T

TAKINGS

The Fifth Amendment to the U.S. Constitution states that 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." This last clause, the "takings clause," prohibits the U.S. government from seizing property without just compensation. In the United States it is this amendment that authorizes the federal government to seize properties for common use, a legal concept known as *eminent domain.* Many other nations have similar laws. The United Kingdom, New Zealand, and the Republic of Ireland have "compulsory purchase" laws; Australia has "resumption or compulsory acquisition" laws; and South Africa has "expropriation" laws. Takings restrictions date as far back as the Magna Carta, issued in 1215 as a curb on the absolute will of the king of England. All such laws protect property owners from unjust seizure but also allow governments to seize property in the common interest.

The requirement of compensation for the physical taking of property is uncontroversial. As regards regulations, however, the requirement is more complex. The environmental issue referred to as "takings" or "regulatory takings" relates to a property holder's claim to compensation for damages incurred or benefits forestalled, as a result of regulations—restrictions, prohibitions, or requirements—placed on the use or lease of a given parcel of property. For instance, if an owner of a piece of land is restricted from building on his or her property, say, because of an endangered-species regulation, the property owner may argue that this regulation has effectively "taken" the property, or taken a significant aspect of value on the property. The central theoretical question is the extent to which a given government action—or, in this case, a given regulation—constitutes a taking.

Until the late 1970s controversies over regulatory takings in the United States had been addressed chiefly by the courts. One of the earliest takings cases was *Pennsylvania Coal Co. v. Mahon* (1922). In this case the Pennsylvania legislature had prohibited the mining of coal underneath streets and houses. The controversy emerged because Pennsylvania Coal had, forty years earlier, granted strict surface rights to H. J. Mahon, under the express agreement that they would eventually mine coal under his dwelling. Pennsylvania Coal argued that the legislature's prohibition of mining under streets and houses constituted a taking because the coal company was no longer permitted to mine coal in these areas. The U.S. Supreme Court found in favor of Pennsylvania Coal, stating that "[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." This case established the precedent that regulations, not only physical seizures of property, can constitute takings.

Since then two cases have emerged as central to modern regulatory takings law (Squillace 2008). In the first case, *Penn Central Transportation Co. v. New York City* (1978), Penn Central petitioned the city for the right to develop a high-rise tower above Grand Central Terminal. Because Grand Central had been designated by the city as an historic landmark, it was subject to zoning restrictions that prohibited such construction. The Court rejected Penn Central's regulatory takings claim, focusing on two issues: the character of the government action and whether the regulation interfered

with distinct and reasonable "investment-backed expectations." No compensation was paid.

In the second case, *Lucas v. South Carolina Coastal Council* (1992), David H. Lucas purchased two properties on the coast of South Carolina for $975,000. In 1988 the state passed the Beachfront Management Act, which restricted Lucas from developing his two properties. Lucas sued and won several critical cases, leading to a Supreme Court hearing. The Supreme Court held that the regulation had effectively deprived Lucas of all economically beneficial use of his property and therefore amounted to a "total taking." By appeal to the character of government action, the concept of reasonable "investment-backed expectations," and the notion of a "total taking," the Penn Central and Lucas cases provide a sound analytical framework for analyzing most regulatory takings cases.

Aside from this judicial history, the concept of takings has sparked heated political controversy. By the late-1970s, the United States had adopted broad-reaching environmental legislation such as the U.S. Endangered Species Act (ESA), the U.S. National Environmental Policy Act (NEPA), and the U.S. Federal Land Policy and Management Act (FLPMA). As these acts came into effect, some property owners, particularly in the western United States, began to question their legitimacy, citing as a precedent the conservationist platform of Gifford Pinchot, the first head of the U.S. Forest Service. Out of these concerns the so-called "sagebrush rebellion" or "wise use movement" was born. This political movement has influenced policy in all branches of government, but most notably in the executive and legislative branches.

For instance, when Ronald Reagan became president in 1981, he appointed James G. Watt, a central figure in the sagebrush rebellion, as secretary of the interior. Watt's appointment resulted in a series of controversial administrative decisions, the ostensible aim of which was to shore up property rights; the real aim, according to critics, was to dismantle environmental law. One of the central decisions came in 1988, when Reagan introduced Executive Order 12630, otherwise known as "Reagan's Order." This order, formally titled "Governmental Actions and Interference with Constitutionally Protected Property Rights," required all agencies in the executive branch to determine whether their proposed action may imply a taking and, if so, to conduct a takings impact assessment (TIA). If any takings implications were found, the order restricted an agency's ability to carry out that proposed action.

During the same decade, state legislatures battled over a variety of takings bills. By 1991 every state in the United States had considered some form of environmental takings legislation. The first federal takings bill had been introduced a year earlier, in 1990, by Senator Steve Symms of Idaho. Although particular bills vary widely in details, takings legislation usually seeks to establish guarantees of compensation for regulation or at least to assure that some assessment of costs and the possibility of compensation is put into place prior to the establishment of a regulation.

