.

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[5] See appendix to Lund 1995 for model legislation; ALEC's model influenced at least three of the five compensation laws considered by Pendall (2002). This state legislation also included assessment measures that adapted Order 12,630 to the state level.

Measure 37 expanded the property rights constituency to landowners and would-be small developers who have been prevented from improving their property by Oregon's mandatory local growth boundaries and limits on forest and farmland conversion (Flint 2006; Sabath 2004; Whitman 2006).

New framing processes have enabled the movement to shift from contesting federal to state regulation. The rhetoric of Oregon's Wise Use movement had combined an insistence that environmental protection would lead directly to job loss with a mythic western history and Lockean vision of property that it shared with activists elsewhere in the region – i.e., that land existed for cultivation, and that the heroic history of western cultivation justified private land use claims. Ten years later, Measure 37's proponents instead fused a familiar, if less distinctively western, attack on overreaching bureaucrats and defense of free enterprise with broadly-appealing arguments for fairness. They told stories of landowners who had invested their life savings in property, hoping to develop it, only to be financially ruined when local planners drew urban growth boundaries (UGBs) that marked their land for preservation. Many credit Measure 37's victory to TV spots featuring 93-year-old Dorothy English, who was unable to subdivide land to build houses for her children due to its location outside of Portland's UGB. Finally, proponents insisted that Measure 37 would not strip away existing zoning, although it held the potential to do just that for property owners who had acquired property before the introduction of zoning codes. In the end, Measure 37 won with a landslide 61 percent of the vote. **[footnote something on the term limits movement's involvement?]**

Victorious OIA activists traveled the county, inspiring similar campaigns elsewhere; the support of the broader libertarian and conservative movements was both an asset and a liability.[6]

[6] These campaigns included county-level initiatives such as Nevada County, California's Measure D (see Sabath 2004).

After Measure 37's survived legal challenges, the libertarian Reason Foundation produced a guide for "exporting" regulatory takings to other states that recommended strategic alliances with taxpayers' groups (Gilroy 2006). During the 2006 election cycle, Howard Rich, a wealthy and reclusive New York City real estate investor, bankrolled regulatory takings legislation and TABORs (see below) in a number of states through his Americans for Limited Government group. Opponents seized on Rich's involvement, attacking the initiatives as out-of-state interference. Regulatory takings measure appeared on state ballots in Arizona, California, Idaho, and Washington, but only Arizona's passed.

Nevertheless, new regulatory takings legislation has now passed in two states, and in Oregon, the resulting claims have resulted in an administrative burden sizable enough to halt most other planning activities at multiple scales. In this regard, it echoes the multiscalar design of ALEC's Wise Use-era model regulatory takings legislation, which required government compensation if the interaction of government regulations at various scales resulted in a 50 percent reduction of property value (Emerson 1997). No such provision exists in Oregon's Measure 37; states and local governments are potentially liable for any reduction of property value. **[flesh this out a bit with Oregon interviews?:]** But since local governments enforce both their own zoning and state planning mandates, landowner claims can have effects at both the local and state scale.

The effects on environmental regionalism – conceived of broadly to include open-space set-asides, etc. – are readily apparent in the Oregon case. Continuing frustration with regionalist land-use regulations, particularly state-mandated urban growth boundaries (often lauded in the regionalist literature), inspired grassroots rural support for Oregon's Measures 7 and 37. Measure 37's compensation requirement have hamstrung local land-use management practices as state and local governments have chosen to waive regulations rather than compensate property owners. Had Oregon voters approved last year's TABOR referendum, state and local capacity to compensate property owners for regulatory takings would have been further diminished. As it stands, previous rounds of tax and expenditure limitation in Oregon (Measure 48, etc.) have reduced the tax capacity of state and local governments and precluded compensation. **[Ask Oregon interviewees whether this is the case]**

The same interface of expenditure restrictions and regulatory taking restrictions could also prevent efforts to pursue equity goals at the regional scale. Measure 7 did not exempt affordable housing from its "pay-or-waive" requirement, and consequently, regional housing provisions such as inclusionary zoning ordinances could entail the extensive compensation of developers (see Sabath 2004 on Measure 7). **[Did 37? – check language/bring up with Portland Metro folks?]**

Post-*Kelo *activism and the Castle Coalition

In 2005, the property rights movement launched a major mobilizing campaign in response to the Supreme Court's decision in the Kelo case, which upheld the right of localities to use eminent domain in pursuit of private development. Playing on widespread popular fears about eminent domain, activists pressed for farreaching restrictions on all public authority over land use. The speed with which these "Kelo-plus" initiatives appeared on state ballots and in state legislatures highlighted the multiscalar capacities of the property rights movement.

