

## Property Rights and "Takings" Legislation.

The U.S. Congress and a number of states are considering "takings" or "property rights" legislation. This legislation requires government agencies to pay landowners when regulation of the land reduces property values by some specified amount (called a "trigger") from some baseline (usually "fair market value"). For example, if prohibitions on logging to protect endangered red-cockaded woodpecker habitat reduced someone's property value by more than say 20%, then the landowner would have to be compensated the full amount of the reduction. This would give it a powerful disincentive to aggressively enforce the Endangered Species Act. Historically, a regulation only constitutes a taking under the Constitution's 5th amendment ("government may not take private property for public use without just compensation") if the regulation makes property virtually valueless. These new laws would significantly expand the scope of this idea. Critics fear that takings legislation will undermine ordinary zoning regulation and historic preservation legislation, as well as environmental regulation.

Here is one argument against "takings" legislation. Sponsors of "takings" and "property rights" bills assume that property rights are absolute. But when people act as a community to establish certain kinds of property, we both limit the bundle of rights extended to owners and attach responsibilities to those rights. For example, the right to own a gun does not allow the owner to do whatever he wants with it. Responsibilities for proper use go along with the limited rights of gun ownership. Other examples include owning a pet or a flag. Similarly, owners of land do not have rights to do anything they want with the land. In our society, land ownership does not include the right to hunt on the land out of season, to fill in the wet parts of that land, to tear down historic buildings on the land, to build on parts of the land in a tidal zone, or to drive endangered life forms on the land out of existence. When people buy land they realize (or should realize) that our society has committed itself to the protection of wildlife, wetlands, historic buildings, beaches, and endangered species. The bundle of rights one gets when one buys land does not include a right to destroy these things, but rather brings with it responsibilities to preserve them. Takings legislation requires communities to pay landowners not to destroy these things. The rationale is that prohibiting a landowner from destroying them makes the property less valuable and thus fairness to the landowner requires compensation from the community. But this is an illusion. The landowner was never given these rights to destroy in the first place and so the community is not taking anything from the landowner. Only if one mistakenly believes that property rights in land are absolute rights to do anything one wants to the land does the "takings" legislation make sense. There are extreme cases where communities enact dramatically new regulations that amount to an unfair and burdensome changing of the rules of property ownership in midstream. But the way to handle these situations is to modify these regulations, not to create legislation that establishes absolute rights of land ownership. Fundamentally changing institutions like land ownership based on extreme cases makes for bad public policy.

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