Regulatory takings poses complex philosophical and ethical issues, ranging from questions about the nature of private property to observations about harms to nature or to humans. At any point in the history of the "takings debate"—whether in the court decisions, in the legislation, in the policy of sitting administrations, or even in the more generalized civil sphere—philosophical issues regarding rights, harm, freedom, participation, representation, identity, self-actualization, moral status, public good, and so on, intertwine and overlap.

SEE ALSO *Environmental Law; Environmental Philosophy: V. Contemporary Philosophy; Land Ethic; Private Property.*

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TAOISM

SEE *Daoism.*

TAYLOR, PAUL
1923–

Paul Warren Taylor was born in Philadelphia on November 19, 1923. He is emeritus professor of philosophy at Brooklyn College, where he specialized in normative and applied ethics. The author of several works in ethics, including *Normative Discourse* (1961) and *Principles of Ethics* (1975), Taylor is probably best known for *Respect for Nature* (1986), in which he develops and defends a sophisticated biocentric (life-centered) environmental ethic.

Taylor's egalitarian biocentric ethic (1986) synthesizes elements of classical virtue ethics with Albert Schweitzer's ethic of reverence for life, Peter Singer's egalitarianism, and Kenneth Goodpaster's account of moral considerability. Taylor contends that one who adopts the ultimate moral attitude of respect for nature will become an environmentally virtuous person. He identifies environmentally ethical conduct with conduct motivated by respect for nature. Such environmentally virtuous conduct seeks to promote the flourishing of all living organisms. In Taylor's words, "Ethical action and goodness of character naturally flow from the attitude [of respect for nature], and the attitude is made manifest in how one acts and in what sort of person one is" (1986, p. 81).

Taylor admits that "we cannot see the point of taking the attitude of respect" until we understand and accept the biocentric outlook, but he insists that "once we do grasp it and shape our world outlook in accordance with it, we immediately understand how and why a person should adopt that attitude [of respect] as the only appropriate one to have toward nature" (1986, p. 90). The biocentric outlook, a scientifically grounded view of humanity's place in the natural order, consists of the following four theses:

1. *Homo sapiens*, like all other species, emerged as a result of random genetic drift and natural selection. As such, humans are members of the earth's biotic community on a par with all other living organisms.
2. The earth's biotic community forms a complex web of functionally interdependent organisms. In this web, the survival of each organism is determined in part by its relations to other organisms.
3. Each individual living organism is a "teleological center of life" pursuing its own good in its own way.
4. Humans are not superior to other living things. Their inherent worth is no greater than that of any other living organism. (1986, pp. 99–100).

Theses 1 to 3 are solidly supported by the sciences of biology and ecology. Taylor argues that those who accept these theses are rationally committed to thesis 4, which, together, support and make intelligible the attitude of respect for nature (1981, p. 206). This outlook sees living things "as *the appropriate objects of the attitude of respect* and are accordingly regarded as entities possessing inherent worth" (1981, p. 206).

Taylor derives his biocentric egalitarianism as follows. First, he argues that all living organisms are biologically goal-directed toward goods of their own. Next, following Goodpaster, he argues that any being with a good of its own deserves moral consideration. Coupling the latter conclusion with Singer's egalitarianism, Taylor concludes that every living organism possesses equal inherent worth and deserves equal moral consideration.

Numerous objections have been raised against Taylor's biocentric ethic. Principal among them are challenges to its account of moral considerability, its egalitarianism, its individualism, and its demands, along with a worry that Taylor commits the naturalistic fallacy.

To treat these challenges in order, some critics (e.g., Singer 1975, pp. 8–9) maintain that only sentient beings have interests and that only beings with interests deserve moral consideration. Taylor argues that it is arbitrary to restrict the class of morally considerable beings to sentient beings. Since all living organisms can be harmed or benefited and what benefits them promotes their good, Taylor insists that there is no nonarbitrary reason not to extend moral consideration to all living organisms. Mary Anne Warren (1997, p. 48) rejects Taylor's reasoning on the grounds that since lower organisms do not care whether their biological interests are satisfied, neither should humans.

Some biocentrists (Goodpaster 1978, Varner 2002) take issue with Taylor's egalitarianism. They agree that all living organisms deserve moral consideration, but deny that being morally considerable entails having *equal* moral significance. These critics reject Taylor's egalitarianism in favor of a hierarchical account of moral significance.

Other critics object to Taylor's stated view that "it is the good (well-being, welfare) of individual organisms ... that determines our moral relations with the Earth's wild communities of life" (1981, p. 198). These critics contend that Taylor's focus on individual welfare fails to address the actual concerns of environmentalists. Most environmentalists are concerned not with the welfare of individual mosquitoes, dandelions, and microbes, but rather with species preservation, ecological integrity, and pollution. These critics insist that a holistic ethic can better address these environmental concerns.

The idea of extending equal moral consideration to every living organism, including every insect and plant, strikes most people as not only too demanding, but outright absurd. How can people live their lives if they must give plants and insects the same moral consideration owed humans? Taylor tries to mitigate this objection by formulating a complex set of principles (self-defense, proportionality, minimum harm, distributive justice,