the owner still had viable economic uses for his holdings, such as displaying them in a museum and charging admission, and that he still had the value of possession.[708]

The Court has made plain that, in applying the economic impact and investment-backed expectations factors of *Penn Central*, courts are to compare what the property owner has lost through the challenged government action with what the owner retains. Discharging this mandate requires a court to define the extent of plaintiff's property—the "parcel as a whole"—that sets the scope of analysis. The Supreme Court holds that takings law "does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated."[709] But, although this apparently means that one may not exclude acreage from the relevant parcel solely to isolate the regulated portion, there are numerous arguments for excluding acreage (purchased by plaintiff at a different time, in different zoning status, etc.) that the Court has not addressed. And roiling the waters are persistent expressions of concern by the conservative justices, often in dicta, about the possible unfairness of an absolute parcel-as-a-whole rule.[710] Most recently, however, in *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*,[711] a six-justice majority including Justices Kennedy and O'Connor offered a ringing endorsement of relevant-parcel doctrine. *Tahoe-Sierra* affirmed the established spatial (court must consider the entire relevant tract) and functional (court must consider plaintiff's full bundle of rights) dimensions of the doc-

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[708] Similarly, the Court in *Goldblatt* had pointed out that the record contained no indication that the mining prohibition would reduce the value of the property in question. 369 U.S. at 594. *Contrast* Hodel v. Irving, 481 U.S. 704 (1987), where the Court found insufficient justification for a complete abrogation of the right to pass on to heirs interests in certain fractionated property. Note as well the differing views expressed in *Irving* as to whether that case limits Andrus v. Allard to its facts. Id. at 718 (Justice Brennan concurring, 719 (Justice Scalia concurring). *See also* the suggestion in Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1027–28 (1992), that *Allard* may rest on a distinction between permissible regulation of personal property, on the one hand, and real property, on the other.

[709] *Penn Central*, 438 U.S. at 130. The identical principle was reaffirmed in Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 497 (1987); Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust, 508 U.S. 602, 644 (1993); and *Tahoe-Sierra* Preservation Council v. Tahoe Regional Planning Agency, 535 U.S. 302, 327 (2002).

[710] *See*, *e.g.*, Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1016 n.7 (1992) ("answer . . . may lie in how the owner's reasonable expectations have been shaped by the State's law of property"). Justice Kennedy provided extended dicta in his majority opinion in Palazzolo v. Rhode Island, referring to this "difficult, persisting question" and noting that "we have at times expressed discomfort with the logic of this rule." 533 U.S. 606, 631 (2001).

[711] 535 U.S. 302 (2002).