

Aerial Takings?

Bryant Walker Smith

Assistant Professor

*University of South Carolina School of Law
and (by courtesy) School of Engineering*

Affiliate Scholar

Center for Internet and Society at Stanford Law School

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(Let's not go here today)



“The airspace, apart from the immediate reaches above the land, is part of the public domain.



- US Supreme Court in *US v. Causby*, 328 U.S. 256 (1946)





“The airspace, apart from the immediate reaches above the land, is part of the public domain.



We need not determine at this time what those precise limits are.”



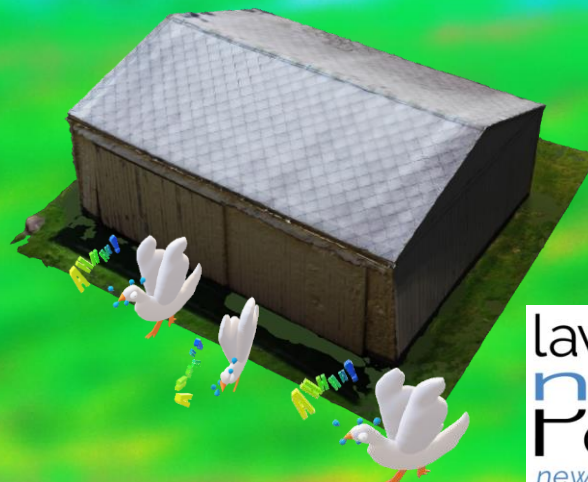
- US Supreme Court in *US v. Causby*, 328 U.S. 256 (1946)

So what?

- Did the US government take my air?
- May I use my drone above your land?
- May I use my drone above *my* land?*
- May my city/state regulate my drone?*

** Even if the FAA says otherwise?*

U.S. v. Causby



Supreme Court's opinion

- You own the air you can use
- Direct and immediate interference in that use violates your property rights
- Let a lower court figure out the details....

300 feet to public airspace (per law)

The taking is
therefore from
83 to 365 feet



65 feet

83 feet

From the precedent to the present

We need not ask if the US government could declare air lower than 300 feet to be public, because “nothing of the sort has been done.”

- Supreme Court in Causby

We set the rules for UAVs, which “cannot be higher than 400 feet above ground level”

- FAA in Small UAS Rule

More wrinkles (of many)

Congress says:

- US has “exclusive sovereignty of airspace”
- FAA shall regulate *navigable* airspace
- FAA determines what airspace is navigable

(49 USC § 40102-03)

So what?

- Does FAA have *statutory authority* to
 - Let me fly my drone above your land?
 - Bar me from flying my drone above my land?
 - Prevent my city/state from regulating my drone?
- And if so:
Did Congress unconstitutionally take my air?