Denver Law Review

Volume 60 | Issue 3 Article 6

February 2021

Texaco, Inc. v. Short: Dormant Minerals and Due Process - A Case for the Irrebuttable Presumption Doctrine?

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TEXACO, INC. V. SHORT: DORMANT MINERALS AND DUE PROCESS—A CASE FOR THE IRREBUTTABLE PRESUMPTION DOCTRINE?

INTRODUCTION

Much criticism has been leveled against the complex system employed in the United States for conveying real property.[1] Land titles are often encumbered by a myriad of outstanding present and future interests, rendering a single tract of property subject to rights held by diverse, often conflicting parties. As a result, the conveyance of land titles has become difficult and costly.[2] Attempts to streamline such systems with retroactive legislation have commonly been met with constitutional objections from persons whose property has been adversely affected.[3]

I. BACKGROUND

A. *The Problem of Dormant Minerals*

One of the most intractable complications in land titles and transfers occurs when the mineral estate is severed from that of the surface, creating two wholly separate fee simple estates.[4] In the United States, based on English custom,[5] the owner of land can create a fee simple estate in the minerals by reservation, exception, or grant.[6] After severance each owner has an indefeasible title in a separate corporeal hereditament, with all the incidents of distinct ownership.[7]

Under common law because the mineral estate is corporeal in nature it cannot be lost by abandonment.[8] Title to the mineral interest must gener-

1. "The basic system of real estate titles and transfers . . . cries out for reexamination and simplification." Chief Justice Burger, Remarks to the Opening Session of the American Law Institute (May 21, 1974), *reprinted in* Presbytery of Southeast Iowa v. Harris, 226 N.W.2d 232, 237 (Iowa 1975), *cert. denied*, 423 U.S. 830 (1975).

2. *See, e.g.*, P. BASYE, CLEARING LAND TITLES (2d ed. 1970); L. SIMES & C. TAYLOR, THE IMPROVEMENT OF CONVEYANCING BY LEGISLATION (1960).

3. *See generally* J. SCURLOCK, RETROACTIVE LEGISLATION AFFECTING INTERESTS IN LAND (1953) (examines retroactive legislation with reference to constitutional guarantees).

4. *See, e.g.*, Mayberry, *Construction of Mineral Exceptions and Reservations*, 14 OKLA. L. REV. 457 (1961); Note, *Severed Mineral Interests, A Problem Without a Solution?*, 46 N.D.L. REV. 451 (1970).

5. Under the common law, the English sovereign owned all mines in which gold or silver might be found, regardless of the ownership of the surface estate. *See* 2 H. TIFFANY, REAL PROPERTY § 586, at 507 (3d ed. 1939).

6. As stated in Smith v. Jones, 21 Utah 270, 272, 60 P. 1104, 1106 (1900): As to mineral lands, the surface may be owned by one person and the mineral underneath by another, and . . . each owner shall have an indefeasible title. When the surface and the underlying mineral strata are separately owned, they constitute separate corporeal hereditaments, with all the incidents of separate ownership. *See also* Chicago, Wilmington and Franklin Coal Co. v. Jilek, 42 F. Supp. 200 (E.D. Ill. 1942); Hummel v. McFadden, 395 Pa. 543, 150 A.2d 856 (1959); 2 H. TIFFANY, REAL PROPERTY § 585 (3d ed. 1939).

7. 2 H. TIFFANY, REAL PROPERTY §§ 585-87 (3d ed. 1939).

8. Generally all solid mineral estates are corporeal. *See supra* note 5. Severed interests in oil and gas, due to their *ferae naturae* character, cannot be owned until reduced to actual posses-

ally be recorded, and is subject to the laws of descent, devise, and conveyance.[9] Once severance has occurred, adverse possession of the surface will not constitute adverse possession of the underlying mineral estate.[10] With all the incidents of separate ownership, the mineral estate may be held in perpetuity with or without subsequent development of the underlying natural resources.

The severed mineral estate is not only relatively indestructible, but also has assumed a traditional dominance in relation to the surface estate. The mineral owner continues to have the right to the mineral estate as long as his activities do not unreasonably interfere with the rights of the surface owner.[11] When not specified in the deed, this dominance includes rights of ingress and egress as well as the right to use as much of the surface as is reasonably necessary to explore for, develop, or produce the minerals.[12] The uniquely durable nature of the mineral estate, and its dominant position relative to the surface estate, constitute significant impediments to the development or conveyance of the surface interest.[13]

Exacerbating these difficulties are the situations in which record title to a mineral interest is vested in owners who cannot be located. Typically, after these estates can no longer be associated with a known record title holder they are referred to as "dormant mineral interests."[14] Attempts by the surface owner to remerge the surface with the mineral interest can be frustrated further when these dormant mineral interests are owned by a defunct corporation,[15] or when through the laws of devise and descent the min-

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sion, and are therefore usually considered incorporeal. *See, e.g.*, Halbert v. Hendrix, 121 Ind. App. 43, 95 N.E.2d 221 (1950); Monon Coal Co. v. Riggs, 115 Ind. App. 236, 56 N.E.2d 672 (1944).

9. *See, e.g.*, Pickens v. Adams, 7 Ill.2d 283, 131 N.E.2d 38 (1955).

10. Witness v. Paniman, 120 N.W.2d 594 (N.D. 1963); *see generally* Kuntz, *Adverse Possession of Severed Mineral Interests*, 5 ROCKY MTN. MIN. L. INST. 409, 420 (1960) (a severed mineral interest may be adversely possessed by working of the minerals).

11. Recent cases reaffirm the mineral owner's right to use reasonably the surface to work the mineral estate. *See* Yaquina Bay Timber & Logging Co. v. Shiny Rock Mining Corp., 276 Or. 779, 784, 556 P.2d 672, 675 (1976); Lomax v. Henderson, 559 S.W.2d 466, 467 (Tex. Civ. App. 1977). *But see* Southern Title Insurance Co. v. Oller, 268 Ark. 300, 595 S.W.2d 681 (1980); Riddlesperger v. Creslenn Ranch Co., 595 S.W.2d 193 (Tex. Civ. App. 1980); Comment, *The Surface Owner's Estate Becomes Dominant: Wyoming's Surface Owner Consent Statute*, 16 LAND & WATER L. REV. 541 (1981).

