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Interior Preservation: In or Out?

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Interior Preservation: In or Out?

By Johnathan Lloyd
INTRODUCTION

The signing of the Declaration of Independence, the death of Abraham Lincoln, Elvis’ final concert, and the invention of the light bulb; All of these events and dozens of others that changed history have at least one common element – they happened indoors, inside historic American interiors.

The need to preserve artifact of civilization has made itself felt since at least as far back as the Roman Empire; Emperor Majorian, circa 453 A.D. “was anxious to protect monuments of those ages in which he would have desired and deserved to live.”¹ Like their Roman counterpart, American leaders keenly felt this need for safeguarding the architectural record of the past. Americans enacted the first local legislation protecting historically or architecturally significant private property in Charleston, South Carolina in 1931.²

Since these first efforts to introduce protection for important historic structures into the legal canon, the volume and scope of historic preservation law has grown enormously. In 1972, the United States Preservation Commission Identification

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¹ Scott H. Rothstein, Takings Jurisprudence Comes in From the Cold: Preserving Interiors Through Landmark Designation, 26 Conn. 1105, 1108 (FN2)(1994).
² Id. at 1108.
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Project identified 492 local historic preservation commissions.\(^3\) Five years later in 1981, that number had nearly doubled to 832.\(^4\) By 1998, the last year for which data is available, the number had exploded to 2,368 historic preservation commissions nationwide.\(^5\)

The Rise of Interior Preservation

Concomitantly with the proliferation of historic preservation commissions, the authority of these commissions to regulate more than mere exterior features also grew. This authority expanded, notably, into interior landmarking.

In 1988, the City of Boston Law Department published an update of a survey that had previously been conducted by the National Center for Preservation Law.\(^6\) The Center had surveyed 465 local landmark commissions, of which 139 responded.\(^7\) Of these 139, only 22 believed they had authority to landmark interiors.\(^8\) Just 11 said they had made such designations already

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\(^4\) Id.
\(^5\) Id.
\(^7\) Id.
\(^8\) Id.
or were otherwise regulating interiors.\textsuperscript{9} This survey represents a cross-section of the burgeoning development of interior preservation in the late 1980s.

Regarding the developing case law in this early period of interior preservation, an article in the Fall 1990 issue of the New England Law Review noted the following:

The battle between property owners and historic preservationists recently moved to the interiors of our significant buildings. Thus far, only three cases have challenged the police power authority of state and local governments to protect building interiors under landmark laws. But with the increasing tendency of municipal governments to designate and regulate building interiors as landmarks, there will be many more challenges to this authority in the future.\textsuperscript{10}

During the late 1980s, and certainly by 1990, it must have seemed that interior preservation was at least one of the facets of historic preservation that was just beginning to make a name for itself.

\textsuperscript{9} Id.
\textsuperscript{10} Id. at 317,318.
**Interior Preservation Now**

So where has interior preservation law gone since 1990? Did the New England Law Journal article correctly predict a long and colorful life for interior preservation, full of litigation, constitutional challenges, commentary, scholarship...?

The history of historic preservation law is somewhat difficult to reconstruct. However, certain sources do offer a glimpse of the major events that mark this history:

- The article from the New England Law Journal cited above refers to two cases that had already dealt with interior preservation: *Weinberg v. Barry* (1986), and *Sameric Corp. v. City of Philadelphia* (1989).\(^{11}\)

- A 1994 article from the Connecticut Law Review cites two of the three interior preservation cases mentioned above, plus two others: *Shubert Organization v. Landmarks Preservation Commission* (1991), and *Teachers Insurance & Annuity Ass’n of America v. City of New York* (1992).\(^{12}\)

- The Fall 1994 issue of Urban Lawyer cites the conclusion of *Sameric Corp.* in it’s article titled “Recent Developments in Historic Preservation and Architectural...

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\(^{11}\) Id. at 318.

\(^{12}\) Manwaring, supra note 6, at 122, 123.
Control Law.”13 This is the only case it cites related to interior preservation. This is also the last time a case dealing directly with interior preservation was mentioned in Urban Lawyer’s “Recent Developments.”

