

Word Count: 2000 words

Context

In 1961, Ronald and Kathrin Just purchased 36.4 acres of wetlands that were situated along the shores of Wisconsin's Lake Noquebay in Marinette County.¹ Subsequent transactions saw them purchasing more shoreside properties between 1964 and 1967, with the Justs' goal being to fill in the wetlands, construct homes, and then sell those homes. However, 1967 was also when the government of Marinette County enforced a new zoning ordinance that prevented any filling, draining, or dredging of wetlands close to bodies of water from being conducted without any permits. This effectively stopped the Justs' plans, but the main issue arose when no compensation was provided to the couple despite the county limiting their land use and depreciating their properties' overall value (via a loss in the possible income earned from their commercial plans).² This issue was debated under the Supreme Court of Wisconsin in 1972, but the decision to restrict the Justs' land use and not compensate them was held. To the court, Marinette County's actions were reasonable and constitutional because they were preventing the couple from harming the rights of other members of the public. To them, the constitutionality of the county's actions meant that no compensation was required. With this outcome being controversial, *Just v. Marinette County* has become a significant case for examining the justifications of government compensation or lack thereof when enforcing environmental regulation.³ In this paper, I will argue in support of not recompensing the Justs on the grounds that the couple's plans were not morally justified. I will also provide a rationale that supports the court's argument that Marinette County acted reasonably because they prevented public harm and, hence, should not be liable to compensate the Justs.

Argument 1

An affected party's suitability for compensation depends on perceptions of their actions. To show this, consider a situation where an American entrepreneur decides to enter the commercial drug industry. They decide to create an operation for making heroin. Eventually, their operation is discovered and their equipment is confiscated by police. Despite it being their own private property, they are not financially compensated for this

¹ David P. Bryden, "A Phantom Doctrine: The Origins and Effects of *Just v. Marinette County*," *American Bar Foundation Research Journal* 3, no. 3 (1978), 405.

² Supreme Court of Wisconsin, "Just v. Marinette County," Justia, accessed October 9, 2018, <https://law.justia.com/cases/wisconsin/supreme-court/1972/56-wis-2d-7-6.html>.

³ David P. Bryden, "A Phantom Doctrine: The Origins and Effects of *Just v. Marinette County*," *American Bar Foundation Research Journal* 3, no. 3 (1978), 397.

confiscation. A third-party may find the lack of compensation justified as the entrepreneur broke laws while also contributing to the country's opioid crisis. However, consider an alternative situation where they decided to grow marijuana instead (in a state where it is legal). If the equipment is confiscated without any compensation, a third-party may find the police's actions objectionable as the entrepreneur did not do anything unlawful. It follows that if affected parties are perceived to have done nothing wrong, it makes sense to compensate them, but if they have, it is reasonable to not compensate. With this observation, one approach to arguing against compensating the Justs would be to demonstrate that their proposed developments were not morally justified.

This demonstration can be performed with utilitarianism. With this framework, morally justified actions are ones that produce the greatest amount of net good (represented by metrics such as happiness and well-being).⁴ Examining only the direct consequences of their plans proceeding unobstructed, the Justs would earn money while buyers of their homes would live in a location that they enjoy. All parties would increase their happiness and well-being, so good would be produced. On the other hand, bad would be produced for the wetland's flora and fauna because they would lose their habitat or be killed during the development process. These negative biological effects would lead to further consequences, such as the diminished ability of other humans to appreciate the wetland's nature (e.g. by birdwatching) due to the loss of biodiversity. With the wetlands being situated close to Lake Noquebay, there is also a possibility that modification of the wetlands and construction of homes would pollute the lake (e.g. fuel from heavy machinery) and cause the deaths of its aquatic plants and animals. As with the wetlands, this would harm the amount of nature appreciation opportunities for other citizens. Considering the lake is a locale for outdoor recreation,⁵ pollution would reduce the quality of fishing, boating, and other aquatic activities — maybe even causing their discontinuation due to unsafe water quality — and decrease visitor numbers, which is problematic for the businesses that rely on them (e.g. lodges, boat rentals). Should the pollution spread from Lake Noquebay to its connected rivers, even more people (and animals) would be harmed. Considering these consequences with a utilitarian mindset, the good that comes from developing the wetlands would be cancelled out or surpassed by the bad that other members of the public would experience, demonstrating that

⁴ Walter Sinnott-Armstrong, "Consequentialism," *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, 2015, accessed October 9, 2018, <https://plato.stanford.edu/entries/consequentialism/>

⁵ Jon Giacalone, "Best Places to Fish in Wisconsin: Lake Noquebay," *Travel Wisconsin*, accessed October 11, 2018, <https://www.travelwisconsin.com/article/fishing/best-places-to-fish-in-wisconsin-lake-noquebay>

the Justs' proposals were morally unjustified. As such, regulation against their plans should not entail compensating them.

One limitation to utilitarianism is that people may assign different values to examined aspects. Some may argue that utilitarianism would morally justify the Justs because they personally weigh up the couple's economic gain moreso than other people's loss of opportunities for outdoor activities. However, such a viewpoint would effectively not acknowledge the large amount of people negatively impacted by the development without experiencing any good from it. This would be unfair and disrespectful as each person is treated only as someone who can be taken advantage of to fulfill the Justs' own goals. The Justs' supporters would not be looked at favourably by a third-party if they utilized this objection as they would be seen as unempathetic to those they harm.