12. Often the mineral owner has even greater prerogatives based on provisions in the deed conveying the mineral estate. *See generally* Comment, *Broad Form Deed—Obstacle to Peaceful Coexistence Between Mineral & Surface Owners*, 60 KY. L.J. 742 (1972) ("broad-form deed" is a typical name for deeds conveying minerals and giving the new mineral owner a large number of specified rights in using the surface estate to recover the minerals).

13. It is generally more difficult to obtain a bank loan to build on property with a severed mineral estate. *See* Brief for Amicus Curiae at 34, Texaco v. Short, 454 U.S. 516 (1982). *See generally* Lopez, *Upstairs/Downstairs: Conflicts Between Surface and Mineral Owners*, 26 ROCKY MTN. MIN. L. INST. 995 (1980).

14. *See, e.g.*, Outerbridge, *Missing and Unknown Mineral Owners*, 25 ROCKY MTN. MIN. L. INST. 20-21 (1979); Polston, *Legislation, Existing and Proposed, Concerning Marketability of Mineral Titles*, 7 LAND & WATER L. REV. 73 (1972) (concerned primarily with the Indiana Dormant Mineral Lapse Act); Street, *Need for Legislation to Eliminate Dormant Royalty Interests*, 42 MICH. ST. B.J. 49 (March 1963); *see generally* Note, *supra* note 4.

15. *See* Knutson, *Defunct Companies that Hold Record Title to Mining Properties: Problems and Solutions*, 24 ROCKY MTN. MIN. L. INST. 377 (1978).

eral estate becomes fragmented.[16]

B. *Indiana's Response*

In 1971, addressing the problem of dormant mineral interests inhibiting the development and conveyance of surface estates, the Indiana Legislature passed the Indiana Dormant Mineral Interests Act[17] (Mineral Lapse Act or Act). This Act provides that a severed mineral interest not used for a period of twenty years automatically lapses and reverts to the current surface owner of the property, unless the mineral owner files a statement of claim[18] in the local county recorder's office within a specified time period.[19] The "use" of a mineral interest sufficient to preclude its extinction includes actual or attempted production of the minerals, payment of rent or royalties to the mineral owner, or payment of taxes.[20]

The statute does not require that any specific notice be given to a mineral owner prior to a statutory lapse of the mineral estate. The Act does set forth a procedure, however, by which a surface owner who has succeeded to the ownership of an underlying mineral estate pursuant to the statute may give notice that the mineral interest has lapsed and quiet title to the mineral estate by virtue of a judicially recognized remerger with the surface interest.[21]

C. *The Case*

On April 23, 1977, the surface owner of a 132-acre Indiana tract gave notice by both publication and mail that the underlying mineral estate, severed in 1942 and 1944, had lapsed. Texaco, Inc., with ten other parties, responded by filing statements of claim. Thereafter, the surface owner filed

16. According to Kuntz, *Old and New Solutions to the Problem of the Outstanding Undeveloped Mineral Interest*, 28 INST. ON OIL & GAS L. & TAX'N 81, 82 (1971): "Once severed, even though the mineral interest was not fragmented when originally granted, the passage of time serves to do so. Family settlements are made and wills are drafted with an understandable lack of concern over the effect upon a mineral interest that is not productive."

17. IND. CODE §§ 32-5-11-1 to -8 (1976). This Act, like similar ones passed in several other states, is based loosely on the Louisiana Act providing for "liberative prescription" of mineral interests. *See* LA. REV. STAT. ANN. § 31:5 to -:34 (West 1975). In Louisiana neither solid minerals nor oil and gas are deemed susceptible of ownership apart from the lands until reduced to possession. A conveyance purporting to sell minerals in place merely creates a right in the nature of a servitude, defined as the right of another to explore for the produce minerals. *Id.* § 31:21. The Louisiana Mineral Code expressly provides that a mineral servitude is extinguished by prescription resulting from non-use for 10 years. *Id.* § 31:27. Such prescription may, however, be interrupted by actual production of minerals or by good faith operations for the discovery and production of minerals. *Id.* § 31:36. *See* Hardy, *Public Policy and Terminability of Mineral Rights in Louisiana*, 26 LA. L. REV. 731 (1966). For an indication of how this Act functions in practice, see Nabors, *The Louisiana Mineral Servitude and Royalty Doctrines: A Report to the Mineral Law Committee of the Louisiana State Law Institute*, 25 TUL. L. REV. 30 (1950).

18. The notice must be filed prior to the end of the 20 year period or within a two year grace period after the effective date of the Act (September 2, 1971).

19. IND. CODE § 32-5-11-1 (1976). One exception is provided to this rule; if an owner of 10 or more interests in the same county files a statement of claim that inadvertently omits some of those interests, the omitted interests may be preserved by a supplemental filing made within 60 days of receiving actual notice of the lapse. *Id.* § 32-5-11-5.

20. *Id.* § 32-5-11-3.

21. *Id.* § 32-5-11-6.

an action seeking a declaratory judgment that the rights of the mineral owners had lapsed.[22]

Stipulating to the facts, and alleging the unconstitutionality of the law, Texaco claimed that the lack of prior notice of the lapse deprived them of property without due process of law.[23] Texaco further argued that the statute effected a taking of property for public use without just compensation.[24] The trial court declared the statute unconstitutional, but the Indiana Supreme Court reversed.[25] In a five-to-four ruling, the United States Supreme Court affirmed the decision of Indiana's highest court upholding that statute's constitutionality.[26]

Citing the common law doctrine that everyone is presumed to know the law, the Court held that the Mineral Lapse Act did not violate procedural due process. Because notice was actually contained in the Indiana Act, the Court held that passage of the statute was, in and of itself, sufficient notice of all the provisions contained therein.[27] Answering a major contention of the appellants that the Mineral Lapse Act deprived them of the opportunity to respond to the assertion of abandonment, the Court distinguished the facts of *Texaco v. Short* from those in *Mullane v. Central Hanover Bank and Trust Co.*[28] *Mullane* requires that notice be "reasonably calculated" to apprise parties of a judicial proceeding affecting their interests.[29] The Court noted that the Mineral Lapse Act was self-executing upon the passage of time, not providing for any adjudicatory hearing prior to termination, and thus the *Mullane* standard did not apply.[30] The Court also held that because the property was deemed abandoned, no compensation was due to the appellants.[31]

