

The Constitution and Environmental Policy

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Several articles and amendments to the Constitution have been especially relevant to the development of U.S. environmental policy. Article 1 establishes the right of the federal government to regulate foreign and interstate commerce. The federal government's right to set rules regarding transportation, the flow and quality of navigable waters, commerce affecting wildlife, mining, and transport of natural resources such as oil, coal, and electricity derive from the commerce clause of Article 1.

Article 4 includes the property clause, which enables the government "to dispose of and make needful rules and regulations respecting the territory or other property of the United States." This article is the basis for laws and regulations governing public lands, including the establishment and management of national parks, national forests, and national wildlife refuges. It also is the basis for legislation that allows the government to protect its property by setting restrictions on nearby landowners.

The Fifth Amendment of the Constitution has many provisions that influence environmental policy. Most importantly, it allows the government to take property for public use, but only if it provides just compensation. It is clear that the government must pay a landowner fair market value for land that it acquires for a road, military facility, or national park. However, if the government establishes a regulation that restricts the use of private property, thereby diminishing the value of the property, must the government compensate the property owner? This question is central to environmental policies affecting matters such as land use, regulation of pollution, and protection of endangered species. Over the years, the courts have ruled that if a legitimate public purpose is served, the government need not pay for every "diminution of value." In other words, owners are not automatically entitled to the highest value use of their property. However, recent court decisions have affirmed that the government must provide compensation if a regulation removes most or all of the value of a property.

The Fourteenth Amendment, added to the Constitution soon after the Civil War, requires that the states provide legal due process and "equal protection" to all citizens. Some see this amendment as a constitutional basis for environmental justice. They argue that this amendment requires that environmental services, such as clear air and water, must be provided equally to all citizens, regardless of race or economic status. The courts have supported this interpretation in some situations but not in others. For example, case law requires consideration of equal protection issues if a new waste facility is located in an established community. Such considerations are not required if people knowingly choose to live near an established waste facility.

A special case for equal protection. Laws and administrative rules that appear to be unrelated to the environment can nevertheless generate significant environmental injustice. The practice of loan "redlining" created just such a situation. The story begins with the passage of the National Housing Act in 1934 and creation of the Federal Housing Administration (FHA) and the Federal Home Loan Bank Board (FHLBB). This legislation was championed by President Franklin Roosevelt as part of his New Deal agenda with the goal of increasing citizens' access to home ownership. The FHA was to provide subsidies to lower interest rates on home mortgages administered by private banks. In 1935, the FHLBB asked another agency, the Home Owners' Loan Corporation (HOLC) to identify which areas in 239 cities were "secure" in terms of being a safe investment for mortgage lending and insurance policies. The HOLC generated "residential security maps" for each of these cities. These maps delineated urban areas that were considered safe for investment by mortgage lenders and insurance companies. The newer often more affluent areas were outlined in green, labeled Type A, and considered a safe investment. Type B areas were outlined in blue and considered "still desirable." Type C, outlined in yellow, were described as "declining" but those outlined in red were labeled "hazardous," the most risky in terms of mortgage support and investment. The end result was that many central city neighborhoods, inhabited primarily by people of color and immigrants, were "redlined," meaning that they were deemed of low investment value. Consequently, banks did not lend money or invest in these neighborhoods and insurance coverage was often denied.

As a direct consequence, redlined areas experienced significant environmental degradation and were much more vulnerable to environmental hazards such as earthquakes, hurricanes, and floods. These citizens were clearly denied equal protection as defined in the Constitution's 14th amendment. The Fair Housing Act of 1968 and the Community Reinvestment Act of 1977 were passed in an attempt to remedy this injustice and repair the damage caused by redlining. Nevertheless, urban areas that were historically redlined remain vulnerable to environmental impacts that diminish the well-being of their residents. Environmental Justice features in Chapters 9 and 16 provide specific details of such impacts.

Questions 2.6

1. Describe the role of the three branches of government in setting environmental policy.
2. Describe four parts of the U.S. Constitution that influence environmental policy.