- The 2002 issue of the Widener Law Symposium Journal publishes an article entitled, “Avoiding the ‘Disneyland Façade’: The Reach of Architectural Controls Exercised by Historic Districts Over Internal Features of Structures.”14 The article cites no interior preservation cases not mentioned above.15

- American Land Planning Law Database, § 75:13 Designation of landmark interiors cites to two cases mentioned already.16 The database’s most recent update was in July 2007.17

- Rathkopf’s The Law of Zoning and Planning, § 19:17 Interiors cites three cases mentioned already.18 The

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13 Bradford J. White, Recent Developments in Historic Preservation and Architectural Control Law, 26 Urb. Law. 777 at 777.
14 Robert W. Mallard, Avoiding the “Disneyland Façade”: The Reach of Architectural Controls Exercised by Historic Districts Over Internal Features of Structures, 8 Widener L. Symp. J. 323 at 324.
15 In 2002, Mallard writes, “while preserving the exterior of homes in historic districts is commonplace, most states do not include interiors in their preservation-enabling legislation.” Id. Is this more evidence of neglect of historic preservation?
17 Id.
database was updated in April 2008, although this section was last updated in June 1997.\textsuperscript{19}

It appears not only that the academic treatment of interior preservation has been spare at best, but also that a mere handful of cases spanning less than a decade is all there is to show for the copious jurisprudence predicted in 1990.

What has sealed the case law on interior preservation against constitutional attack? What about these landmark cases has made interior preservation almost unquestionably constitutional?

This paper examines takings and due process challenges in the leading cases that galvanized the constitutionality of interior preservation. These cases together form the shield that protects interior designations from constitutional attack. This paper’s goal is to distill the critical points that have left the jurisprudence on interior preservation all but bare for much more than a decade.

\textbf{THE CASE LAW}

A legal genealogist tracing the lineage of interior preservation law finds his Adam in \textit{Penn Central}.\textsuperscript{20} Lawyers and

\footnotesize{\textsuperscript{19} Id.}
legal scholars have no trouble recognizing this case as a watershed in the field of historic preservation. Better known, certainly, for its contributions in the realm of exterior preservation law, the case has no less significance in the province of interior preservation.

**Penn Central (1978)**

Grand Central Terminal is a French Beaux Arts rail terminal at the intersection of 42nd Street and Park Avenue in New York City. The building was opened in 1913. The terminal was owned by Penn Central Transportation Corporation (Penn Central), who was also the proprietor of a number of other important properties in Midtown Manhattan. New York’s Landmarks Preservation Commission (Commission) designated Grand Central

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21 Id. at 115.
22 Id.
23 Id.
Terminal a “landmark” in August of 1967. The following month, the Board of Estimate (the Board) confirmed the designation, as prescribed by New York City’s Landmark Preservation Law.

Although Penn Central opposed the landmark designation before the Board, it failed to take advantage of its right to judicial review of the decision.

The year after the designation, Penn Central leased the airspace above the train terminal to UPG Properties. The terms of the lease called for the construction of a multistory office building above the station. Renowned Hungarian architect Marcel Breuer prepared two proposals for the design of the new addition. Owing to the new landmark designation, Penn Central and UPG were forced to seek approval of the plans from the Commission. The Commission rejected both proposals as incompatible with the historic design of the terminal, denying the necessary certificate of no exterior effect and certificate of appropriateness.

Penn Central filed suit in the New York Supreme Court. After winning here, the Appellate Division reversed, and Penn

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24 Id.  
25 Id. at 116.  
26 Id.  
27 Id. The agreement was made on January 22, 1968.  
28 Id.  
29 Id.  
30 Id.  
31 Id. at 117.  
32 Id. at 119.
Central appealed.\textsuperscript{33} The New York State Court of Appeals affirmed.\textsuperscript{34} The case finally came before the United States Supreme Court.\textsuperscript{35}

Penn Central alleged that New York’s Landmark Preservation Law, by denying their proposal to build the new addition to the terminal, wrought a taking without just compensation in violation of the Fifth Amendment.\textsuperscript{36} In an opinion by Justice Brennan, the court held that three factors are particularly relevant to courts’ consideration in deciding cases alleging takings:\textsuperscript{37}

1) “the economic impact of the regulation on the [owner]”;  
2) “the extent to which the regulation had interfered with distinct investment backed expectations”; and  
3) “the character of the governmental action.”\textsuperscript{38}

Although the specific facts of this case do not touch on interior landmarking, every case that does cites to its opinion. What is it about this decision that makes it such a boon to interior preservation?

