

"Taking" - property right

"bundle of sticks"

- use -

- exclude -

- sell (alienate)

- legislation - remove/reallocate
bundle of sticks -

absolute loss (all of bundle)

taking for public use

Sth Amend - "takings clause"

- public use / benefit

- comp paid

- not absolute loss

- regulatory action - not reg
comp. → meet

- "regulatory taking"

Hicks - Kaldor
criterion

Pareto Improvement

Land use - zoning Euclid, OH

↳ siting
 ↳ uses for land
 ↳ scope of development

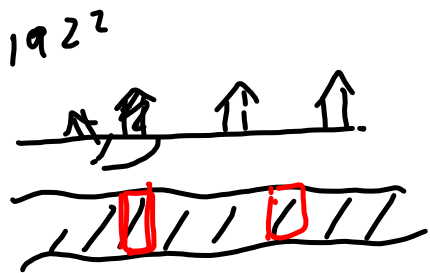
} modify plan
 result of
 market value

How large must loss be to constitute
 Q: a compensable taking?

Mugler v Kansas 1887 -

Penn Coal v Mahon et al. 1922

Kohler Act (1917?)



costs - loss of coal
 - costs of extraction

Justice Oliver Wendell Holmes - ruled for Penn Coal.

Dissent ~~Brandies~~ Brandies

- Mahon owned surface rights not mineral rights - could have bought mineral rights - got lower price when bought - w/o mineral rights

Brandies - invoked nuisance
argument

environmental regulation
- coastal land use

Lucas v South Carolina Coastal Council

1977 - "critical area" → restriction on
land modification

1986 - Lucas - 2 lots for \$975,000
- not in "ca"

1988 - Beachfront Management Act
modified Council's ca map
- Lucas denied permit

Lower court → not a taking
- regulatory action -
- is "nuisance" sufficient
- Rehnquist et al
→ how much loss is a taking?
Lucas - awarded \$1.2 mill. 1992

- bypass litigation
 - create markets for property rights
 - Conservation Reserve Program (CRP)
 - habitat preservation
 - marginal lands
-

Endangered Species Act.

- ' section 9 → show examples of species on land
 - modification of development plan

Babbitt v Sweet Home 1995

habitat modification is "taking"
of species
Court ruled for S of I
did not constitute taking on
property owner

private party suits for env. damages

- "standing" - bona fide interest
economic value

Sierra Club v Morton 1972
Mineral King Valley - on border
of Sequoia NP

Disney \$135 mill. 14k visitors/day

Sierra Club → org has standing
on basis members use

MK Valley + NP
US Supreme Court No 4-3
- injunction -