Both the majority and the dissenting opinions examined the aggregate reasonability of the Mineral Lapse Act. The majority employed a minimal substantive due process review and found the statute constitutional, based on the examples of similar statutes.[32] The dissent employed a stricter standard, which it reasoned was applicable due to the retroactive nature of the statute. Based on this stricter standard, the dissent found the statute to be

22. Texaco, Inc. v. Short, 454 U.S. 516, 521 (1982).

23. U.S. CONST. amend. XIV, § 1.

24. *Id.* amend. V. The fifth amendment prohibition against the federal government taking private property for public use is equally applicable to the states through the fourteenth amendment. *See* Webbs Fabulous Pharmacies v. Beckwith, 449 U.S. 155, 160 (1980). The appellants also contended that the Act violated the equal protection clause of the fourteenth amendment, and that it constituted an impairment of contracts in violation of article 1, § 10 of the United States Constitution. These contentions, however, are beyond the scope of this comment.

25. Short v. Texaco, Inc., 406 N.E.2d 625 (Ind. 1980).

26. Texaco, Inc. v. Short, 454 U.S. 516 (1982). Justice Stevens, wrote the opinion and was joined by Chief Justice Burger, and Justices Blackmun, Rehnquist, and O'Connor. Justice Brennan wrote the dissenting opinion and was joined by Justices White, Marshall, and Powell.

27. *Id.* at 531.

28. 339 U.S. 306 (1950). *See also* Boddie v. Connecticut, 401 U.S. 371 (1971).

29. 339 U.S. at 319.

30. 454 U.S. at 534.

31. *Id.* at 530. For an interesting, related review of possible due process violations regarding a similar extinguishment of unpatented mining claims, see generally Note, *New Federal Mining Law Abandonment Provisions: A Violation of Due Process of Law?*, 21 NAT. RESOURCES J. 647 (1981).

32. 454 U.S. at 529.

an unreasonable abridgment of due process.[33]

This comment examines the *Texaco* decision in view of other statutes that function to extinguish a vested interest in land without notice or compensation. The assertion is made that such statutes are constitutional when the government is acting as an arbiter between competing interests in the same property, a situation not presented by the Mineral Lapse Act.

It is further asserted that the retroactive nature of the statute called for an intermediate level of substantive due process review, which would have resulted in the statute being declared unconstitutional. Instead, the Court simply conducted a minimal substantive due process review consistent with prospective economic and social legislation, and upheld the statute.

The analysis closes by introducing a doctrine previously used by the Court to provide an intermediate level of substantive due process review. The argument is made that the irrebuttable presumption doctrine should have been used in *Texaco* to force Indiana to adopt a more constitutionally acceptable solution to the problem of severed mineral interests.

II. ANALYSIS

A. *The Government as Arbiter*

The United States Constitution provides that property shall not be taken without due process of law,[34] nor taken for a public purpose without just compensation.[35] Notwithstanding these provisions, the states are charged with the responsibility of defining the general nature of property and establishing criteria for the resolution of competing claims.[36] An essential problem that the *Texaco* Court faced was determining the extent to which, and under what circumstances, a state may redefine vested property interests without violating these constitutional protections.

The Mineral Lapse Act functions retroactively to define those mineral estates requiring periodic reaffirmation of ownership.[37] As the majority opinion stated, there are statutory precedents for altering the character of property interests. Such relevant precedents include state enactments of adverse possession, recording, and marketable title statutes, each requiring some affirmative act by the owner to preserve the property interest.

In *Hawkins v. Barney's Lessee*,[38] the Court upheld a Kentucky statute

33. *Id.* at 540.

34. U.S. CONST. amend. XIV, § 1.

35. *Id.* amend. V.

36. In Board of Regents v. Roth, 408 U.S. 564 (1971) the Court stated: "Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as State law . . . ." *Id.* at 577.

37. As stated by the Court in *Texaco*:

> The State of Indiana has defined a severed mineral estate as a "vested property interest," entitled to "the same protection as are fee simple titles." Through its Dormant Minerals Act, however, the State has declared that this property interest is of less than absolute duration; retention is conditioned on the performance of at least one of the actions required by the Act. (footnotes omitted).

454 U.S. at 525.

38. 30 U.S. (5 Pet.) 457 (1831); *see also* Montoya v. Gonzales, 232 U.S. 375 (1914).

which allowed a defendant, who had resided for more than seven years on property with a claim of right, to assert superior title over the record landowner. Initially such adverse possession statutes were deemed constitutional based on their close analogy to statutes of limitation; when the state acts to withdraw a remedy (ejectment of a trespasser) it is not acting to destroy a right.[39] This analogy was flawed because the effect of such adverse possession statutes, however, was not merely to withdraw the remedy of ejectment, but also to divest the former title holder of property without due process or compensation, and to vest title in the trespasser who had developed an interest in the property through continued possession.[40]

Incorporating and broadening the equitable doctrine of bona fide purchaser, many land title recording statutes provide that an otherwise valid transfer of property that is not recorded may be defeated by a subsequent transfer.[41] The Court in *Jackson v. Lamphire*[42] approved the constitutionality of such recording statutes, even when applied retroactively.

A third type of statute that may act to divest a property owner of an interest in land upon failure to re-register that interest periodically, is a marketable title act. Although such acts have not been specifically considered by the United States Supreme Court, they have met with wide approval in various state courts.[43]

Marketable title acts facilitate land transactions by permitting a buyer to rely on a record title search covering a limited period to determine outstanding interests in property.[44] The interest is generally void if not noted in

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39. *See, e.g.*, Wilson v. Iseminger, 185 U.S. 55, 61 (1902); Terry v. Anderson, 95 U.S. 628, 634 (1877).

40. The Court in *Texaco*, acknowledging this defect in reasoning, stated that if the practical consequence of eliminating a remedy is identical to the consequence of extinguishing a right, the contemporary constitutional analysis is the same. 454 U.S. at 528. Curiously, although the Court acknowledged the invalidity of this differentiation between right and remedy, it used the elimination of remedy concept in analogizing between adverse possession and the Mineral Lapse Act. The Court's analysis seems to imply that although the constitutional justification for adverse possession provisions is no longer cognizable, the cases decided upon the discredited concept remain as legitimate precedents for the decision in *Texaco*. *Id.* at 528. *See, e.g.*, El Paso v. Simmons, 379 U.S. 497, 506-07 (1965); Home Building & Loan Ass'n v. Blaisdell, 290 U.S. 398, 430 (1933).