As a preliminary matter, it seems clear that this case has had the fortunate effect of giving the constitutional go-ahead to municipalities to create their own historic preservation ordinances. As historic designation became more widespread, the

\begin{itemize}
  \item Id. 1975.
  \item Id. at 120. 1977.
  \item Id. at 122. Argued April 17, 1978.
  \item Id.
  \item Id. at 124.
  \item Id. at 124.
\end{itemize}
pressure to begin protecting historic interiors as well as exteriors certainly mounted as well. It may be thanks to this mounting pressure and the efforts by local landmarking commissions to relieve it that the subsequent cases came along at all.

Regarding specific protections against takings challenges, this case first makes it absolutely clear that mere diminution of value does to constitute a taking.\(^{39}\) This one principle alone appears again and again in the subsequent interior designation cases, and its impact can hardly be overestimated.

\(^{39}\) Id. at 105.

A takings challenge was again the central issue in Weinberg v. Barry. The property that is the central object of this case is the Warner Building in downtown Washington, D.C. The City designated a portion of the building’s exterior and a portion of the building’s interior, a theater, as an historic landmark. Plaintiff brought suit against the Mayor of the District of Columbia, claiming that the D.C. ordinance allowing for the designation of building interiors was facially unconstitutional.
and effected a taking without just compensation in violation of the Fifth Amendment.\textsuperscript{43}

Then as now, the only reference to interior designation in the D.C. historic preservation statute occurs in the definitions section: Under the statute, “alter” or “alteration” includes any “change in any interior space that has been specifically designated as an historic landmark.”\textsuperscript{44} Interestingly, however, plaintiffs did not contend that this fleeting reference to interior designations was insufficient to give the Commission authority to make them. Nor has this authority of the D.C. Historic Preservation Commission under the statute ever been called into question before the court.

Plaintiffs argued that a private interior space, such as the theater of the Warner building, could only be a benefit to the public if it were forcibly opened for public viewing.\textsuperscript{45} Forcing the building open would produce an invasion of private property impermissible under \textit{Loretto}, and rob owners of the profitable uses of their own property.\textsuperscript{46} Thus no law providing for the designation of interiors as historic landmarks could possibly pass constitutional muster.\textsuperscript{47}

\textsuperscript{43} Id. at 92.
\textsuperscript{44} D.C. St. 6-1102(1)(b).
\textsuperscript{45} \textit{Weinberg}, 634 F.Supp. at 93.
\textsuperscript{46} \textit{Loretto v. Teleprompter Manhattan CATV Corp.}, 458 U.S. 419 (1982).
\textsuperscript{47} \textit{Weinberg}, 634 F. Supp. at 92.
The Court firmly rejected plaintiff’s argument that that interior designation only serves the public interest if the government requires public access to the building. The Court noted first that the stated purposes of the D.C. preservation act include much more than visual enjoyment, citing the economic benefits of attracting visitors to the city.

But even if the public interest required that the public be allowed to see the interior firsthand, as the plaintiff argued, the court found that the interior designation would still not affect a taking. Nor did the Court find that it would be necessary to mandate the opening of the building to the public in violation of the private property rights of the owner. Many, if not most or all of the economically viable uses for this and other historic interiors depend upon the owner voluntarily inviting the public inside. Restaurants, retail shops, hotels and theaters (as in this case) all give the public access to their interiors without the need for government directive.