Argument 2

Whether a government should provide compensation or not depends on whether they are perceived to have unreasonably or unjustifiably violated any rights or freedoms. Jail is an example of a publicly-accepted violation of freedom. Consider murderers as an example. If they were free to run loose, the freedom of the public to comfortably live their daily lives would be lost. They would stop staying outside at night in fear of being stalked and killed. Thus, the freedom of murderers would need to be violated by placing them in jail to ensure that they do not harm the public or their freedoms. Such violations are not compensated, and there is no public backlash because the public itself sees jail as justified since it protects them. However, if the government convicts and jails a suspected murderer who is later proven to be innocent, a lack of compensation would be protested against as the government has restricted the freedom of somebody who would not have harmed the public or their freedoms, making the government's actions unreasonable. These different situations tie closely to John Stuart Mill's Harm Principle, which dictates that government restrictions are moral so long as they prevent harm to other people and/or their interests.⁶ If the government is perceived to be acting reasonably (i.e. morally), it is reasonable for it to not provide compensation to those it affects, but if it is perceived to be acting unreasonably, then compensation is expected. Thus, the lack of compensation for the Justs would be justified if it is demonstrated that Marinette Country's ordinances against the couple's development was to prevent other members of the public from having their interests harmed.

⁶ David Brink, "Mill's Moral and Political Philosophy," The Stanford Encyclopedia of Philosophy, ed. Edward N. Zalta, 2018, accessed October 11, 2018, <https://plato.stanford.edu/entries/mill-moral-political/>

This rationale was utilized by the Supreme Court of Wisconsin to justify their decision to uphold the lack of compensation, but their reasoning must be dissected to ensure their conclusion's validity. As previously described, developing the wetlands would result in negative consequences for others as their ability to appreciate the biodiversity of the wetlands and surrounding waters, participate in outdoor recreational activities at Lake Koshong and nearby rivers, and partake in other outdoor pastimes would decline. Their freedom to utilize the area's nature would be hampered, meaning their interests would be harmed by the Justs' development. Thus, Marinette County's ordinances can be argued to have prevented public harm. Accordingly, the county's actions are morally justified under the Harm Principle, and thus it is reasonable for them to not compensate, validating the Supreme Court's rationale.

Arguing against the court, the Justs' supporters may concede that their construction would have contributed to the pollution in nearby waters but counter that they are not entirely at fault for its negative consequences. They may argue that, with the amount of human activity on and near the water, there would already have been some pollution in the form of boat fuel leakage and disposed garbage. Combined, this past pollution was at a level that did not greatly affect Lake Koshong and its connected rivers. If the Justs were allowed to develop, they would have increased the pollution past a threshold level where its negative effects (e.g. dead fish, unsafe water quality) appeared. However, if the pollution from non-Just sources did not exist, the couple's actions would not cause these effects to appear. This reasoning could also apply to the other polluters. Thus, it could be argued that the individual pollution contributions of the Justs and the others would be too small for each party to have individually harmed the public, making it morally unjustified to restrict the Justs' development under the Harm Principle and thus qualifying the couple for compensation. However, as Gerald Gaus points out, arguing that each polluter did not cause any harm is unreasonable.⁷ If nobody did any harm, then how is it possible that the public's interests were harmed (i.e. how did their ability to participate in outdoor activities decline)? The couple's pollution must have caused at least some harm to the public. As such, any government action against the Justs' development is preventing public harm and thus reasonable. This mindset reflects Gaus' Public Harm Principle, a modification of Mill's Harm Principle which proposes that if the accumulation of any action — in this case, pollution — causes harm to others — in this case, hinders the ability of other members of the public to utilize Lake Koshong and other waters — the government is morally justified in limiting such actions —

⁷ Gerald F. Gaus and Fred D'Agostino, eds., *The Routledge Companion to Social and Political Philosophy* (New York, Routledge, 2013), 180.

which would include, in this case, creating environmental regulation that would restrict the Justs' development.⁸ Hence, even with the mindset that the Justs would not have pushed pollution levels to unsafe levels had other people not polluted, it is fair to say that they would have caused harm and, accordingly, the government was justified in restricting them. Based off these conclusions, it is reasonable that the couple did not receive any compensation.

Main Counterargument

The main assumption of my arguments was that the Justs' development would pollute nearby waters as a result of the wetland's proximity to a lake, but this is only an assumption. The Justs' supporters may respond that it is unfair and that the couple can responsibly modify the wetlands without polluting their surroundings, meaning only the biodiversity of their owned wetlands would be negatively affected. Those wishing to birdwatch or appreciate nature there are out of luck, because the wetlands are the Justs' private property, and thus they should have the right to destroy the nature that they own. However, even if they control their water pollution, the effects of modifying will not be limited to just their own property for ecological reasons. For example, migratory waterbirds rely on the Justs' wetlands, and if it is destroyed they will not be able to find enough resources to survive when they stopover or breed. If they die on the Justs' property it would mean that fewer migratory waterbirds are able to return to their origin or continue to their destination. This diminishes the ability of other members of the public at those locations to appreciate nature. Thus, regardless of whether the pollution assumption is correct, by modifying the wetlands, the Justs have harmed the public.

Conclusion

With their proposed actions, the Justs would have arguably caused more bad than good to other people, making their plans morally unjustified. As these plans would have caused public harm if they were allowed to continue, Marinette County acted reasonably — under the Public Harm Principle and as supported by the Supreme Court of Wisconsin — in restricting the liberty of the couple to carry out such actions. I believe that these two statements demonstrate that compensation was reasonably not provided to the Justs.

⁸ Gerald F. Gaus and Fred D'Agostino, eds., *The Routledge Companion to Social and Political Philosophy* (New York, Routledge, 2013), 184.