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# AMERICAN LAW



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OXFORD  
UNIVERSITY PRESS

2002

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**TAKINGS.** The power of the sovereign to take private \*property for public purposes through eminent domain has existed for many centuries. By the time of American independence, however, payment of compensation to owners had become customary. That approach was embodied in the Fifth Amendment of the United States Constitution, which provides "... nor shall private property be taken for public use, without just compensation." This provision originally applied only to the federal government, but was held applicable to the states through the \*due process clause of the \*Fourteenth Amendment (1868) in *Chicago, Burlington & Quincy Railroad Co. v. City of Chicago*

(1897). The constitutions of all of the states contain similar provisions.

Just compensation is defined as the market value of the property taken, which might be land, personal items, or intangible rights. Nevertheless, just compensation hardly ever is full compensation, since most owners have customized property used in business or have sentimental attachment to their homes. Moving also carries significant costs and disruption. The public use requirement limits eminent domain to situations when legitimate governmental needs compel its exercise, thereby avoiding arbitrary takings from some private individuals for the benefit of others and reducing uncompensated losses. In *Hawaii Housing Authority v. Midkiff* (1984), however, the Supreme Court effectively eliminated the public use requirement by equating public use with the general constitutional standard that government regulations advance the public health, safety, or welfare. This has led to the invocation of eminent domain for the benefit of private businesses, so long as some public benefit is shown.

In *Pumpelly v. Green Bay Co.* (1871), the Supreme Court held that the permanent flooding of private land behind a public dam was an exercise of eminent domain, in spite of the fact that the landowner never had been deprived of title. Likewise, in *Pennsylvania Coal Co. v. Mahon* (1922), Justice Oliver Wendell Holmes observed that the imposition of regulations could constitute a taking where the regulations went "too far." What constitutes a regulatory taking has been in dispute ever since.

The Supreme Court has ruled that permanent physical occupation of land constitutes a taking in *Loretto v. Teleprompter Manhattan CATV Corp.* (1982), and that regulations that deprive land of all economically viable use constitute takings in *Lucas v. South Carolina Coastal Council* (1992). Beyond these relatively clear situations, the Court has employed a balancing test that takes into account the character of the regulation, its economic impact on the owner, and whether the owner has "investment-backed expectations" that are defeated, as in *Penn Central Trans. Co. v. City of New York* (1978).

Numerous questions continue to swirl around the *Penn Central* standards, including whether they should be applied to all of the claimant's property or to some lesser "relevant parcel"; whether property rights, which primarily arise from state common law and statutes, might be amended by statute so as to preclude takings claims; and whether the relationship between ex-

pectations and property is irredeemably circuitous. Several states have enacted private property rights laws, which require payment of compensation when government action has reduced the value of property in certain situations. Until the Supreme Court comprehensively defines property rights, it is unlikely that regulatory takings issues can satisfactorily be resolved.

[See also Constitutions, United States; Sovereignty]

• Richard A. Epstein, *Takings: Private Property and the Power of Eminent Domain*, 1985. Steven J. Eagle, *Regulatory Takings*, 2d ed., 2001. —Steven J. Eagle