Readers should note that although the court did not incorporate them into its opinion, the purposes of the D.C. Act offer perhaps more possibilities for rationalizing the

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48 Id. at 93.
49 Id.
50 Id.
51 Id.
52 Id.
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protection of historic interiors regardless of the public’s access to them.53

The D.C. Act states among its purposes, “to safeguard the city’s cultural, social, economic, political and architectural heritage.”54 D.C.’s Historic Preservation Review Board will still accomplish this purpose if it designates as landmarks historic interiors that have no prospect whatever of ever being open to the public. This is, in fact, the logical conclusion of the reasoning employed some years after Weinberg by the Sameric court. It held that even if an interior were completely closed to the public, the legitimate purposes of historic landmark designation might well be upheld, if only to preserve the space with the prospect that some future owner might make a more public use of it.55

One might even argue that designating interiors to which the public has no access more effectively “safeguard[s] the city’s cultural, social, economic, political and architectural heritage,” than designating those into which the touching, prying, trampling hoi polloi regularly intrude.

54 D.C. St. § 6-1101(a)(2).
By upholding this and other purposes of the D.C. Act as Constitutionally valid, the court leaves the door wide open to arguments like this one that, though they greatly enhance the likelihood that historic interiors will gain legal protection, also greatly attenuate the public’s link to benefits professedly “in the public interest.”

While this result is perhaps undesirable as a policy matter, it does make defending interior preservation all the easier. By allowing the attenuation of the link to the public interest, the court greatly reduces the realm of what constitutes a taking without just compensation.

Sameric Corp. v. City of Philadelphia (1989)

Sameric proposed essentially the same argument against landmarking Philadelphia’s Boyd Theater that Weinberg had used to oppose landmarking the Warner Building theater in D.C. some
years earlier. \footnote{Id. at 157, 158.} Sameric argued that the landmark designation of the theater was inappropriate as the public could gain no benefit from a private interior. \footnote{Id. at 158.} Having poached a dead argument, Sameric might have anticipated the court’s reasoning in rejecting it: Quoting Weinberg, the court held that “numerous conceivable private uses of the interiors of buildings which are compatible with public viewing of the area.” \footnote{Id.}

After thus dispensing with Sameric’s arguments, the court took the unusual step of drawing out the logical conclusions of its reasoning. It noted, as discussed above, that if preserving historic resources is itself an acceptable public purpose, justifying the use of the police power, public viewing of these interiors (or any viewing at all!) becomes superfluous. \footnote{Id.}

The Sameric court uses the conservative side of this reasoning to make the point that the government must preserve landmark interiors with the outlook that some future use may well give the public access. \footnote{Id. at 158.} In the court’s own words, “the Commonwealth must execute a farsightedness which, at times will necessarily transcend private interests.” \footnote{Id.} This is the inverted version of Teacher Insurance and Annuity Association’s (TIAA) argument, discussed infra and rejected by that court, that

\begin{itemize}
\item \footnote{Id. at 157, 158.}
\item \footnote{Id. at 158.}
\item \footnote{Id.}
\item \footnote{Id.}
\item \footnote{Id.}
\item \footnote{Id. at 158.}
\item \footnote{Id. at 158.}
\item \footnote{Id.}
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\item \footnote{Id.}
\item \footnote{Id.}
\end{itemize}
because its restaurant might some day be converted into a wholly private space, landmark designation should be withheld. Here the argument is that because some day the protected interior might become public, landmark preservation should be allowed.

Though this court’s reasoning was more tempered, might one cite Sameric as pointing to the proposition that the government would serve the public interest by landmarking interiors that never have been and are never likely to be open to the public?

Shubert Organization (1991)

In the mid-1980s, the New York City Landmarks Preservation Commission undertook a project of designation for historic Broadway theaters. The project eventually culminated in the designation of 28 theaters. Only two of the theaters’ interiors were not designated landmarks. Petitioners brought suit claiming that the method of designation of landmarks outlined by the Preservation Statute affected a per se violation of the Takings Clause.

