

Land Use and Property Rights – Dr Wrago [<http://www.youtube.com/watch?v=Q5VGZL3xqDI>]

From your notes try to answer some of these questions

1. Outline?
2. What is the Fifth Amendment of the Constitution?
3. Why does he start by looking at ‘Wyoming’ – Greater Yellowstone Ecosystem?
4. What is the purpose of the slide on the Wolf Pack Territories?
5. Is the Grizzly Bear ‘common property’?
6. Is the allocation of fishing rights governed?
7. What is the point on the Tsongas National Forest?
8. What is important about the California Coastal Commission case?

9. Why is the Point Reyes National Seahorse Park used as an example?
10. What is significant about the Mining Law of 1872?
11. Are Underlying mineral rights separable from the surface rights?
12. What's the problem with Methane Reserve Extraction?
13. What is the connection to the Horse Whisperer's Film?
14. How can the 'the law of Nuisance' be used in these circumstances?
15. What was the nuisance case of 1887?
16. What was famous about 'takings' for law history of Euclid v Ambler 1926?
17. Discuss the Penn Central Transportation Co. V. City of New York: 1978 case.

18. What is the point in the Hawaii Housing Authority v. Midkiff: 1984 case?

19. What did the Kelo v. City of New London 2005 case define?

20. What is 'valueless' in the Pennsylvania Coal Co V. Mahon 1922 case?

21. What case discusses 'blocked visual access' and what was 'the remedy'?

22. What was the Florida Case about?

23. Conclusion

Critical thinking: *What do you think of this lecture? Has anything surprised you? If so, what? What was missing from the lecture? How can National Park authorities / agencies be regulated so there is consistency in their policies? Should local people take the law into their own hands to regulate territories and boundaries? In what ways is Climate Change affecting property rights? And what could be the solutions? Should the underlying mineral rights be separable to surface rights? Are there any of the legal cases that you think the decision was wrong or could have been dealt with differently? Anything else?*

Land Use and Property Rights.. **ANSWERS**

1. Outline?

To look at property rights and the 'taking' – when Governments have the rights to take private property for public purposes and under what circumstances compensation is required.

2. What is the Fifth Amendment of the Constitution?

Private property cannot be taken without compensation if it's going to be used for public purposes.

3. Why does he start by looking at 'Wyoming' – Greater Yellowstone Ecosystem?

To emphasise how property rights are fractured by Law but also by jurisdictional boundaries. This example shows the problems. The jurisdictional boundaries are really complicated – there are several national parks (Yellowstone, national forests, Grand Teton National Forest, National wildlife refuges, Native American reservations).

4. What is the purpose of the Wolf Pack Territories?

One species of wolf crosses all these different boundaries – a wide number of laws are at play that give implementation authority to different agencies (Forest Service, Bureau of Land Management, the National Park Service, the Fish and Wildlife Service, complimentary State agencies, private land owners, - mixture of private and public)
There is a complexity – also the area is rich in natural gas and oil reserves, timber extraction, water resources, which create conflicts.
Main Point – fundamental problem is all of these agencies have different policies on dealing with / managing the wolfs (or any resource) – one example is 'Fire' the Forest service suppress but the National Park let it burn. Inconsistency and content with these different agencies.

5. Is the Grizzly Bear 'common property'?

No – only common property in legal terms when protected in national park lands – but if it crosses boundaries into, for example, Alaska native American lands the bear would be appropriable (could be hunted / private property) – similar example for Fish.

6. Is the allocation of fishing rights governed?

No not necessarily. Example of Maine Coast Island – Lobster fishing and how is it regulated? Fishermen have little trust in Government policy and took the law into their own hands when a 'newcomer' tried trap lobster in their territory.

7. What is the point of the Tsongas National Forest?

Denuded of forest – national public domain – picture shows no generation of new life because area has been destroyed through the pressure that the Forest service gave out timber contracts without a sustainable timber policy in place. **Point:** mismanagement.

8. What is important about the California Coastal Commission case?

The California Coastal act of 1976 Coastal commission – is unusual and important. Took an idea from the 'Adirondack Park Agency Act' the idea of Zoning – cluster development Strategies to manage coastal development – Government exercised right of 'Eminent domain' to take over land from Private sector to public (Point Reyes National Seashore, Cape Cod National Seashore, Fire Island National Seashore, Assateague Island, Padre Island in Texas). **Point:** is to look at these strategies to see what works in protecting resources, and how these strategies work with Climate change.

