United Artists v. Township of Warrington, 316 F.3d 392 (3d Cir. 2003), p. 311

The Civil Rights Act

• Race and ransom
• Substantive due process
• Proof
• Abstention

The Takings Clause: The Fifth Amendment

No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

• Regulation as Taking
  • Pennsylvania Coal Co. v. Mahon
• Balancing
  • Penn Central Transp. Co. v. City of New York
• Economic Use
  • Lucas v. South Carolina Coastal Council
Pennsylvania Coal Co. v. Mahon,
260 U.S. 393 (1922), p. 325

Regulation as Taking

- Limitations and limitations on limitations
- Too far
- Average reciprocity of advantage
- Relative values

Penn Central Transp. Co. v. City of New York,

Balancing

- Facial v. as-applied challenge
- 3 factors
- Conceptual severance/denominator problem

Early Principles
- “harmful and noxious uses”
- “harm-preventing” v. “benefit-conferring”
Modern Principles Cont’d

Lucas Cont’d

• “[L]and use regulation does not effect a taking if it ‘substantially advance[s] legitimate state interests.’” See Lingle v. Chevron (regulatory takings)

Modern Principles Cont’d

• Compensation is required—
  • when government action deprives the property owner of “all economically beneficial use” of the property
  • if it goes beyond what the relevant background principles of state nuisance and property law would dictate.
Lucas Cont’d

Modern Principles Cont’d

• Law must “do no more than duplicate the result” that could have been achieved in the courts.

Lucas Cont’d

Dissents

• Blackmun
• Stevens
Lucas’s Property

One New House by 2000
5000 sq. ft.
Categorical or Per Se Rules (almost)

- Physical invasion by government or authorized by government = taking.
  - *Loretto*
- Regulating a nuisance ≠ taking.
  - *Keystone & Hadacheck*
- When the value of the land is essentially wiped out = taking (unless . . .).
  - *Lucas*