The activism that followed the Kelo decision traced its roots to the elite eastern branch of the property rights movement, which began to organize eastern urban and suburban constituencies at the grassroots level in the XXXXs?. Whereas Wise Use's strategists focused on primary producers, federal lands, and environmental regulation in the West, this second branch of the property rights movement has concentrated on the property rights of developers, homeowners, and businessowners.

During the 1980s and 1990s, libertarian lawyers won a series of cases before the Supreme Court, expanding the types of government action that could be considered "takings" (including regulations that only partially diminished property value) and preventing governments from imposing permit fees unrelated or disproportionate to the impacts of proposed development. They converged with Western property rights organizations in campaigns for regulatory takings laws discussed in the previous section. But it was not until the 2000s that this branch of the movement began to organize grassroots support among individual urban and suburban homeowners in the Northeast and Upper Midwest. What has developed since 2000 has been a counter movement to local economic entrepreneurialism, a counter movement that the Supreme Court's *Kelo* decision catapulted to national prominence.

Kelo affirmed that economic development could be considered a "public use" under the Fifth Amendment's Takings Clause, which forbids the government seizure of property for public use without just compensation. The details of the case were widely reported in the local and national media: the City of New London, Connecticut, having long suffered from job loss and deindustrialization, had devised a plan whereby its development corporation [**check Stelle Garnett**] would acquire and demolish a number of residences and businesses in the Fort Trumbull section; the city's development corporation would then work with developers and Pfizer to construct new waterfront development, including a state park, office and retail space, a hotel, a marina, and upscale housing (see Stelle Garnett, 2006 for more detail).[7] Homeowner Suzette Kelo and several others refused to sell their parcels and challenged the city's eminent

[7] Pfizer's role in the redevelopment has been the subject of some debate: many property rights activists claim that the city undertook the development at Pfizer's behest, while defenders of the city point out that some parts of the plan were well underway before the company became involved.

domain proceedings in court. The Connecticut Supreme Court found against the plaintiffs, who then successfully appealed the case to the U.S. Supreme Court.

The arguments largely hinged on whether the Supreme Court should modify the expansive definition of "public use" and the principle of deference to state legislatures established in *Berman v. Parker* (1954) and *Hawaii Housing Authority v. Midkiff* (1984) (Eckhoff and Merriam 2006:31-3). Representing the plaintiffs, the libertarian Institute for Justice argued that the court should adopt a narrower definition of "public use" – one that did not include the "public benefits" such as jobs and tax revenue that flow from redevelopment by private parties – and strengthen judicial oversight. Other *amici* emphasized that such restrictions were justified by broad patterns of eminent domain abuse, including seizure for "speculative" development and, importantly, the historical targeting of poor and minority communities.

The respondents – including *amici* such as the American Planning Association and the cities of Baltimore and New York – countered that eminent domain was an indispensable planning tool for the revitalization of older cities and the provision of infrastructure, and that judicial deference to the legislature should be maintained. The majority accepted this argument and emphasized the role of planning in preventing eminent domain abuse, with Justice Kennedy going so far as to suggest that the execution of a participatory and comprehensive planning process might be used to distinguish eminent domain's valid use from its abuse (Barron 2006; Salkin, et al. 2006; Stelle Garnett 2006).

