



Figure 1: Schematic scale of compensation rights for regulatory takings in thirteen countries.<sup>22</sup>

A look at the United States through a comparative lens can help illustrate my point about the high degree of legal uncertainty. My book *Takings International*<sup>23</sup> covers thirteen national jurisdictions (representing forty-five percent of all OECD members at the time). U.S. law on regulatory takings is shown to be the most turbulent and infected with chronic uncertainty. In the absence of federal legislation and only a few partial attempts at state legislation (following the *Kelo* decision),<sup>24</sup> government bodies continue to be exposed to constitutional takings challenges. Unlike other countries, where legislation provides boundaries for the types of regulations that can trigger takings claims, in the United States the boundaries are not clear. Apparently, takings claims are sometimes based on grounds totally unrelated to land use or real property.<sup>25</sup>

22. Rachele Alterman, *The U.S. Regulatory Takings Debate Through an International Lens*, 42 URB. LAW. 331 (2010/2011).

23. RACHELE ALTERMAN, *TAKINGS INTERNATIONAL: A COMPARATIVE PERSPECTIVE ON LAND USE REGULATIONS AND COMPENSATION RIGHTS* (2010); see also Alterman, *supra* note 23.

24. *Kelo v. City of New London*, 545 U.S. 469 (2005). Regarding state legislation, see Harvey M. Jacobs & Ellen M. Bassett, *All Sound, No Fury? The Impacts of State-Based Kelo Laws*, 63 PLAN. & ENV'T L. 3 (2011). A more recent analysis argues that these state statutes have been weakened even further. See Timothy M. Harris, *Backwards Federalism: The Withering Importance of State Property Law in Modern Takings Jurisprudence*, 75 RUTGERS UNIV. L. REV. 113 (2023).

25. The latest example to surprise me happened to land in my inbox recently. In *Washington Food Industry Association & Maplebear, Inc. v. City of Seattle*, 524 P.3d 181 (Wash. 2023), the court held that a takings challenge to Seattle’s ordinance requiring COVID-19 combat pay for food delivery workers could proceed. *Seattle’s Hazard Pay For Food Delivery Gig Workers Might Be a Penn Central Taking*, INVERSE CONDEMNATION (Feb. 13, 2023), <https://www.inversecondemnation.com/inversecondemnation/2023/02/seattles-hazard-pay-for-food-delivery-gig-workers-might-be-a-taking.html>. For a scholarly argument about the lack of boundaries see, for example, Eduardo Peñalver,