41. J. DUKEMINIER & J. KRIER, PROPERTY 787 (1981).

42. 28 U.S. (3 Pet.) 280 (1830). The Court stated that:

> It is within the undoubted power of state legislatures to pass recording acts, by which the elder grantee shall be postponed to a younger, if the prior deed is not recorded within the limited time; and the power is the same whether the deed is dated before or after the passage of the recording act.

Id. at 289.

43. *See, e.g.*, City of Miami v. St. Joe Paper Co., 364 So.2d 439 (Fla. 1978); Presbytery of Southeast Iowa v. Harris, 226 N.W.2d 232 (Iowa 1975), *cert. denied*, 423 U.S. 830 (1975) (possibility of reverter can be constitutionally extinguished due to the failure to comply with re-recording provision of marketable title statute). *See generally* P. BASYE, *supra* note 2, at §§ 171-89; L. SIMES & C. TAYLOR, *supra* note 2, at 3-16; Aigler, *A Supplement to "Constitutionality of Marketable Title Acts—1951-1957,"* 56 MICH. L. REV. 225 (1957); Barnett, *Marketable Title Acts—Panacea or Pandemonium?*, 53 CORNELL L. REV. 45, 72-76 (1967) (effect of marketable title acts on mineral interests); Basye, *Trends & Progress—The Marketable Title Acts*, 47 IOWA L. REV. 261 (1962). For a detailed analysis of the current functioning of a marketable title provision, see Conine & Morgan, *The Wyoming Marketable Title Act—A Revision of Real Property Law*, 16 LAND & WATER L. REV. 181 (1981).

44. Marketable title acts are "designed to shorten the period of search required to establish

the record chain of title during the statutorily designated limiting period. As a practical matter, such interests are commonly noted by the grantor of land in the deed of conveyance, thus preserving the encumbrance. Nevertheless, the holder of an incorporeal hereditament in land may re-record before the expiration of the limiting period, and thereby secure the interest from lapsing by giving this constructive notice to interested parties.

Despite the *Jackson* Court's approval of retroactive recording statutes in that case, the Court cautioned that similar provisions may be unconstitutional as an *unreasonable* denial of right.[45] The mechanism employed in the Mineral Lapse Act is similar to that used in adverse possession, recording, and marketable title statutes. Each of these four statutes is or can be a retroactive measure compelling an owner of real property to perform some affirmative act to preserve his or her property interest. Failure to perform the act, in all four situations, can result in the extinguishment of a fee simple absolute without notice or compensation.

Although the mechanism employed in the Mineral Lapse Act and adverse possession, recording, and marketable title statutes is similar, and therefore arguably reasonable, the justification for state action under the Mineral Lapse Act is less clear. In the adverse possession, recording, and marketable title statutes, the government is acting as an arbiter between parties who have a "colorable" claim to the same property, adjusting the legal rights between competing interests. The Mineral Lapse Act, however, functions to transfer property to a vertically adjacent landowner who may previously have received compensation as the grantor of the property.

Recording acts and marketable title acts both protect a bona fide purchaser of property who has no constructive knowledge of an outstanding interest prior to conveyance. In either situation, the grantee must take reasonable steps, as defined by statute, to ascertain ownership of property before conveyance. After taking these steps the state, as arbiter, favors the bona fide purchaser who has a colorable claim to the property, over the former owner who failed to record properly the property title.[46]

Adverse possession is usually viewed as a record title owner losing property through his own laches. The record title owner's property interest, however, is lost to an individual who has achieved an equitable interest after using the property, under a claim of right, for the statutory period.[47] The state, again acting as arbiter, favors the latter equitable interest over the claim of the negligent title holder.

In the examples of adverse possession, recording, and marketable title acts, the state is performing the reasonable and necessary function of declaring rights between differing colorable claims to real property.[48] Under the Mineral Lapse Act, however, the state is not acting as an arbiter to protect a

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title in real estate and given effect and stability to record titles by rendering them marketable and alienable . . . ." Chicago & N.W. Ry. Co. v. City of Osage, 176 N.W.2d 788, 793 (Iowa 1970).

45. 28 U.S. (3 Pet.) at 289.

46. *See generally* P. BASYE, *supra* note 2.

47. *See, e.g.*, O'Bryan v. Dr. P. Phillips & Sons, 123 Fla. 302, 166 So. 820 (1936).

48. For a discussion of criteria used to determine when the state effectuates a taking requir-

bona fide purchaser, or to favor one who over time has developed an equitable interest in the property. Under the Act the government, in an attempt to promote the convenience of the surface owner in developing or conveying his estate, intrudes on the relationship between adjoining land owners, whose only link after severance is vertical proximity. The Act could, therefore, be viewed as arbitrary state action benefitting one landowner by divesting another with an equally valid claim.[49]

B. *Substantive Due Process and Retroactive Legislation*

To state that the Mineral Lapse Act is a less justifiable and more arbitrary use of state power than adverse possession, recording, and marketable title statutes does not necessarily mean that the Act is unconstitutional. Starting with *Nebbia v. New York*[50], the Court has ostensibly given wide latitude to state governments to fashion prospective economic and social policy not violative of fundamental rights.[51] Statutes that have a "reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory,"[52] meet the Court's modern substantive due process guidelines for prospective economic and social legislation.[53]

In defining the nature of a severed mineral interest, it is undisputed that Indiana can prospectively legislate the nature, character, and duration of any property interest before that interest is created.[54] The Mineral Lapse Act, however, functions retroactively, imposing a condition on the retention of vested fee simple estates, which when created were of absolute duration.[55]

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ing just compensation, see Sax, *Takings, Private Property and Public Rights*, 81 YALE L.J. 149 (1971). *But see* Berger, *A Policy Analysis of the Taking Problem*, 49 N.Y.U. L. REV. 165 (1974).

