



RESOURCE

The Public Trust Doctrine, Property, and Society

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Description / Abstract

The public trust doctrine creates a set of sovereign rights and responsibilities with regard to certain resource commons, obligating the state to manage them in trust for the public. In the last century, the doctrine has gradually transformed from an affirmation of sovereign authority over trust resources to a recognition of sovereign responsibility to protect them for present and future generations. Especially in the United States, it has evolved through common, constitutional, and statutory law to protect a broader variety of resources and associated values, including ecological, recreational, and scenic values. Today, the doctrine is frequently invoked in natural resource conflicts, some defending environmental regulations against constitutional takings claims, and some of which push the boundaries of previously recognized trust values, such as recent appeals to public trust principles in support of meaningful climate governance. After reviewing the origins of the public trust in early Roman and English law, this chapter explores its development in US law to protect different values, applied to different resources, and vindicated by different legal mechanisms in different states. It reviews the two most famous American public trust cases over a hundred year span, the U.S. Supreme Court's 1892 decision in *Illinois Central Railroad v Illinois* and the California Supreme Court's 1983 Audubon Society decision at Mono Lake, and then explores the incorporation of the doctrine in different state constitutions. It considers the expanding role of the doctrine as a defence to constitutional takings claims and considers whether it should be understood as a constraint on all sovereign authority, including federal authority, and the significance for climate-related public trust advocacy. It concludes with reflections on the ongoing development of public trust principles and contrasting environmental rights internationally.

Publication year

2022

Country

United States of America (the)

Region

Americas

Publisher

Florida State University College of Law

Thematic Tagging

Water services

Language English

View resource

Source
URL: <https://beta.toolbox.venthic.com/resource/public-trust-doctrine-property-and-society>