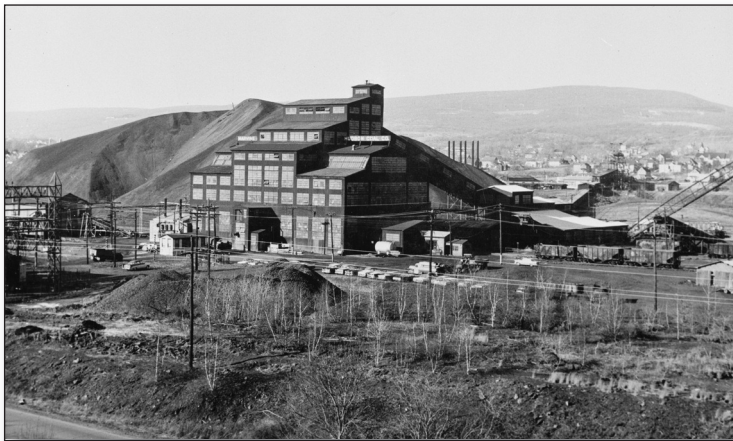


The First Regulatory Takings Case

In *Pennsylvania Coal Co. v. Mahon* (1922), the U.S. Supreme Court established for the first time that a mere use restriction by the government—one not involving physical occupation or appropriation by the government—could be compensable under the Fifth Amendment, which provides that private property shall not “be taken for public use, without just compensation.” Thus was born the “regulatory taking.”

Here is the case. Pennsylvania Coal Company had the right to mine coal from under Mahon’s house even though it would cause the land to sink. Pennsylvania’s Kohler Act, intended to protect the public’s health, safety, and general welfare (the “police power”), prohibited mining causing damage. A trial court denied Mahon’s request to stop the mining, holding the Act unconstitutional. The Pennsylvania Supreme Court reversed, finding the Act a proper use of the police power. The coal company appealed to the U.S. Supreme Court.

Justice Oliver Wendell Holmes, Jr., writing for the majority, viewed the Kohler Act as taking the coal, the private property of the mining company, when it prohibited mining in a way that prevented subsidence. The Court reversed the Pennsylvania Supreme Court, holding that a constitutional taking depends on how much value is lost: “The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.”



The Lackawana Historical Society, Scranton, Pennsylvania, located in the Library of Congress, HAER Collection

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