

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 10: The Reagan Era – Individual Rights/Property/Takings

Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984)

The Hawaii Housing Authority in 1978 ordered Frank Midkiff to sell some of his land to tenants that lived on his property. This action was based on the state Land Reform Act of 1967. That measure permitted the Hawaii Housing Authority under certain conditions to condemn parts of large estates and to sell that land to persons who were renting homes on the property. The Hawaii legislature passed this law after determining that a few landowners owned more than half the private property in the state and that this “concentrated land ownership was responsible for skewing the State’s residential fee simple market, inflating land prices, and injuring the public tranquility and welfare.” Midkiff filed a lawsuit. He claimed that the Land Reform Act violated the “public use” requirement of the takings clause of the Fifth Amendment as incorporated by the due process clause of the Fourteenth Amendment, because the condemned land was being transferred from one private owner to another. The local federal district court sustained the state law, but that ruling was reversed by the Court of Appeals for the Ninth Circuit. The Hawaii Housing Authority appealed to the Supreme Court of the United States.

The Supreme Court by an 8–0 vote sustained the Land Reform Act. Justice O’Connor’s unanimous opinion asserted that states could condemn land as long as the legislature had a legitimate purpose and the condemnation was a rational means for achieving that purpose. What was the purpose of the Land Reform Act? Why did the Court think that purpose legitimate? Suppose the Court had condemned an ice cream store and sold the property to a hamburger joint on the ground that the latter might be more profitable and, hence, pay more taxes. Is that constitutional after Midkiff? Many takings cases during the 1980s divided the Court on ideological grounds. Why do you think Midkiff was unanimous?

JUSTICE O’CONNOR delivered the opinion of the Court.

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... The “public use” requirement is . . . coterminous with the scope of a sovereign’s police powers.

There is, of course, a role for courts to play in reviewing a legislature’s judgment of what constitutes a public use, even when the eminent domain power is equated with the police power. But . . . that it is “an extremely narrow” one. . . . [T]he Court has made clear that it will not substitute its judgment for a legislature’s judgment as to what constitutes a public use “unless the use be palpably without reasonable foundation.”

To be sure, the Court’s cases have repeatedly stated that “one person’s property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid.” . . . But where the exercise of the eminent domain power is rationally related to a conceivable public purpose, the Court has never held a compensated taking to be proscribed by the Public Use Clause. . . .

On this basis, we have no trouble concluding that the Hawaii Act is constitutional. The people of Hawaii have attempted, much as the settlers of the original 13 Colonies did, to reduce the perceived social and economic evils of a land oligopoly traceable to their monarchs. The land oligopoly has, according to the Hawaii Legislature, created artificial deterrents to the normal functioning of the State’s residential land market and forced thousands of individual homeowners to lease, rather than buy, the

land underneath their homes. Regulating oligopoly and the evils associated with it is a classic exercise of a State's police powers.

Nor can we condemn as irrational the Act's approach to correcting the land oligopoly problem. The Act presumes that when a sufficiently large number of persons declare that they are willing but unable to buy lots at fair prices the land market is malfunctioning. When such a malfunction is signaled, the Act authorizes HHA to condemn lots in the relevant tract. The Act limits the number of lots any one tenant can purchase and authorizes HHA to use public funds to ensure that the market dilution goals will be achieved. This is a comprehensive and rational approach to identifying and correcting market failure.

Of course, this Act, like any other, may not be successful in achieving its intended goals. But "whether in fact the provision will accomplish its objectives is not the question: the [constitutional requirement] is satisfied if . . . the . . . [state] Legislature rationally could have believed that the [Act] would promote its objective." When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings—no less than debates over the wisdom of other kinds of socioeconomic legislation—are not to be carried out in the federal courts. Redistribution of fees simple to correct deficiencies in the market determined by the state legislature to be attributable to land oligopoly is a rational exercise of the eminent domain power. Therefore, the Hawaii statute must pass the scrutiny of the Public Use Clause.

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The mere fact that property taken outright by eminent domain is transferred in the first instance to private beneficiaries does not condemn that taking as having only a private purpose. The Court long ago rejected any literal requirement that condemned property be put into use for the general public. "It is not essential that the entire community, nor even any considerable portion, . . . directly enjoy or participate in any improvement in order [for it] to constitute a public use." As the unique way titles were held in Hawaii skewed the land market, exercise of the power of eminent domain was justified. The Act advances its purposes without the State's taking actual possession of the land. In such cases, government does not itself have to use property to legitimate the taking; it is only the taking's purpose, and not its mechanics, that must pass scrutiny under the Public Use Clause.

The State of Hawaii has never denied that the Constitution forbids even a compensated taking of property when executed for no reason other than to confer a private benefit on a particular private party. A purely private taking could not withstand the scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void. But no purely private taking is involved in these cases. The Hawaii Legislature enacted its Land Reform Act not to benefit a particular class of identifiable individuals but to attack certain perceived evils of concentrated property ownership in Hawaii—a legitimate public purpose. Use of the condemnation power to achieve this purpose is not irrational. Since we assume for purposes of these appeals that the weighty demand of just compensation has been met, the requirements of the Fifth and Fourteenth Amendments have been satisfied. Accordingly, we reverse the judgment of the Court of Appeals, and remand these cases for further proceedings in conformity with this opinion.

JUSTICE MARSHALL took no part in the consideration or decision of these cas