49. A sufficiently arbitrary statute may constitute a violation of substantive due process. *See, e.g.*, Nebbia v. New York, 291 U.S. 502, 537 (1934). *But see* Miller v. Schoene, 276 U.S. 272 (1927) (the Court upheld the power of the State of Virginia to destroy ornamental cedar trees on private property that were a perceived threat to the apple industry).

50. 291 U.S. 502 (1934). The Court in *Nebbia* stated that:

> [A] State is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose . . . . If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied . . . .

Id. at 537.

51. According to the Court, property is not a protected liberty interest. *See, e.g.*, West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937).

52. *Nebbia*, 291 U.S. at 537.

53. The Court stated in Williamson v. Lee Optical, 348 U.S. 483, 487-88 (1955): "[T]he law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." For further examples of the Court's post-*Nebbia* substantive due process reasoning, see Ferguson v. Skrupa, 372 U.S. 726, 730 (1963); Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421 (1952); United States v. Carolene Prods. Co., 304 U.S. 144 (1938).

54. A prospective law incorporates its provisions and limitations into all future transactions. Thus, there is no question concerning the constitutionality of the Mineral Lapse Act regarding mineral estates created after the passage of the Act. *See Texaco*, 454 U.S. at 542.

55. At a minimum, the Court has required a statutory grace period provided within retroactive legislation to allow affected persons a reasonable time to bring their actions into conformity with the law. In Wilson v. Iseminger, 185 U.S. 55 (1902) the Court stated:

> It may be properly conceded that all statutes of limitation must proceed on the idea that the party has full opportunity afforded him to try his right in the courts. A stat-

The United States Supreme Court has considered such retroactive laws affecting vested rights to be suspect violations of substantive due process.[56] Although mandating higher scrutiny than prospective legislation, not all retroactive statutes are unconstitutional.[57] The Court generally employs an implicit weighing, rejecting only retroactive statutes that are considered unreasonable.[58]

In utilizing this higher standard, the *Texaco* Court determined whether the Act was irrational or arbitrary to such an extent as to be a violation of substantive due process.[59] The critical question was whether this retroactive measure under the *Jackson* standard was unconstitutional as an unreasonable denial of right.[60]

In reviewing the Supreme Court's evaluation of retroactive legislation, one commentator has identified three criteria for assessing the reasonableness of such enactments. According to this analysis, the Court balances the following three factors: the nature and strength of the public interest served by the statute, the extent to which the statute modifies or abrogates the asserted pre-enactment right, and the nature of the right that the statute alters.[61]

The first criterion, the strength of the public interest served by the stat-

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> ute could not bar the existing right of claimants without affording this opportunity; if it should attempt to do so, it would not be a statute of limitations, but an unlawful attempt to extinguish rights arbitrarily, whatever might be the purport of its provisions. It is essential that such statutes allow a reasonable time after they take effect for the commencement of suits upon existing causes of action.

Id. at 62. *See also* Terry v. Anderson, 95 U.S. 628, 632-33 (1877); Kolker v. Biggs, 203 Md. 137, 99 A.2d 743 (1953).

56. *See generally* Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 HARV. L. REV. 692 (1960).

57. *Id.* at 694.

58. *Compare* Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976) *with* Railroad Retirement Bd. v. Alton R.R., 295 U.S. 330 (1935). *Usery* and *Railroad Retirement Board* are similar cases concerning the constitutionality of legislation retroactively requiring employers to give retired employees specified benefits. The Court overturned the statute in *Railroad Retirement Bd.* but let it stand in *Usery*. *See also* Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934) (description of constitutional limitations placed on retroactive laws); Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922) (land use statute invalidated as a retroactive taking of property without compensation). *See generally* Hochman, *supra* note 56; Orland & Stebing, *Retroactivity in Review: The Federal and Washington Approaches*, 16 GONZ. L. REV. 855 (1981); Slawson, *Constitutional and Legislative Considerations in Retroactive Lawmaking*, 48 CALIF. L. REV. 216 (1960); Smead, *The Rule Against Retroactive Legislation: A Basic Principle of Jurisprudence*, 20 MINN. L. REV. 775 (1936); Smith, *Retroactive Laws and Vested Rights*, 6 TEX. L. REV. 409 (1928); Stimson, *Retroactive Application of Law—A Problem in Constitutional Law*, 38 MICH. L. REV. 30 (1939). For specific commentary on Indiana's Mineral Lapse Act as retroactive legislation, see Polston, *supra* note 14 (suggests a model statute upon which the Indiana Act is based); Note, *Constitutionality of Retroactive Land Statutes—Indiana's Model Dormant Mineral Act*, 12 IND. L. REV. 455, 480-86 (1979).

59. Many attempts have been made to define precisely a "retroactive" law. *See, e.g.*, Smith, *supra* note 58. For purposes of simplicity, it will be assumed in this article that "[a] retroactive statute is one which gives to pre-enactment conduct a different legal effect from that which it would have had without the statute." Hochman, *supra* note 56, at 692.

60. *Jackson*, 28 U.S. (3 Pet.) at 290.

61. Hochman, *supra* note 56, at 697. Generally retroactive legislation is considered in four distinct types of cases: 1) cases that involved emergency retroactive legislation; 2) cases that challenge the constitutionality of curative statutes; 3) cases that involve the constitutional merits of retrospective taxing legislation; and 4) cases that contest the constitutionality of retrospective general legislation. *Id.* at 698, 703, 706. The Court has been most amenable to legislation in the first two categories, and somewhat less so to the third. *Id.* The Court has been most suspect of

ute, is difficult to determine. The public is served when land titles are rendered marketable and a valuable resource such as land is employed in an efficient manner. The benefit rendered by the statute to the private interests of the surface landowners is not a factor under this criterion. The only legitimate consideration is the general public interest served by the promotion of an efficient, unrestricted market for land transfers.

The second criterion, the extent to which the statute modifies or abrogates the asserted pre-enactment right, can also be misleading. On its face, the Act does little more than require a simple reaffirmation of ownership where affirmation was not previously required. The Mineral Lapse Act operates, however, to essentially change a fee simple absolute in land to a terminable estate with a means to retain ownership. Therefore, the preenactment right of ownership in perpetuity can be extinguished under the Act. In practice the statute may function as a taking of property without notice of the new reaffirmation requirement.