Although *Kelo* was not the successful challenge to state power that property rights advocates had hoped for, they could console themselves that their efforts to frame eminent domain as a civil rights issue had borne fruit: the novel diversity of *amici* for the petitioners during the case held the promise of a much broader property rights coalition. This emerging alliance had been carefully cultivated by the Institute for Justice, a libertarian non-profit co-founded in 1991 by Chip Mellor and Clint Bolick. The organization's earliest work included a brief on behalf of the beachfront homeowner in *Lucas vs. South Carolina Coastal Council*, (an important regulatory takings case), but IJ soon became known for lawsuits on behalf of clients in working-class communities and communities of color with broad deregulatory effects (RightWatch, 2000; People for the American Way, 2006).[8]

In 2002, while the *Kelo* case was *en route* to the Supreme Court, the Institute for Justice launched the "Castle Coalition," an effort to educate homeowners and businessowners about the dangers of eminent domain and provide them with the legal resources need to fight takings in their community.[**find newspaper cite**] IJ simultaneously began to cultivate relationships with civil rights groups at the state and national scales. Hence, the briefs in the *Kelo* case included not just the usual coterie of libertarian think tanks and homeowners groups, but a number of civil rights and anti-gentrification organizations – the National Association for the Advancement of Colored People (NAACP), the American Association of Retired Persons, the Hispanic Alliance of Atlantic County (New Jersey), and Develop Don't Destroy Brooklyn – who emphasized the discriminatory past and present application of eminent domain power.[9] The NAACP et al.'s brief went on to predict that "elimination of the requirement that any taking be for a true public use will disproportionately harm racial and ethnic minorities, the elderly, and the economically underprivileged." (*amicus* in *Kelo*, 4).

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[8] For example, the Institute attempted to have the Davis-Bacon Act declared unconstitutional, on the grounds that it was originally designed to protect the interests of unionized white workers, and that its requirements burden small construction companies. Such a decision would have effectively released all construction companies from the "prevailing wage" provision requiring that contractors on federally-funded projects pay the local union wage.
[9] Urbanist Jane Jacobs and New Urbanist John Norquist also pointed out the devastation that clearance had brought to urban neighborhoods. The alliance appears to have been sustained, if the Ohio NAACP's support for a post-*Kelo* state-level limitations on eminent domain are any indication (Burtka 2006).

The support of these civil rights groups marked a failure, among progressives and planners, to articulate a compelling distinction between eminent domain's abuse and its progressive possibilities (i.e., a distinction based upon community benefits, distributional or environmental impacts, etc.).

Since the *Kelo* defeat, IJ has shifted back to a legislative strategy, drawing on its network of homeowners, businessowners, and civil rights groups to support for its "Hands Off My Home" campaign. At the national scale, IJ has led the drive for the Property Protection Acts of 2005 and 2006, both of which would have denied federal economic development funding to state and local governments that use eminent domain for private commercial development (Institute for Justice 2005). Though these federal efforts have thus far been unsuccessful,[10] the IJ has successfully supported state-level legislation to limit the definition of blight, bar takings for economic development, or both; by September 2006, thirty state legislatures had approved "anti-*Kelo*" bills, and that November, eight states placed constitutional amendments or measures limiting the use of eminent domain before voters, all of which passed without encountering significant organized opposition (**Institute for Justice, 2006; Ballot Initiative Strategy Center, 2006**). Many have observed that these new restrictions have more "bark than bite," although the IJ continues to press for stronger restrictions in states that have passed weak legislation (Barron, 2006; Institute for Justice, 2006).[11]

IJ's property rights campaigns – and its non-property rights activism on issues like school choice – have kept it connected to well-funded libertarian and conservative groups at the national level. The proponents of new regulatory takings laws (including the Reason Foundation

[10] The 2005 bill passed the House, but stalled in the Senate Judiciary Committee, and though the act was introduced in the Senate in 2006, it died after the majority leader refused to place it on the legislative agenda. Similar legislation is still less likely to pass the now-Democratic Congress.

[11] As part of the Hands Off My Home campaign, IJ is also trying to establish chapters of the Castle Coalition in every state.

(Howard Rich, and others) have done their best to ride the wave of popular discontent that has followed *Kelo*, often by pairing regulatory takings laws with eminent domain restrictions in "*Kelo*-plus" initiatives. *Kelo*'s potential as a wedge issue that could introduce a still broader section of the U.S. electorate to the broader property rights agenda led Grover Norquist – better known, not incidentally, as an anti-tax activist – to judge the ruling as "manna from heaven" for the property rights movement (Bradley 2006). Thus far, the *Kelo*-plus strategy has only been successful in Arizona, though California only narrowly rejected its Proposition 90 after opponents outspent supporters by a 3-1 margin (Pristin 2006). The Castle Coalition's website indicates that further efforts to place *Kelo*-plus referenda on the 2007 ballot in other states are currently underway.