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63 Sameric, 558 A.2d at 158.
65 Id.
66 Id.
67 Id. at 505.
The court held that \textit{Penn Central} controlled under the facts of the case.\footnote{Id. at 508.} Since the Supreme Court in that case had already found New York’s Preservation statute constitutionally sound, the court saw no need to reason further.\footnote{Id.}

On the petitioner’s claim that the statute produced a taking as applied, the court likewise found no merit.\footnote{Id.} Petitioners had failed to meet their burden of showing that the designation of the 28 theaters in question deprived them of “essential use of their property.”\footnote{Id.}

Interestingly, petitioners in this case also raised in support of their claims of constitutional violation, the argument that the landmark designation of the theaters was a pretext for protecting the theater industry.\footnote{Id. at 507.} Landmarking for this purpose was impermissible under the New York City Administrative Code. The Code expressly forbad the Commission from using its authority “to regulate and restrict the locations of trades and industries or location of buildings designed for specific uses.”\footnote{N.Y.C. Admin. Code § 25-304(a).}

From one point of view, it looks as though the actions of the New York City Commission fall neatly into the category of proscribed conduct; it was, after all, attempting to landmark 28
theaters within only a few block of one another. This might certainly have been seen as “regulat[ing…the] location of buildings designed for specific uses.”

The Shubert court deftly overcame this allegation of improper use of authority, however. It stated:

Although manipulation of the landmarks law for the purpose of preserving the Broadway theatre industry, rather than individual theatres, would have been improper, the designation proceedings addressed the specific buildings in terms of the criteria of the law. Accordingly, the administrative determination was based on substantial evidence, was not arbitrary and capricious, and did not violate the law. 74

The Teachers Insurance court (whose decision is discussed infra) would later cite this judgment as making the New York City Administrative Code provision tantamount to “a prohibition against the use of landmark designations for zoning purposes.” 75

Thus the actions of the Preservation Commission may permissibly bear a very strong resemblance to zoning, as they did in this case. It appears that the Commission may designate as many buildings used for a single purpose in as small an area as it likes. The Commission need only ensure that each individual building meets the legal criteria for designation, and it will screen its action against attack.

Perhaps this case’s greatest contribution to the armor that protects interior preservation came out of its citation to Penn

74 Shubert, 570 N.Y.S.2d at 507.
75 Teachers Ins., 82 N.Y.2d at 44.
That case, as we have already mentioned, had nothing to do with interior preservation. However, when the Shubert court cited to it in support of interior designation against a per se takings challenge in this case, later courts (Teachers Insurance, to be specific) came to interpret the citation as extending the Penn Central doctrine to interior designation.77

Lucas v. South Carolina (1992)

Lucas’ 2 lots on either side of the house in the center

Lucas’ connection to the field of historic preservation may seem somewhat attenuated. Although the case’s facts originate

76 Shubert, 570 N.Y.S.2d at 508.
at the birthplace of American historic preservation law, near Charleston, South Carolina, the case itself has nothing to do with historic preservation.\textsuperscript{78} The Lucas decision, however, serves as a much-needed sequel to the oblique takings doctrine of \textit{Penn Central}.\textsuperscript{78}

The facts are as follows: Lucas bought two lots of residential beachfront property where he planned to build single-family homes.\textsuperscript{79} Two years after this purchase, South Carolina’s state legislature enacted the Beachfront Management Act, which aimed to prevent the dangerous effects of erosion on beachfront property.\textsuperscript{80}

Lucas brought suit against the Coastal Council alleging that the new State statute effected a taking as applied to his case.\textsuperscript{81} The statute, which placed Lucas’ property in a zone where new construction was forbidden, effectively rendered his two formerly valuable beachfront lots valueless.\textsuperscript{82}

Prior to coming before the United States Supreme Court, the South Carolina Supreme Court held that the Beachfront Management Act had no Constitutional flaw.\textsuperscript{83} Relying on U.S. Supreme Court precedent, the court held that the statute properly addressed itself to the regulation of “harmful or noxious uses,” and that

\textsuperscript{79} Id. at 1008.
\textsuperscript{80} Id.
\textsuperscript{81} Id. at 1009.
\textsuperscript{82} Id.
\textsuperscript{83} Id. at 1010.
in such cases no compensation was required, regardless of the statute’s effect on property value.\textsuperscript{84}

The U.S. Supreme Court found that its own doctrine on “harmful or noxious uses” did not apply to the facts of \textit{Lucas}.\textsuperscript{85} Instead, the Court held that any regulation that affects a one-hundred percent diminution in the value of real property is compensable as a taking.\textsuperscript{86} The principle holds, said the Court, regardless of the public interest advanced by such a regulation.\textsuperscript{87}

Like \textit{Penn Central}, this case has, ostensibly, no nexus to interior preservation. Also like \textit{Penn Central}, however, its application is integral to a complete understanding of the protections surrounding interior preservation.

