

Takings clause research paper examples

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Introduction

The Fifth Amendment to the United States Constitution provides that Private property shall not be taken by the government for public use without just compensation to the owner. It may appear that the Fifth Amendment only applies to actions by the federal government. However, the Fourteenth Amendment to the Constitution extended the application of this clause to the state governments and the local governments. When government seeks to obtain land to construct say a school or another amenity for use by the public, it must first buy land from the open market as do, private individuals. However, if the seller refuses to dispose their land, the government is given power under the doctrine of eminent domain to acquire the land from the owner compulsorily if the land is to be put into public use. The Takings Clause is in place to guard rights of owners of private land from being militated against by the government whenever the government compulsorily acquires land. Indeed, the two requirements imposed by the Takings Clause to enable government acquire private land is that the land must be for public use and the government must pay just compensation to the private owner. Nonetheless, it must be mentioned that there has been an evolution of the Takings Clause over the years. This paper seeks to examine the evolution of the law in relation to the Takings Clause. To this end, the paper shall explore several cases decided by the courts in this arena.

The Takings Clause was first enunciated in section 39 of the Magna Carta which was to the effect that land would not be taken without a form of due process. Prominent jurists at the time such as William Blackstone, Sir Edward Coke and the natural rights theorist John Locke argued for the need to

compensate private owners of land. They stated that the application of the common law guarded private rights from being abused by royal authority. The later adoption of the American Constitution marked another milestone as the Takings Clause was incorporated in the Constitution in the bill of rights which was part of the first ten amendments to the Constitution. The Takings Clause was consequently embedded in the Fifth Amendment following fears that the federal government would be too powerful and deprive people of their land in an arbitrary manner. Nonetheless, the effect of the Fifth Amendment was short lived as the courts found that the provision only applied to actions by the federal government and not the state or local government. This was so held by Chief Justice Marshall in the case of *Barron v Mayor and City Council of Baltimore*. However, the Takings Clause was extended to the state and local government through the enactment of the Fourteen Amendment after the Civil War which necessitated the federal government to limit the powers of the state governments against their own citizens. The fourteenth amendment imposed its restriction on the action of the state through the Equal Protection Clause and was illustrated in the *Slaughterhouse* cases which considerably emasculated the Privileges and Immunities Clause.

The Due Process Clause evolved along three lines to act to protect private rights to property against compulsory acquisition. One of the lines in which the due process was made a reality was through the procedural due process where it was required that hearings and other governmental process were to be conducted in a fair and procedural manner. Another line in which the limits on the state and local government were achieved was through a line of

decided cases which had the effect of limiting the power of the government through the Bill of Rights. The United States Supreme Court applied the Takings Clause of the Fifth Amendment to the states by way of the Fourteenth Amendment Due Process Clause in the case of *Chicago Burlington and Quincy R. R. v. City of Chicago*. The third line in which the application of the Takings clause applied to the state and local government was through review of legislation. The Supreme Court first stated that it could review the substance of legislation through the Due Process Clause in the case of *Mugler v Kansas*. This process by the court came to be known as substantive due process and reigned supreme until the year 1940. It gave judges the authority to determine whether a particular legislation was appropriate or unduly oppressive to one of the parties.

Following the decision of the court in *Mugler v Kansas*, substantive due process became a thriving jurisprudence of the Supreme Court in undergirding the rights of private citizens. However, this ended with the decision in the case of *United States v. Carolene Products Co.* where the court limited judicial review to social and economic regulation.

The government is empowered under the doctrine of eminent domain to acquire land for public use and no more. The courts have continually construed the term "public use" in a broad manner as to encompass public ownership, use by the public or public benefit. In the seminal case of *Kelo v City of New London*, a 2005 decision, there arose a question as to whether the acquisition of land by government for economic development purposes only is a public use to be covered by the doctrine of eminent domain. In a

majority opinion of 5 to 4, the court found that the acquisition was consistent with the law.

Conclusion

It is evident that the law in regard to the Takings Clause has metamorphosed over the years. Broader meaning has been given to the term “ public use” thus giving the government power to acquire land. The evolution has also seen the application of the Takings Clause to state and local governments by virtue of the Fourteenth Amendment.

Reference

- Hart, J. (2007). Colonial land use law and its significance for modern takings doctrine. *Harvard Law Review*, 65-71.
- Peterson, A. (2008). The Takings Clause: In Search of Underlying Principles: Part I. A Critique of Current Takings Clause Doctrine. *California Law Review*, 17-24.
- Treanor, W. (2006). The original understanding of the takings clause and the political process. *Columbia Law Review*, 11-19.