

trine,⁷¹² and added a temporal one (court must consider the entire time span of plaintiff's property interest). Invoking this temporal dimension, the Court held that temporary land-use development moratoria do not effect a total elimination of use, since use and value return in the period following the moratorium's expiration. Thus, such moratoria are to be tested under the ad hoc, multifactor *Penn Central* test, rather than the *per se* approach to "total takings" discussed further on.

In the course of its opinion in *Penn Central* the Court rejected the principle that no compensation is required when regulation bans a noxious or harmful effect of land use.⁷¹³ The principle, it had been contended, followed from several earlier cases, including *Goldblatt v. Town of Hempstead*.⁷¹⁴ In that case, after the town had expanded around an excavation used by a company for mining sand and gravel, the town enacted an ordinance that in effect terminated further mining at the site. Declaring that no compensation was owed, the Court stated that "[a] prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking or an appropriation of property for the public benefit. Such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it, but is only a declaration by the State that its use by anyone, for certain forbidden purposes, is prejudicial to the public interests."⁷¹⁵ In *Penn Central*, however, the Court denied that there was any such test and that prior cases had turned on the concept. "These cases are better understood as resting not on any supposed 'noxious' quality of the prohibited uses but rather on the ground that the restrictions were reasonably related to the implementation of a policy—not unlike historic preservation—

⁷¹² The spatial dimension is illustrated by the takings analysis in *Penn Central*, declining to segment Grand Central Terminal from the air rights over it. Functional parcel as a whole—refusing to segment one "stick" in the "bundle" of rights—was applied in *Andrus v. Allard*, 444 U.S. 51, 65–66 (1979), holding that denial of the right to sell Indian artifacts was not a taking in light of rights in the artifacts that were retained.

⁷¹³ The dissent was based upon this test. *Penn Central*, 438 U.S. at 144–46.

⁷¹⁴ 369 U.S. 590 (1962). *Hadacheck v. Sebastian*, 239 U.S. 394 (1915), and, perhaps, *Miller v. Schoene*, 276 U.S. 272 (1928), also fall under this heading, although *Schoene* may also be assigned to the public peril line of cases.

⁷¹⁵ 369 U.S. at 593 (quoting *Mugler v. Kansas*, 123 U.S. 623, 668–69 (1887)). The Court posited a two-part test. First, the interests of the public required the interference, and, second, the means were reasonably necessary for the accomplishment of the purpose and were not unduly oppressive of the individual. 369 U.S. at 595. The test was derived from *Lawton v. Steele*, 152 U.S. 133, 137 (1894) (holding that state officers properly destroyed fish nets that were banned by state law in order to preserve certain fisheries from extinction).