

FOREWORD

The fifth amendment to the United States Constitution provides “. . . nor shall private property be taken for public use without just compensation.” Although this amendment is expressly applicable only to the federal government, the Supreme Court has dictated that it be applied to the states as well under the fourteenth amendment, which requires the states to provide their citizens with due process of law. Originally, the just compensation clause of the fifth amendment was construed to provide compensation only when the state “physically occupied” private property. However, takings jurisprudence has since broadened to include government regulations which deprive the owner of free use of his land.

Regulatory Takings Doctrine is an area of constitutional law that highlights the classic conflict between governmental power and individual rights. On one hand, the government needs to regulate the use of land in order to further a myriad of legitimate public purposes—one of which is to protect our environment for future generations. On the other hand, the right to own and use property freely is considered sacrosanct to most Americans. Land is a scarce resource; in the immortal words of Will Rogers, “they’re not making any more of it.” Hence, this classic struggle between government and the individual will escalate as land grows more scarce and more valuable.

This special issue of the *UCLA JOURNAL OF ENVIRONMENTAL LAW AND POLICY* deals exclusively with the interpretation of recent developments in Supreme Court takings jurisprudence. The authors explore the effects of recently decided cases on the future of the takings doctrine as a whole and on the future of government regulation in particular.

The issue begins with an article by Professor Joseph L. Sax. Professor Sax provides an exhaustive analysis and synthesis of constitutional law and property rights. Professor Sax’s main goal is to track the future direction of the Supreme Court with regard to the just compensation clause. He concludes that, despite the symbolic importance of property to a more conservative court, the enlarged role of contemporary government compels the Court to maintain a circumscribed view regarding the status of property rights. Next is an article by Jack R. White. The author, who argued the *First English* case before the Supreme Court, cogently summarizes California law

relating to the remedies available to a plaintiff in an inverse condemnation proceeding, explains the controversial *First English* decision, and theorizes on the impact the ruling will have on future zoning policies and practices. Rigoberto Obregon and I follow with a comment examining the effects of and the relationship between two recent Supreme Court takings decisions. In the first of these decisions, *Nollan v. California Coastal Comm'n*, the Court reinterpreted the standard of judicial review for determining whether a land use regulation constitutes a "regulatory taking." In the second decision, *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, the Court addressed the issue of whether a property owner is entitled to compensation for a "temporary regulatory taking." This comment is written with an eye toward aiding environmental and land use regulators, in light of these two decisions. Finally, Anne Davies has written a casenote analyzing *Keystone Bituminous Coal v. DeBenedictis*, which holds that a regulation limiting a property owner's right to mine coal complied with the fifth amendment. The Court concluded that the State's interest in public health and safety made the Subsidence Act in question a constitutional taking of private property.

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