The nature of the right that the statute alters is the third criterion. The Mineral Lapse Act can destroy an ownership right to an estate in minerals, without any provision for compensation. On balance the three criteria would mandate a more thorough analysis than that provided by the Court.[62] The implication of the Court's cursory treatment is that retroactive statutes are being evaluated with greater deference.

Another test of the reasonableness of retroactive legislation is the degree to which the statutes disrupt "reasonable expectations" of property owners. The test has been used to determine whether state action constitues a taking of property requiring compensation,[63] and whether a retroactive law violates substantive due process.[64] Under this test, a change in zoning or an increase in property tax is not violative of due process because such actions do not disrupt the reasonable expectations that property owners have upon acquiring land. A state using the land for a public purpose without compensation would, however, violate this criterion. The fundamental justification of this approach is that efficiency is fostered when individuals are allowed to plan economic activities with reasonable certainty.

The owners of mineral interests could reasonably expect a greater degree of state regulation of their property than that which existed when such rights were acquired. Given the common law rule that a corporeal property interest cannot be abandoned, however, a statutory presumption of aban-

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those cases in the fourth category into which the *Texaco* decision falls. *Id. See also*, J. NOWAK, R. ROTUNDA, & J. YOUNG, CONSTITUTIONAL LAW 419-37 (1978).

62. By returning a previously conveyed property interest, in some instances to the seller, an argument could be made that the Mineral Lapse Act works as an impairment of contract in violation of U.S. CONST. art. 1, § 10. Since the 1930's, however, the Court has taken a deferential approach to statutes that potentially violate this constitutional provision. It can be argued that this constitutional infirmity has merely become an element of the permissive substantive due process balancing. *See, e.g.*, City of El Paso v. Simmons, 379 U.S. 497 (1965); Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934); Hale, *The Supreme Court and the Contract Clause*, 57 HARV. L. REV. 512 (1944). *But see* United States Trust Co. v. New Jersey, 431 U.S. 1 (1977); Note, *Revival of the Contract Clause*, 39 IOWA ST. L.J. 195 (1978) (contract clause is apparently applied more directly when a state is a party to the contract).

63. Berger, *supra* note 48.

64. Smith, *supra* note 58. *See also* Hochman, *supra* note 56, at 727.

donment absent formal reaffirmation of the intent to own would not be a reasonable expectation of these property owners.

Both the majority and dissent in *Texaco* examined the reasonableness of the Mineral Lapse Act, but neither employed the previously suggested criteria for considering retroactive legislation. With the dearth of modern precedent, and the consequent lack of a strong analytical framework for considering retroactive legislation, the majority made only brief references to the substantive due process aspects of the Act. The Court noted that "the State has not exercised . . . power in an abitrary manner,"[65] and that the statute "furthers a legitimate state goal."[66] This terse discussion implies that the Court has adopted a permissive view of state enactment of retroactive statutes, similar to the minimal scrutiny currently applied to prospective legislation.[67] In essence, the Court, by failing to consider the retroactive effect, seems to adopt a deferential stance to formerly suspect retroactive legislation. This approach gives the states greater latitude to fashion laws that will solve a perceived problem, even at the expense of disturbing vested property rights.

The *Texaco* decision can, however, be better understood by examining the implicit substantive due process analysis actually employed. Contrary to the standard analysis of viewing specific constitutional objections to the statute, the Court initially found the overall Mineral Lapse Act reasonable, and only then proceeded to dismiss specific constitutional objections. Essentially the Court balanced the total effect of the Mineral Lapse Act, weighing the constitutional rights at issue against the state's prerogative to impinge on these rights in furtherance of a governmental objective. The dissent used a similar methodology. After finding the total statute unreasonable as suspect retroactive legislation, the dissent sympathetically examined the specific constitutional objections.[68] Although *Texaco* represents the Court's current analytical framework for evaluating retroactive statutes, neither the majority nor the dissent explicitly admitted their adoption of this substantive due process approach.

III. Substantive Due Process Review and the Irrebuttable Presumption Doctrine

The constitutional deficiency of the Mineral Lapse Act is illustrated by examining two presumptions on which it is based; one a legal maxim, the other a statutory determination. The first is the common law maxim that everyone is presumed to know the law. Despite the well-reasoned dissent-

65. 454 U.S. at 529.

66. *Id.*

67. The Court has expressed a stricter view towards retroactive general legislation as recently as 1976. *See* Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976). Although upholding the statute in question, the *Usery* Court cautioned that: "It does not follow . . . that what [a state] can legislate prospectively it can legislate retrospectively. The retrospective aspects of legislation, as well as the prospective, must meet the test of due process, and the justification for the latter may not suffice for the former." *Id.* at 16-17.

68. 454 U.S. at 540.

ing opinion to the contrary,[69] the majority states that by the end of the two-year grace period all mineral owners are deemed to have constructive notice of the statutory requirements for retaining their interests.[70] The second presumption is statutory, providing that after a specified period of non-use the mineral interest is deemed abandoned, absent the filing of a notice of retention.[71]

Both the assumed knowledge, and the deemed abandonment are conclusive, irrebuttable presumptions, which cannot be disputed once the time period has elapsed.[72] The harsh consequence of the two presumptions, forfeiture of a vested property interest gives rise to the objection that such legislation is unreasonable, and thus is an unconstitutional violation of substantive due process.

In examining similar statutes, the Court has said that the Constitution disfavors statutory irrebuttable presumptions such as that providing for abandonment in the Mineral Lapse Act.[73] Illustrating this doctrine is the Court's decision in *Stanley v. Illinois*.[74] In this case the Court held that an

69. Given the unusual retroactive character of the Mineral Lapse Act, the dissent implies there is a "good faith" notice requirement on the state to inform those directly affected. The dissent indicates that the "reasonably calculated" standard introduced in *Mullane* is applicable to the non-adjudicatory state action in *Texaco*. The *Texaco* situation, according to the dissent, "highlights the limited circumstances in which the State's reliance on a presumption of knowledge strains the constitutional requirement that the liberty and property of persons be dealt with fairly and rationally by the State." *Id.* at 546 (Brennan, J., dissenting). Utilizing substantive due process analysis, the dissent questions what rational state objective is served by not affording the mineral estate owner greater notice of his imminent abandonment. *Id.* at 552.

