

"Takings" and Property Rights

The Fifth Amendment of the U.S. Constitution grants the government the authority, known as eminent domain, to take possession of private land for the public good. When this is done, however, the Constitution requires that just compensation be paid to the landowner. The police power of government also allows seizure of property to punish wrongdoing and allows restriction of property use to prevent harms.

In recent decades, the use of wetlands has been significantly regulated. Landowners are prevented from destroying wetlands, filling in wetlands, or otherwise significantly affecting their ecological functioning. Because wetlands provide such critical functions as ensuring water quality and providing flood control, these restrictions are based, in part, on the police power of government to prevent harms. But what of cases where land use is restricted for the public good?

Environmental regulations have recently been challenged on the grounds that they are unconstitutional "takings" of private property. Consider a city that passes a zoning ordinance to protect the few remaining oak savannas or prairies within its boundaries. Development is now prohibited in areas where owners previously could have sold the land for shopping malls and housing developments. Does society owe compensation to the landowners when environmental regulations deny them profits that they could have made without the regulation? Is the right to develop property an essential part of private ownership? ~~Compare the meaning of development used in this case to the meaning of development used by Norman Dohy. What exactly is the difference?~~ If government seeks to protect land for the "moral, aesthetic, cultural, political, and religious values" ~~mentioned by Sugoff~~, should it be required to pay landowners for the lost economic value that results?

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