The activism around Kelo is directly antagonistic to regionalism. By stripping away most public control of land, the most extreme of thee initiatives make the very notion of regional planning moot. Even the least government-oriented business-driven regional growth coalitions would have little room to manuever in a context where property owners had absolute control over their land. (More needed here) Environmental groups staunchly opposed these state initiatives the preserving open space as part of a metropolitan regional strategy.

The Colorado Taxpayer Bill of Rights

Although they are not often considered in tandem with analyses of land-use regulations, anti-tax initiatives share many of the same connections to the broader conservative movement and they draw on framing strategies quite similar to those of property rights activists. Moreover, like the property rights regulations, anti-tax initiatives at the state and federal levels have the effect of sharply limiting government capacities Not only have they reduced state revenue, they have also limited tax capacity at the city and county levels. By restricting public revenues, anti-tax initiatives raise a very high bar for regionalists of all stripes, who view infrastructure projects as a critical component of the regionalist vision. The experience of the most far-reaching tax limitation initiative – Colorado's Taxpayer Bill Of Rights (TABOR) – highlights the muscular use of the multiscalar strategy by the anti-tax movement.

Although the anti-tax movement did not emerge as a explicit countermovement, it developed multiscalar strategies from the beginning. Like the property rights countermovement, the anti-tax movement worked across levels of government, beginning with early protests against higher home assessments in Los Angeles in the early 1960s, then building to the state level with the landmark success of California's proposition 13 in 1978. From there, the anti-tax mantra was adopted by the Republican Party, and became a national cause as Republicans assumed the mantle as "the party of permanent tax rebellion" (Martin, forthcoming). The movement achieved its first national successes early in the Reagan administration, with the passage of federal income tax reductions.

Like the property rights movement, the anti-tax movement gained considerable power as it became connected to a broader national conservative movement. National organizations have been central in disseminating models of state legislation designed to limit taxes and have worked assiduously to pass such legislation state by state. Key among the national anti-tax groups is Grover Norquist's Americans for Tax Reform (ATR). Created at the behest of Republican President Ronald Reagan, ATF is well-known as the source of the "starve the beast" strategy, which seeks to limit government by reducing taxes. ATR is closely tied to other key anti-government groups, such as the older National Taxpayers Union, the Club for Growth, and the libertarian Cato Institute. Norquist's tentacles spread widely throughout the conservative movement and ATR reportedly receives considerable funding from the Republican Party (Hacker and Pierson 2005).

ATR has worked to influence state and local legislation in a variety of ways. Since 1986, the organization has sponsored a "taxpayer protection pledge" in which state, local, and national legislators and candidates promise to oppose all tax increases. Joined by newer organizations, such as the Americans for Prosperity Foundation and backed by research from the Cato Institute and state-level anti-tax groups, the ATR worked throughout the 1990s to convince state legislators to enact limitations on state taxes. This activity bore fruit in the rising number of tax and expenditure limitations (TELs), adopted in the states. By 2005, 30 states had some form of tax or expenditure limitation.

The framing strategies of the anti-tax movement are strongly influenced by its association with the broader conservative political, The movement made staunch opposition to all forms of taxation the keystone of its efforts at all levels of government. Actitivists gave the anti-tax message a broad populist framing, portraying taxes as an intrusion on individual rights by the state. Likewise in Colorado, anti-tax activists referred to their measures as "a healthy dose of democracy" (cited in Smith, 2004 96). This culturally resonant rhetoric is evident in the name given to the state tax restriction initiative considered "the gold standard for tax and spending limits," Colorado's "Taxpayer Bill of Rights."(Daniel 2005).

Enacted in 1992, Colorado's TABOR was the product of a concerted multiyear campaign that began in 1986 when the first tax limitation measures appeared on the Colorado ballot.. The measure that ultimately passed included several amendments to the state constitution that sharply limited state spending by restricting increases in annual state expenditures to a formula based on annual inflation and population growth. Similar restrictions were imposed on the state's revenue raising capabilities. Revenues above the limits were returned to taxpayers in the form of checks issued by the state. Because the TABOR restrictions pegged annual expenditure increases to the previous year's expenditures, spending could not bounce back after a recession. The effect was to create a rigid state budget that automatically ratcheted downward over time. TABOR also required that future tax increases would require a two-third vote of the legislature; permanent increases also required approval by voters. The TABOR amendments were themselves multiscalar not only limiting state taxes,but also restricting taxes and spending in localities.