70. The Court relies upon North Laramie Land Co. v. Hoffman, 268 U.S. 276, 283 (1924) to support the statement that: "[P]ersons owning property within a State are charged with knowledge of relevant statutory provisions affecting the control or disposition of such property." 454 U.S. at 532 (footnote omitted). *See generally* Anderson Nat'l Bank v. Luckett, 321 U.S. 233 (1944); Security Savings Bank v. California, 263 U.S. 282 (1972); Ballard v. Hunter, 204 U.S. 241 (1907); Huling v. Kaw Valley Ry. & Improvement Co., 130 U.S. 559 (1889).

71. An interesting comparison can be drawn between the Indiana Mineral Lapse Act and the Virginia Statute having essentially the same function, but relying on a wholly different *rebuttable* presumption. VA. CODE §§ 55-153 to -155 (1981). The Virginia statute provides that when a mineral interest has not been transferred or separately taxed, or when exploration has not been conducted for a period of 35 years, the land covering such interest is deemed to contain no minerals. *Id.* § 55-154. The surface owner is then entitled to bring a suit to quiet title to such mineral interest in himself. If the mineral owner defends, he is given six months from the date of the hearing in which to explore for minerals. Within that six month period, if he can establish that there are minerals, the court will order the mineral interest to be separately taxed. If he fails to establish the existence of minerals, the interest is extinguished. *Id.* § 55-155. *See generally* Polston, *supra* note 14, at 89.

72. *See, e.g.*, Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632 (1974); United States Dep't of Agriculture v. Murry, 413 U.S. 508 (1973); Vlandis v. Kline, 412 U.S. 441 (1973); Stanley v. Illinois, 405 U.S. 645 (1972); Bell v. Burson, 402 U.S. 535 (1971); Goldberg v. Kelly, 397 U.S. 254 (1970). *But see* Weinberger v. Salfi, 422 U.S. 749 (1975). *See generally* L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 16-32, at 898 (1978); Note, *Irrebuttable Presumptions as an Alternative to Strict Scrutiny: From* Rodriguez *to* La Fleur, 62 GEO. L. J. 1173 (1974); Note, *The Irrebuttable Presumption Doctrine in the Supreme Court*, 87 HARV. L. REV. 1534 (1974); Note, *The Conclusive Presumption Doctrine: Equal Process or Due Protection?*, 72 MICH. L. REV. 800 (1974); Note, *Irrebuttable Presumptions: An Illusory Analysis*, 27 STAN. L. REV. 449 (1975); Comment, *Some Thoughts on the Emerging Irrebuttable Presumption Doctrine*, 7 IND. L. REV. 644 (1974).

73. In Vlandis v. Kline, 412 U.S. 441, 446 (1973), the Court stated that "permanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments."

74. 405 U.S. 645 (1972).

unwed father must be given a chance in a custody proceeding to prove his fitness to be a parent. The Court stated that the administrative convenience of an irrebuttable presumption cannot preclude an individual's right to be heard.[75] In *Vlandis v. Kline*,[76] the Court cast doubt on the factual basis for a state's restrictive statutory determination of in-state residency for tuition purposes, and held that "when the State has reasonable alternative means of making the crucial determination," the Court should declare the conclusive presumption unconstitutional.[77] In *Bell v. Burson*,[78] the Court determined that use of a motor vehicle is a property interest. Furthermore, a self-executing statute that suspends the drivers license of an individual involved in an auto accident, without any determination of fault or liability, is unconstitutional.[79] The Court has used the irrebuttable presumption doctrine in cases of statutory deprivation of protected rights when it determined there was the likelihood that a hearing procedure could be developed by the government, favoring individualized determination over the administrative convenience of a conclusive presumption.[80]

In effect, the irrebuttable presumption doctrine provides a higher level of scrutiny for economic and social legislation than that available under the Court's substantive due process criteria.[81] The future scope of the irrebuttable presumption doctrine was limited by the Court's decision in *Weinberger v. Salfi*,[82] in which the Court stated this doctrine would only be used to guarantee a constitutionally protected right or status. The doctrine, has not been specifically overruled, although it is no longer being utilized as aggressive enforcement mechanism of due process rights.

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75. *Id.* at 656-58. The Court stated:

> The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy.

Id. at 656.

76. 412 U.S. 441 (1973).

77. *Id.* at 452.

78. 402 U.S. 535 (1971).

79. In direct contradiction to the reasoning of the Court in *Texaco* that "reasonably calculated" notice need only be given for an adjudication of rights, the Court, referring to the self-executing statute at issue in the earlier *Bell* case stated that "due process requires that when a State seeks to terminate an interest such as that here involved, it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective." *Bell*, 402 U.S. at 542.

80. In describing the basic constitutional rationale for the irrebuttable presumption doctrine, Justice Marshall stated that:

> [W]here the private interests affected are very important and the governmental interest can be promoted without much difficulty by a well-designed hearing procedure, [the Due Process Clause] requires the Government to act on an individualized basis, with general propositions serving only as rebuttable presumptions or other burden-shifting devices.

United States Dep't of Agriculture v. Murry, 413 U.S. 508, 518 (Marshall, J., concurring).

81. In his dissent in Cleveland Bd. of Ed. v. LaFleur, 414 U.S. 632 (1974), Justice Rehnquist warned that: "The Court's disenchantment with 'irrebuttable presumptions,' and its preference for 'individualized determination,' is in the last analysis nothing less than an attack upon the very notion of lawmaking itself." *Id.* at 660 (Rehnquist, J., dissenting).

82. 422 U.S. 749 (1975).

The Mineral Lapse Act is well suited for application of the irrebuttable presumption doctrine. A legal determination of abandonment is a necessary prerequisite for the state to transfer title of the mineral interest to the owner of the surface estate without giving compensation. Despite the Act's provision for a hearing procedure to judicially determine the surface owner's claim to the minerals, the issue of abandonment by the mineral owner is irrebuttably determined by the expiration of the statutory period. After this period lapses, the mineral owner is foreclosed from challenging the abandonment determination in any judicial forum.[83] By employing a statutorily conclusive presumption of abandonment, rather than an *in rem* adjudication of status, it is possible that some non-abandoned estates will be extinguished without due process or compensation. As in *Vlandis*, there is doubt cast on the underlying validity of the determination that the irrebuttable presumption attempts to provide.