In one sense, this case is one of a very few that opens the door, albeit only slightly, to takings claims. The case does stand for the proposition that a one hundred percent diminution in value will constitute a taking and is compensable.

In another sense, however, this case can be seen as creating a very strict definition of what will in fact constitute a taking requiring compensation. Before \textit{Lucas}, courts were aware that there was a nebulous boundary between permissible zoning and landmarking and impermissible takings.

\textsuperscript{84} Id.
\textsuperscript{85} Id. at 1026.
\textsuperscript{86} Id.
\textsuperscript{87} Id. at 1031.
Not having a precise standard may have caused courts to err on the side of safety, compensating for more actions than would later prove compensable under the one hundred percent standard articulated in *Lucas*. 88

Richard Lazarus, of Georgetown University Law Center, arrives at precisely that conclusion: Although many view Lucas as a boon to private property rights advocates, Scalia’s per se rule in the *Lucas* opinion has made showing a taking more and not less difficult. Lazarus puts it this way:

> The property rights movement had, in effect, been seduced by Scalia’s rhetoric in *Lucas* and sought to squeeze all of their takings claims into the *Lucas* rubric. But [...] courts routinely concluded that economic value remained and therefore *Lucas* did not apply. [...] There have literally been hundreds of cases since *Lucas* in which courts had maintained a *Lucas* taking. But in more than fifteen years of litigation, there are only a handful of cases in either federal or state court, fewer than ten, in which courts have in fact relied on *Lucas* in concluding that a taking in fact occurred. 89

Indeed, a *Penn Central* takings analysis, while still a high bar, offered those seeking to style interior designations as “takings” a fairer prospect than they now face in the wake of *Lucas*.

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89 Id.
Teachers Insurance and Annuity Association of America v. New York (1992)

The property at issue in this case was the interior of the Four Seasons restaurant in the Seagram Building in New York.
The building itself as well as the restaurant are executed in the International Style. The building is the only example of the work of celebrated Bauhaus architect Ludwig Mies van der Rohe in New York City. The restaurant, whose interior decoration is the work of American designer Philip Johnson, has remained architecturally unchanged since it opened in 1959. The restaurant’s design has known much praise – one New York Times article called it “one of the finest restaurant interiors ever made anywhere, in any era.”

After the New York City Landmarks Preservation Commission landmarked the building and the restaurant’s interior, TIAA brought suit challenging the designation, alleging, among other arguments, a per se taking without just compensation. Citing Shubert, the lower court held that the preservation statute was immune from per se takings challenges where the claim is based on a restricted use of property.

Once again, the Teachers Insurance court was also faced with the argument that the designation of the Four Seasons interior was actually a pretext for impermissibly protecting the

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90 Teachers Ins., 82 N.Y.2d at 39.
91 Id. at 40.
92 Id.
93 Id. at 39.
94 Rothstein, 26 Conn.L.Rev. at 1124.
95 586 N.Y.S.2d 262, 263 (1992)
96 Id.
existing use of the space.  This court gave no more weight to the pretext argument than the Shubert court had done. In rejecting the claim of pretext, the court reasoned that it does not follow that just because the space’s optimum use considering the designation is probably as a restaurant, that the designation mandates the space’s continued use as such. In other words, eliminating the most profitable possible uses for an interior is not the same as requiring one specific use only.

TIAA argued in addition that the designation of the restaurant’s interior impermissibly included elements that were not fixtures of the space. The court handily added this to the list of TIAA’s failed arguments. It reasoned that the features in question (sculptures) were sufficiently connected to the restaurant’s interior to fall within the meaning of the applicable regulation. The court concluded simply that the regulation in question “does not distinguish between personalty and realty.”