The broader conservative movement played a central role in securing the political success of the TABOR amendments. The brainchild of Douglas Bruce, a California transplant, who had been active in the anti-tax movement in his home state, the effort to enact the TABOR benefited from the support of all the heavy hitters in the national conservative movement, including the National Taxpayers Union and Norquist's Americans for Tax Reform. The initiative's language was complex, but its common sense formula for growth attracted substantial public support. Bruce had perfected a broadly appealing anti-government rhetoric in earlier campaigns, at one point declaring: "We're the economic slaves of government…they can take their money off the top and leave us with an economic allowance to live on." (Quoted in Stankiewicz 2005, 59) By 1992, TABOR also won the backing of many Republican politicians, reflecting the sharp turn to the right within the Republican Party.

Despite the strong line up against TABOR, voters opted for the tax measure with 53.2% voting in favor. Stankiewicz's analysis showed that all types of counties supported the TABOR but that "within the metropolitan counties, Denver and Boulder county residents opposed the amendment, but the other [suburban Denver] counties of Jefferson, Adams, Arapahoe, and Douglas all supported [it]" (p.63, 85).

Most business groups , however, opposed the measure.[12] Among these were the Colorado Association of Commerce and Industry, the state's major business organization, as well as some large employers, including the conservative Coors Brewing Company (Frates 2005, 21; Stankiewicz, 2005, 62). The Denver Convention and Visitors Bureau, which stood to lose the tax revenue that supported its activities, was one of the chief organizers against the TABOR (Smith, 1998, 149). At the heart of business's opposition was concern that the severity and inflexibility of the tax measure would undermine strategies to improve regional economic competitiveness. In 2005, when business backed the initiative to lift temporarily some of TABOR's provisions, issues related to economic competitiveness were at the forefront. By then, the collision between the limits on state budget growth and the normal demands of spending had become glaringly apparent. Faced with draconian cuts to higher education and infrastructure, the business community came all out in favor of a measure that suspended refunds to taxpayers for five years and allowed the state to retain revenue even if it exceeded the TABOR formula. Joe Blake, president and CEO of the Denver Metro Chamber of Commerce reflected business concerns about competitiveness, declaring that "mountains and the quality of life are not enough," "Without [these changes], state policy is bound to focus on neck-down jobs."(Denver Post 10-16-05). Regional growth coalitions have historically focused on advocating (and facilitating) increased spending on infrastructure and workforce development.[cite Olberding] These are precisely the programs that suffer most in the fiscal vise of expenditure limitations like Colorado's TABOR.

Moreover, TELs that effectively limit local government revenues (as did Colorado's TABOR) intensify the fiscal strain on local governments such as those in the older suburbs, with

[12] Some accounts portray the business community as divided. (James with Wallis, 23).

ambiguous consequences for intergovernmental equity and cooperation. Local government tax limitations might reduce both tax increments and, by extension, the incentive for fiscal zoning. On the other hand, local governments may become even less likely to risk their stagnant or dwindling resources in a regional tax base sharing arrangement.

The setback in Colorado did not deter the anti-tax advocates from promoting comparable TABOR legislation in 16 states during the 2006 legislative sessions and elections (CPBB 2007). Despite the strong support of national anti-tax groups linked to the conservative movement, none of these measures succeeded. [number that made it onto the ballot?] The extreme impact of the TABOR on Colorado's budget and the subsequent suspension of parts of the law played an important role in the debates about taxes in many of the states. Active lobbying by Colorado business leaders of their counterparts in other states also contributed to their defeat (Shanley 2006). These setbacks reveal the mobilization of opposing forces but they are not the deathknell for campaigns to enact similar measures in other states. Several months after these defeats, new efforts were already underway to enact TABORs and related tax limitation efforts across the states.

