AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 7: The Republican Era – Individual Rights/Property/Takings

**United States v. Pacific Railroad, 120 U.S. 227 (1887)**

*The Pacific Railroad Company was a corporation in Missouri. In 1864 during the Civil War, several bridges owned by the railroad were destroyed by either Confederate or Union forces. In October 1864, a general of the Union army informed representatives of the railroad that the immediate rebuilding of the bridges was a “military necessity” and directed that the company do everything in its power to rebuild them. The company subsequently rebuilt several of the bridges, but the federal government rebuilt four of the bridges that the company was unable to rebuild itself. Two of the four bridges that the federal government rebuilt had admittedly been destroyed by the Union army under military exigency to slow the advance of enemy forces, but the other two had presumably been destroyed by the Confederate army.*

*In the years immediately after the war, the federal government incurred a debt to the Pacific Railroad for the transportation of passengers and freight. Against that debt, the government sought to offset the cost of all four bridges that it had rebuilt. The railroad sought payment for the full debt in the federal court of claims. The court of claims ruled that the federal government could charge the company for the cost of rebuilding three of the four bridges. Both sides appealed to the U.S. Supreme Court. The Supreme Court unanimously reversed the court of claims, holding that while the government did not owe compensation to owners whose property was destroyed out of military necessity neither could it charge owners for the cost of structures that the government built out of military necessity. The government could not subtract the costs of the four bridges from the amount that it owed to Pacific Railroad.*

JUSTICE FIELD, delivered the opinion of the Court.

. . . .

. . . . [W]e are clear that no obligation rests upon the company to pay for work done not at its request or for its benefit, but solely to enable the government to carry on its military operations.

It has been held by this Court in repeated instances that though the late war was not between independent nations, yet as it was between the people of different sections of the country and the insurgents were so thoroughly organized and formidable as to necessitate their recognition as belligerents, the usual incidents of a war between independent nations ensued. . . .

The war, whether considered with reference to the number of troops in the field, the extent of military operations, and the number and character of the engagements, attained proportions unequaled in the history of the present century. More than a million of men were in the armies on each side. The injury and destruction of private property caused by their operations, and by measures necessary for their safety and efficiency, were almost beyond calculation. For all injuries and destruction which followed necessarily from these causes no compensation could be claimed from the government. By the well settled doctrines of public law, it was not responsible for them. The destruction or injury of private property in battle, or in the bombardment of cities and towns and in many other ways in the war, had to be borne by the sufferers alone as one of its consequences. Whatever would embarrass or impede the advance of the enemy, as the breaking up of roads or the burning of bridges, or would cripple and defeat him, as destroying his means of subsistence, were lawfully ordered by the commanding general. Indeed, it was his imperative duty to direct their destruction. The necessities of the war called for and justified this. The safety of the state in such cases overrides all considerations of private loss. *Salus populi* is then, in truth, *suprema lex.* *Respublica v. Sparhawk* (1788).

Vattel, in his *Law of Nations*, speaks of damages sustained by individuals in war as of two kinds -- those done by the state and those done by the enemy. And after mentioning those done by the state deliberately and by way of precaution, as when a field, a house, or a garden belonging to a private person is taken for the purpose of erecting on the spot a town rampart or other piece of fortification, or when his standing corn or his storehouses are destroyed to prevent their being of use to the enemy, and stating that such damages are to be made good to the individual, who should bear only his quota of the loss, he says:

“But there are other damages caused by inevitable necessity, as, for instance, the destruction caused by the artillery in retaking a town from the enemy. These are merely accidents; they are misfortunes which chance deals out to the proprietors on whom they happen to fall. The sovereign, indeed, ought to show an equitable regard for the sufferers if the situation of his affairs will admit of it, but no action lies against the state for misfortunes of this nature -- for losses which she has occasioned not willfully, but through necessity and by mere accident, in the exertion of her rights. The same may be said of damages caused by the enemy. All the subjects are exposed to such damages, and woe to him on whom they fall. The members of a society may well encounter such risk of property, since they encounter a similar risk of life itself. Were the state strictly to indemnify all those whose property is injured in this manner, the public finances would soon be exhausted and every individual in the state would be obliged to contribute his share in due proportion -- a thing utterly impracticable.”

. . . .

In his message to the Senate, the President [Ulysses S. Grant], after speaking of the claim [regarding a house near a Union fort destroyed by the Union army during a battle in Kentucky so as to deny the enemy forces a shelter for potential snipers] as one for compensation on account of the ravages of war and observing that its payment would invite the presentation of demands for very large sums of money against the government for necessary and unavoidable destruction of property by the army, said:

"It is a general principle of both international and municipal law that all property is held subject not only to be taken by the government for public uses, in which case, under the Constitution of the United States, the owner is entitled to just compensation, but also subject to be temporarily occupied or even actually destroyed in times of great public danger, and when the public safety demands it, and in this latter case governments do not admit a legal obligation on their part to compensate the owner. The temporary occupation of, injuries to, and destruction of property caused by actual and necessary military operations is generally considered to fall within the last-mentioned principle. If a government makes compensation under such circumstances, it is a matter of bounty, rather than of strict legal right."

. . . . The principle that for injuries to or destruction of private property in necessary military operations during the civil war the government is not responsible is thus considered established. Compensation has been made in several such cases, it is true, but it has generally been, as stated by the President in his veto message, "a matter of bounty, rather than of strict legal right."

In what we have said as to the exemption of government from liability for private property injured or destroyed during war by the operations of armies in the field or by measures necessary for their safety and efficiency, we do not mean to include claims where property of loyal citizens is taken for the service of our armies, such as vessels, steamboats, and the like for the transport of troops and munitions of war, or buildings to be used as storehouse and places of deposit of war material, or to house soldiers or take care of the sick, or claims for supplies seized and appropriated. In such cases, it has been the practice of the government to make compensation for the property taken. Its obligation to do so is supposed to rest upon the general principle of justice that compensation should be made where private property is taken for public use, although the seizure and appropriation of private property under such circumstances by the military authorities may not be within the terms of the constitutional clause. *Mitchell v. Harmony* (1852); *United States v. Russell* (1871).

While the government cannot be charged for injuries to or destruction of private property caused by military operations of armies in the field or measures taken for their safety and efficiency, the converse of the doctrine is equally true -- that private parties cannot be charged for works constructed on their lands by the government to further the operations of its armies. Military necessity will justify the destruction of property, but will not compel private parties to erect on their own lands works needed by the government or to pay for such works when erected by the government. The cost of building and repairing roads and bridges to facilitate the movements of troops, or the transportation of supplies and munitions of war, must therefore be borne by the government.

It is true that in some instances the works thus constructed may afterwards be used by the owner. A house built for a barrack or for the storage of supplies or for a temporary fortification might be converted to some purposes afterwards by the owner of the land, but that circumstance would impose no liability upon him. Whenever a structure is permanently affixed to real property belonging to an individual without his consent or request, he cannot be held responsible because of its subsequent use. It becomes his by being annexed to the soil, and he is not obliged to remove it to escape liability. He is not deemed to have accepted it so as to incur an obligation to pay for it merely because he has not chosen to tear it down, but has seen fit to use it. . . .

It follows from these views that the government can make no charge against the railroad company for the four bridges constructed by it from military necessity. The court will leave the parties where the war and the military operations of the government left them.

*Reversed*.