The *Weinberger* restriction is met in the *Texaco* context because the Mineral Lapse Act can deprive a landowner of an interest in property without compensation upon an irrebuttable presumption of abandonment.[84] In addition, the retroactive effect of the Act mandates an intermediate level of substantive due process scrutiny, which the irrebuttable presumption doctrine provides.

While the Court could use this doctrine to overturn a number of laws that contain an irrebuttable presumption, usually the issue does not arise because the irrebuttable presumptions are employed to circumvent difficult problems of proof.[85] In contrast, it would be possible for the Mineral Lapse Act to mandate a simple, efficient *in rem* adjudication to determine the intent of a mineral owner to abandon the interest, similar to that used in the Virginia statute.[86]

A mineral owner who neither has actual knowledge of the Mineral Lapse Act nor has any intention to abandon, can lose his property by virtue of presumptions to the contrary.[87] The Court in *Texaco* could have found

83. According to one commentator: "The primary objection to conclusive presumptions is that they usurp the judicial fact-finding function." Note, *Irrebuttable Presumptions as an Alternative to Strict Scrutiny: From* Rodriguez *to* LaFleur, 62 GEO. L.J. 1173, 1197 (1974).

84. The Court, and various commentators have struggled to determine when social and economic legislation, not violative of fundamental rights, results in a taking of property mandating compensation. *See, e.g.*, Pennsylvania Cent. Transp. Co. v. City of New York, 438 U.S. 104 (1978) (examination of the application of New York City's Landmarks Preservation Law to Grand Central Terminal, owned by Pennsylvania Transportation Co.); Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922) (balances police power of state against private property interests). Since there was no issue in *Texaco* of a taking by regulation, or a partial taking, for purposes of this comment it is assumed that the denial of a property right in a severed mineral interest, absent abandonment, would be a taking requiring compensation.

85. *See supra* note 72. For example, when a state enacts a law under its police power to limit the speed of vehicles on a highway, an inherent presumption is that a vehicle traveling in excess of this speed is dangerous to the public safety. The presumption is irrebuttable, in that an individual is not allowed to assert that, because of excellent road conditions or superior driving ability, it was acutally safe to exceed the stated maximum speed. To allow this assertion, under these circumstances, would inextricably complicate the judicial function.

86. *See supra* note 71.

87. A mining firm may find it economically advantageous to acquire and hold mineral interests for future production and thereby neither currently work the mineral estate nor intend

the Mineral Lapse Act unconstitutional based upon the dissent's rationale that the Act lacked reasonable notice,[88] or based on the irrebuttable presumption doctrine. The consequence of not examining the underlying legitimacy of the statutory presumptions is that the Mineral Lapse Act allows the state to take property without just compensation under the guise of abandonment, in violation of constitutional protections.[89] Failure to utilize any of these methods of restricting the Court's deferential stance is an indication of the current Supreme Court tolerance for legislative prerogative in social and economic legislation.

IV. CONCLUSION

Texaco illustrates the difficulties encountered by a state in efficiently regulating land use by employing retroactive legislation while attempting to preserve established rights.[90] These difficulties, in turn, create complex issues for the Supreme Court, which must function as a constitutional check on state action, and yet allow government to creatively address such modern problems as severed mineral estates.

The Court methodically considered the procedural due process contentions of the appellants, restricting the decision in *Mullane* to state-mandated adjudicatory proceedings, but failed to sufficiently weigh the burdensome nature of the law as a violation of substantive due process. The Court did not adequately address the fundamental reasonableness of a statute that retroactively alters the long-standing legal environment for retaining a vested property interest, without giving adequate notice. Contrary to earlier cases and the views expressed by scholars, the *Texaco* Court assesses this retroactive law with the more deferential test typically applied to prospective legislation.

Texaco is, however, implicitly decided on the basis of a substantive due process reasoning, based on public policy, regarding the limits to state action. The Court viewed the Mineral Lapse Act as justified, given the need for state action to eliminate dormant mineral interests. It had ample precedent to construe a violation of procedural due process or a taking without compensation, but chose not to apply these theories in such a way as to defeat the statute. It chose not to invoke the irrebuttable presumption doctrine, refusing to suggest the constitutionally more palatable, but less

to abandon the property. *See generally* O. HERFINDAHL & A. KNEESE, ECONOMIC THEORY OF NATURAL RESOURCES (1974).

88. The Mineral Lapse Act was passed shortly before midnight by the Indiana Senate on the last day of the legislative session; thereafter it never received extensive publicity. Polston, *supra* note 14, at 90.

89. Here the state is defining abandonment of corporeal and incorporeal mineral interests contrary to the common law, yet the Supreme Court chose not to examine whether, under this new definition that creates an irrebuttable presumption the property is sufficiently "abandoned" for the state to take without giving just compensation.

90. The problem, according to P. BASYE, *supra* note 2, at vi, is that "[b]ecause the original structure of our system [of land transfers] did not come into being with the ability to visualize its operation in a later and more complex age, we have seen its efficiency undergoing a progressive decline during most of the twentieth century to date."

administratively efficient means of using an individualized hearing procedure to determine abandonment.

The unique nature and problems created by severed mineral interests limits the precedential value of *Texaco* for state actions affecting other forms of property.[91] The import of this decision is the indication it provides of an ideologically divided Court, constrained by its own self-imposed minimal substantive due process review, trying to strike a proper balance between legislative prerogative and constitutional safeguards.

Ross Koplin

91. *See, e.g.*, Wilson v. Iseminger, 185 U.S. 55 (1901). The Court in *Wilson* upheld a Pennsylvania statute that provided for the extinguishment of a reserved interest in ground rent if the owner collected no rent and made no demand for payment for a period of 21 years. Though the effect of the Pennsylvania statute was to extinguish a fee simple estate of permanent duration, the Court upheld the legislation. Although heavily relied upon by the Indiana Supreme Court in its *Texaco* ruling, and relied upon somewhat by the United States Supreme Court, the facts are more similar to extinguishment of a debt by the running of a statute of limitations, although an interest in property is technically lost. It is doubtful that this decision, or that of the Court in *Texaco*, can be relied on as precedents for more common types of real property interests.