Regionalism and Resistence to taxpayer and property rights activism

Proponents of regionalism do not have an organizational infrastructure that can match the multiscalar organization of the taxpayer and property rights movements. Several national groups including Smart Growth America, Congress for a New Urbanism, POlicyLink, and the Alliance for Regional Stewardship[13] are dedicated to regionalist ideas. But these organizations rely mainly on educating state and local officials, business groups, and community organizations;

[13] In 2006, the Alliance for Regional Stewardship merged with the National Chambers of Commerce (FIX). We discuss the implications of this below.

they do not have the sharp advocacy orientation of Norquist's anti-tax group, nor do they promote model legislation (true??) in the way that ALEC does. Moreover, the regionalist organizations are considerably newer and lack the strong horizontal networks that conservative organizations have developed over a period of decades.

Yet, property rights and anti-tax activism activists are less organized at the regional scale than are various regional groups, particularly the private-public partnerships that are the institutional backbone of growth regionalism. This fact has ambiguous consequences for anti-tax and property rights initiatives. On the one hand, regional business groups have sporadically joined regional coalitions that support state property rights and anti-tax legislation. Feldman and Jonas (2000), for example, find that in Riverside County large landowners, farmers, and businesses have joined forces to weaken enforcement of the Endangered Species Act. In the process, they have effectively formed "western Riverside County's pro-growth urban regime" (273).

But regional business interests have not consistently arrayed themselves behind anti-tax and antiregulatory measures, and they have just as often judged these initiatives as a threat to growth and become critical members of the opposition. Denver's business leaders have been among a handful of regional groups attempting to respond to threats to regionalism with the same scalar and organizational flexibility as property rights and anti-tax activists. With the backing of a broadly united business community, the Denver metropolitan area won voter approval for a massive public transit initiative – and a .4 percent sales tax increase -- in 2004 (Lieb 2004). When anti-tax activists in Maine successfully placed a TABOR on the state ballot in 2006, the Metropolitan Denver Chamber of Commerce sent letters to Maine business leaders, warning them of TABOR's damaging effects on infrastructure and higher education.

During the same year, regionalists in California organized against Proposition 90, a *Kelo*-plus regulatory takings measure. The California Center for Regional Leadership, a non-profit organization focused on conducting regional dialogues with a variety of public and private stakeholders, included presentations to inform its member organizations about Prop 90's likely effects on regional planning. [**interviews with Denver CoC, CCRL**]

There has been little opposition, regional or otherwise, to post-*Kelo* legislation and referenda that have not included a regulatory takings provision. In 2006, eight referenda made state ballots across the country, and all of them passed (most by large margins). Given the popular backlash in the immediate aftermath of the *Kelo* decision, those who supported the judicious use of eminent domain may have been understandably hesitant to organize opposition to the new restrictions. Moreover, few regional groups are *directly* involved in redevelopment activities that would be obstructed by new limits to eminent domain powers. Post-*Kelo* backlash, however, has lent strong rhetorical support to the regulatory takings measures planted in *Kelo*-plus referenda, a strategy with one early success in Arizona and a near-success in California. If property rights activists continue to employ this strategy in the coming years, any effective regionalist response to regulatory takings legislation must take the popular response to *Kelo* into account. Regionalists might find some inspiration in the work of groups who employ community benefits models (such as the Partnership for Working Families) and have begun to articulate an alternate model for the proper use of eminent domain, one that focuses on the distributional impacts of eminent domain rather than categorically rejecting its use.

Conclusion

Regionalism is often portrayed as a process of establishing collaborative horizontal linkages. Indeed such connections are a key aspect of most efforts to enhance regional capacities.

But, the context within which regional efforts take place – the state and local regulations that determine the scope of action possible and the pools of resources available (and the willing of regional actors?) to promote regional initiatives -- are often determined at the federal, state, and local scales. Over the past three decades, multi-pronged and strategically versatile movements of property rights and anti-tax advocates have had a profound impact on that context. The multiscalar capacities of these movements have meant that they are able to direct their efforts at the most politically favorable venues and are well-poised to take advantage of new opportunities that emerge, as in the backlash against the *Kelo* decision. The ability of these groups to influence so many aspects of policy related to regional development suggest that they are critical – if unacknowledged – contenders in the effort to shape regions.

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