TIAA appealed the decision of the New York Supreme Court. On appeal before the New York Court of Appeals, TIAA abandoned any hope of prevailing on constitutional grounds.

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97 Id. at 264.
98 Id.
99 Id.
100 Id.
101 Id.
102 Teachers Ins., 82 N.Y.2d at 41.
103 Id.
The Association alleged only that the New York preservation statute gave no authority for interior designations. It seems apparent that TIAA had read the writing on the wall by this time: interior designations appear by all accounts invincible to takings challenges.

Even unencumbered by the constitutional challenge, TIAA must have realized that its appeal would be an uphill battle; the New York City Landmarks Law explicitly authorized landmark designation for interiors older than 30 years. The code does specify, however, that the space must be open to the public or be one "customarily open or accessible to the public, or to which the public is customarily invited." The argument against designation centered on the claim that a fundamental difference exists between the character of truly "public" spaces like lobbies, theaters, and train stations and "ordinary commercial space[s]." The difference, TIAA argued, is that the former are "dedicated to public use."

The court rejected TIAA’s distinction, finding no difference between the nature of the public’s access to a restaurant or its access to a theater or any other private space.

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104 Id.
105 Id. § 25-302(a)(2).
107 Teachers Ins., 82 N.Y.2d at 42.
108 Id. at 43.
which depends on public patronage for its viability. Nor, the court reasoned, did the Landmark Law itself make any distinction in the nature of various varieties of interior spaces.

TIAA proffered one last-ditch argument against designation. It argued that even though the space was currently leased by a restaurant and therefore accessible to the public, it might one day be adapted to a strictly private purpose. The interior would become by that token outside the scope of the code which requires public access for designation to be permissible. The court recognized that this reasoning taken to its logical conclusion leads to the absurd result that any interior that might possibly be converted to a private use in the future can never be a landmark.

**United Artists’ (1993)**

This case is the reargument of the appeal of Sameric to the Supreme Court of Pennsylvania.

In the original appeal, the Supreme Court of Pennsylvania reversed the decision below, and held that,

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109 Id.
110 Id.
111 Id. at 44.
112 See supra note 106 and accompanying text.
113 Teachers Ins., 82 N.Y.2d at 44.
...the “Historic Buildings, Structures, Sites, Objects and Districts” provisions of the Philadelphia Code (Section 14-2007), which authorize the historic designation of private property—in this case the Boyd Theater—without the consent of the owner, are unfair, unjust and amount to an unconstitutional taking without just compensation in violation of Article 1, Section 10 of the Pennsylvania Constitution.\textsuperscript{115}

Interestingly, the court did not make any distinction between interior and exterior designation. It struck down the entire historic preservation ordinance.\textsuperscript{116} One author summarizes the decision in this way:

There is plenty of opportunity for serious constitutional discussion of real problems involved in landmark designation, but not much such discussion in the majority opinion. Characteristic of the prevailing tone is a heavy reliance on a long-discredited Pennsylvania (anti-)zoning opinion dating from 1926. [...] About the closest thing to legal reasoning in the opinion are two references, just in passing, to two pro-developer rationales—that a private owner cannot validly be required to share a public burden, which should be borne by all taxpayers, and that the validity of zoning depended on the fact that it involved “an average reciprocity of advantage.”\textsuperscript{117}

This was the first time a state court had dismissed \textit{Penn Central} to hold that it interpreted takings differently under the state constitution than under the federal Constitution.\textsuperscript{118}

\textsuperscript{116} Id. at 14.
\textsuperscript{117} Williams and Taylor, supra note 16.
The contention that United Artists’ excited prompted the Pennsylvania Supreme Court to hear reargument of the constitutional elements of the case.\textsuperscript{119}

This Pennsylvania Supreme Court, which one author described as “deeply riven by various internal controversies,” took two years to issue its opinion on the reargument.\textsuperscript{120} Chief Justice Nix wrote the opinion with which three other judges agreed.\textsuperscript{121} One judge reiterated the past decision in a dissent, and two more did not participate.\textsuperscript{122}