10. What is significant about the Mining Law of 1872?

All valuable minerals in and on lands belonging to the US are free and open to exploration and purchase by US citizens. However, this was amended by the Mining and Minerals Policy Act 1970 (DOI) – promote economic development on public lands. **Point:** is that there is conflict – people see the public lands as protected but the managers of the land see the land as economic development opportunities (mining, timber, grazing).

11. Are Underlying mineral rights separable from the surface rights?

Yes, many people don't understand this. Example -Methane reserves in Arizona. Those that own surface rights are not aware that the Federal Government sold off the underlying oil and gas rights.

12. What's the problem with Methane Reserve Extraction?

Scale 10,000 wells 5 years ago – Sheridan problem = ground water extraction is occurring at such a rate that it is changing the biological diversity of the region.

13. What is the connection to the horse whisperer's Film?

Coal bed Methane extraction – road being made on his property. Purchased the land rights, no right to stop them. The water pumped up changed his land, rivers – many of the farmers have been compromised.

14. How can the 'the law of Nuisance' be used in these circumstances?

An act, object, or practice that interferes with another's rights or interests by being offensive, annoying, dangerous, obstructive or unhealthful. Distinction between what is a public nuisance (collective interest) and a private nuisance (to take company to court – litigation) Extractor – would pay X amount of money. Legal agreements made before.

15. What was the nuisance case of 1887?

Mugler v. Kansas 1887 – if land use is considered to be a nuisance it may be regulated without compensation. Sale of Alcoholic beverage. Condition - Not all rights were removed

16. What was famous about takings law history of Euclid v Ambler 1926?

Supreme court decision – segregation of land use of residential and commercial districts complexity. Outcome was that State police power maybe used to classify and regulate land use.

17. Discuss the Penn Central Transportation Co. V. City of New York: 1978 case.

Grand Central Station – city of N.Y designation of the station as a historic landmark – prohibiting development above the station. Does this constitute to taking of property without compensation? Argument of ‘air’ rights? **Point:** Government won the case with designating the site as an historic landmark and owning the air rights.

18. What is the point in the Hawaii Housing Authority v. Midkiff: 1984 case?

1967 - 96% of state 72 landowners. Legislation approved use of eminent domain to condemn residential lots and sell land to existing tenants. To break up this oligopoly even if the landowners object. Compensated the landowners. **Point:** dramatic act of a state government and the use of eminent domain. Sup Ct ruled legitimate use of Eminent Domain BUT is not a taking – the public use is created. The key case is that it was in the interest for the public in the breakup of oligopoly.

19. What did the Kelo v. City of New London 2005 case define?

What is public use? Sup Ct found that the use of eminent domain for economic development did not violate the public use. If used as an economic project to create new jobs, increases taxes / revenues and revitalizes a depressed urban area – it qualifies.

20. What is the ‘valueless’ in the Pennsylvania Coal Co V. Mahon 1922 case?

‘Valueless’ – expectation that you had property lots to sell and the government pass a new law and dedicate your land to Green area. Shouldn’t that constitute to a taking? And compensate you for the loss. However, Sup Ct if you are left with a property right that has a remnant value. The 1922 case is about subsidence of homes from mining underground. This prohibition of mining had gone too far and constituted as a taking. Why? Because the underlying mineral rights become worthless.

21. What case discusses blocked visual access and what was the remedy?

Nolan V. California Coastal Commission – Nolan Leased property with option to buy conditioned with a bungalow – needed a permit from CCC. New Property would block the view – What would be the affect? Psychological / burden access remedy was to supply physical access to coastal area (Nolan argued the access condition as a taking - won the case as seen as a taking)

Nexus argument – harm = Loss of visibility / remedy = access [no clear remedy]

22. What was the Florida case about?

Property value susceptible to loss – storms and beach re-nourishment programme. Highly vulnerable areas to climate change and sea level rise. Stop the beach re-nourishment v. Florida Dept. of Env’tl Protection. Walton County shoreline. A boundary was set between private / public land. No right of access to your property. Landowners declared ‘Taking’ of their property right to own shoreline – they alleged that the Sup Ct violated the due process and takings clauses by suddenly unpredictably changing state substantive law that deprived these owners of their private property without compensation. Sup Ct ruled that

beachfront owners had no rights to their property with continued contact to the water nor any vested right of the future breach accretion. Popular case supported by a coalition of 26 states

23. Conclusion

Among all these strategies that might be applied to protect public resources and against private damage to the environment, the use of regulation is extremely important opportunity for state and local governments. If you apply a strict standard, demand that taking of all property value be required prior to the grant of compensation, that offers the greatest opportunity for governments to be effective in pursuing environmental agendas.