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How Does the Fifth Amendment Protect Property?

BACKGROUND ESSAY

If a person owns some beautiful land and wants to build her home there, who is to say she cannot? But what if there were three-thousand-year old redwood trees on that land and building would mean cutting them down? Or what if the land is on the beach where construction would damage the shoreline? Are these valid reasons for the government to take the land?

What Does the Fifth Amendment Guarantee?

Among other things, the Fifth Amendment guarantees that people have the right to their lives, liberty, and property. The government is not allowed take those things without a reason or without following due process. Due process means that the government must act fairly and obey legal procedures when it tries to take property. The just compensation clause of the Fifth Amendment means the federal government must pay for any private property it takes for public use.

What Is a Taking?

Although the Constitution protects private property, the government can sometimes seize or restrict the use of that property. It can take property in the name of the public good. This is called a taking.

What Is Eminent Domain?

The Founders realized they must reconcile [consider both] the need to sometimes take property for government use and individuals' rights to use their own property. Sometimes the government needs land to build a road, school, post office, or military base. Historically, most takings happened through eminent domain. Eminent domain refers to the government's right to take private property for public use. In the 1800s, eminent domain was used to claim land for railroads. In the twentieth century, it was used to remove residents from land along planned interstate highway routes. Even in cases of eminent domain, the government must provide just compensation.

What Is Just Compensation?

Individuals can sue the government to be reimbursed [paid back] for the lost value of their property. They are asking for just compensation. It is often difficult to determine the amount of just compensation. Today, the Supreme Court generally uses the fair market value standard, defining just compensation as "what a willing buyer would pay in cash to a willing seller at the time of the taking."

In some cases, the government has

been required to pay citizens even if it did not actually take land. Some people have lost some or all of their property's value through regulation or other government actions. They have claimed a right to be paid for a partial taking.

In *Lucas v. South Carolina Coastal Commission* (1992), the Court ruled that the owner of beachfront land must be paid back after a state law stopped all new construction on the property. Lucas had intended to build single-family homes on the land. Since he could no longer do this, the land's economic value was reduced to zero. The Court ruled that this was a taking even though the land had not literally been taken away, because the state took away all of the economic value of the land. The state was required to compensate Lucas for loss of his property's value.

More recently, the court has usually sided with state and federal power to regulate over the property rights of citizens. In *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002), the Tahoe Regional Planning Agency stopped new building at Lake Tahoe. Although the ban on building was supposed to last for nearly three years, the delay went on to last for nearly twenty years. Property owners claimed that this ban was a taking and they should be paid back. The Court did not agree. In its decision, the Court ruled that "a temporary restriction causing a diminution [loss] in value is not [a taking]."

Kelo v. New London (2005) became the landmark case surrounding the



Suzette Kelo was forced from her property in New London, Connecticut when the local government used the Takings Clause of the Fifth Amendment

government's ability to exercise eminent domain and changed the concept of public use versus private use. Suzette Kelo was forced from her property in New London, Connecticut when the local government used the Takings Clause of the Fifth Amendment. The Takings Clause of the Fifth Amendment allows the government to take private land for "public use." While the term "public use" formally relates to the building of highways, railroads, or other uses that constituted the public interest, Kelo's land was to be used for a private business venture.

The Court ruled that the taking of Kelo's property was constitutional because the public would benefit from increased jobs, tax revenue, and economic development. In the majority opinion, Justice Stevens stated, "The city has carefully formulated [created] a development plan that it believes will provide appreciable [real or noticeable]

benefits to the community.” However, in the dissenting opinion, Justice Sandra Day O’Connor asserted that “Any property may now be taken for the benefit of another private party” and that the decision would help those with money and political power at the expense of the rights of individual citizens.

The ruling in *Kelo* has spurred legislation at both the state and federal level in an attempt to clearly define “public use” and “just compensation.” As for the land in the *Kelo* case, it remains vacant. The economic development which forced Suzette Kelo out of her home never happened.

Are Ideas Property?

Property is not always tangible or concrete. Authors, researchers, inventors, and artists also have a strong interest in protecting their rights to the products of their minds. These things are called intellectual property. Songs, books, or poems are property,

just like cars, houses, or land.

The Internet has made it much easier to send information, but it has also made it much easier to steal intellectual property. Books and music can be illegally downloaded for free, taking payment away from the authors and musicians. Some argue that if these owners do not think they will be justly paid for their work, they may produce less. The consequences to our culture may be huge: fewer novels, fewer medicines, fewer inventions, and less art. Others argue that few ideas are truly original, but build on the efforts of prior creators. Therefore, they say, giving too much protection to intellectual property can have the effect of reducing creative output.

The Founders believed that protecting private property was necessary for economic prosperity. Because a citizen’s rights are his property and because the government is established to protect citizens’ rights, the government cannot protect rights without protecting property.



Comprehension Questions

1. What does the Fifth Amendment guarantee?
2. Why was the case *Lucas v. South Carolina Coastal Commission* considered a taking?
3. Why was the *Kelo v. New London* case considered a landmark Supreme Court case?