In this decision, the court held to the Penn Central precedent and found that the case’s facts did not give rise to a taking under the federal Constitution.\textsuperscript{123}

The court’s consideration of the facts under the Pennsylvania constitution lead it to consider the federal takings precedent it had rejected on its first hearing of the case.\textsuperscript{124} The Pennsylvania Supreme Court adopted the takings analysis used by federal courts, which it set forth as follows:

1) the interest of the general public, rather than a particular class of persons, must require governmental action;
2) the means must be necessary to effectuate that purpose;
3) the means must not be unduly oppressive upon the property holder, considering the economic impact of

\textsuperscript{119} Williams and Taylor, supra note 16.
\textsuperscript{120} Williams and Taylor, supra note 16.
\textsuperscript{121} United Artists’ II, 635 A.2d at 614.
\textsuperscript{122} Id. at 622.
\textsuperscript{123} Id. at 620.
\textsuperscript{124} Id. at 619.
the regulation, and the extent to which the government physically intrudes upon the property.\textsuperscript{125} Under this analysis, the court found no taking.\textsuperscript{126} The court upheld the power of the Commission to undertake historic preservation, but only through exterior designation.\textsuperscript{127} The enabling legislation, reasoned the court, specifically referred to the upkeep and maintenance of landmarks’ exteriors, but only mentioned the maintenance of interiors insofar as such was necessary to preserve the structure’s exterior.\textsuperscript{128} The Commission had therefore acted without authority in designating the Boyd Theater’s interior and the designation was vacated.\textsuperscript{129}

The major contribution to protecting interior preservation made by this case lies in its recognition of the Edmunds principles of federal and state statutory interpretation.\textsuperscript{130} Pennsylvania had tried to “make its own way” by interpreting its own constitutional takings clause outside the prescribed methods used for federal takings. Until Pennsylvania joined the rest of the states, it left the possibility open that each state would be its own “loose cannon,” with its own interpretation of takings. This would have rendered interior preservation’s takings victories in federal court all but useless.

\textsuperscript{125} Id. at 618.  
\textsuperscript{126} Id. at 620.  
\textsuperscript{127} Id. at 622.  
\textsuperscript{128} Id.  
\textsuperscript{129} Id.  
\textsuperscript{130} Id. at 615.
Pennsylvania’s decision to adopt the standard interpretation method ensures that the very favorable federal takings doctrine will be applicable in the states as well.

CONCLUSION

In conclusion, it seems clear that the field of interior preservation is riddled with treasures for the academic and legal mind. This area too long neglected must reclaim the attention of legal scholars and practitioners.

Take, for example, the 18th and 19th-century houses of some of the nation’s oldest historic districts. The exterior architectural elements of these buildings are already protected by landmark designations, although only a few, if any of their interiors benefit form any kind of legal protection. How can historic preservation commissions avoid the reproof this paper directs at scholars and practitioners for neglecting interior preservation? Can they claim that the interior architecture of the 18th and 19th centuries is of lesser quality than that of the exterior? Do the Greek and Roman revival, Neoclassical, Victorian, Beaux-Arts, Art Nouveau, Art Deco, Modern and International styles manifest themselves only in exterior architectural elements?
Indeed, in D.C., Philadelphia, and New York, as elsewhere, private homes often hold the best (and best-preserved) examples of historic architecture. Why have preservation commissions failed to protect these invaluable resources?

Perhaps some local commissions still lack the express authority to make interior landmark designations. In light of the many protections surrounding interior preservation, should local commissions like D.C. and others, whose preservation statutes include no specific authority to designate interiors now make the effort to have such terms expressly included? The precedent described here will probably keep interior designation safe from takings attacks, even in localities where there is no express authority to make them. However, such cases may give rise to new due process challenges currently outside interior preservation’s known territory. What are these potential attacks? Is interior preservation prepared to face them?

And there are other issues, too - does the armor whose construction has been outlined here provide too much protection for old buildings and not enough for people? How might courts use the existing doctrines of interior preservation to accomplish even more ambitious preservation goals? What is the potential for abuse of this highly protected area of law?

All these and other question wait to be explored in a field overgrown with exciting and novel issues ripe for examination.