AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 8: The New Deal/Great Society Era – Individual Rights/Property/Takings

**United States v. Central Eureka Mining Co., 357 U.S. 155 (1958)**

*Early in the Second World War, the federal government determined that there was shortage of certain metals that would be needed to manufacture armaments and a shortage of machinery to produce those metals. The War Production Board issued a series of “preference orders” that gave to mining operations deemed essential to the war effort priority in the acquisition of needed goods. In 1942, the board issued a “limitation order” that directed nonessential gold mines to close down entirely so that miners, machinery and supplies that would have been used by gold mines could be redirected to mining operations deemed more essential to the war effort. The federal government did not take physical or legal possession of the gold mines and did not require gold mines to dispose of any of the machinery or equipment that they had in their possession. The limitation order was revoked in 1945.*

*In 1952, Congress granted the federal court of claims jurisdiction to hear any cases arising from the board’s limitation order. Various gold mine operators brought cases arguing that the board’s actions amounted to a constitutional taking for which they were owed compensation. The court of claims eventually agreed, and the federal government appealed to the U.S. Supreme Court. In a 7-2 ruling, the Supreme Court reversed the court of claims and held that the limitation order was a mere regulation and not a temporary constitutional taking of private property that required compensation.*

JUSTICE BURTON, delivered the opinion of the Court.

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. . . . [I]t is clear from the record that the Government did not occupy, use, or in any manner take physical possession of the gold mines or of the equipment connected with them. *Cf. United States v. Pewee Coal Co*. (1951). All that the Government sought was the cessation of the consumption of mining equipment and manpower in the gold mines and the conservation of such equipment and manpower for more essential was uses. The Government had no need for the gold or the gold mines. The mere fact that L-208 was in the form of an express prohibition of the operation of the mines, rather than a prohibition of the use of the scarce equipment in the mines, did not convert the order into a "taking" of a right to operate the mines. . . . The record shows that the WPB expected that L-208 would release substantial amounts of scarce mining equipment for use in essential industries, and also that experienced gold miners would transfer to other mines whose product was in gravely short supply. The purpose of L-208 was to encourage voluntary reallocation of scarce resources from the unessential to the essential.

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Thus, the WPB made a reasoned decision that, under existing circumstances, the Nation's need was such that the unrestricted use of mining equipment and manpower in gold mines was so wasteful of wartime resources that it must be temporarily suspended. Traditionally, we have treated the issue as to whether a particular governmental restriction amounted to a constitutional taking as being a question properly turning upon the particular circumstances of each case. *Pennsylvania Coal Co. v. Mahon* (1922). In doing so, we have recognized that action in the form of regulation can so diminish the value of property as to constitute a taking. *United States v. Causby* (1946). However, the mere fact that the regulation deprives the property owner of the most profitable use of his property is not necessarily enough to establish the owner's right to compensation. *Mugler v. Kansas* (1887). In the context of war, we have been reluctant to find that degree of regulation which, without saying so, requires compensation to be paid for resulting losses of income. *Hamilton v. Kentucky Distilleries & Warehouse Co*. (1919). The reasons are plain. War, particularly in modern times, demands the strict regulation of nearly all resources. It makes demands which otherwise would be insufferable. But wartime economic restrictions, temporary in character, are insignificant when compared to the widespread uncompensated loss of life and freedom of action which war traditionally demands.

We do not find in the temporary restrictions here placed on the operation of gold mines a taking of private property that would justify a departure from the trend of the above decisions. The WPB here sought, by reasonable regulation, to conserve the limited supply of equipment used by the mines, and it hoped that its order would divert available miners to more essential work. Both purposes were proper objectives; both matters were subject to regulation to the extent of the order. L-208 did not order any disposal of property or transfer of men. Accordingly, since the damage to the mine owners was incidental to the Government's lawful regulation of matters reasonably deemed essential to the war effort, the judgment is

*Reversed*.

JUSTICE FRANKFURTER, dissenting.

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JUSTICE HARLAN, dissenting.

I dissent because I believe that the Fifth Amendment to the Constitution requires the Government to pay just compensation to the respondents for the temporary "taking" of their property accomplished by WPB Order L-208.

. . . . Finding 46 of the Court of Claims states that reallocation of gold miners by forced closure of the gold mines was "*The* dominant consideration . . . in the issuance of . . . L-208." (Italics supplied.) . . .

On the basis of its findings, the Court of Claims concluded in its opinion:

"From the language of the order itself [L-208] and from the circumstances surrounding its promulgation, it is apparent that its only purpose was to deprive the gold mine owners and operators of their right to make use of their mining properties."

These conclusions, which seem to me to be convincingly supported by the evidence in the record, require that L-208 be regarded as having no other purpose than to effect the closing of respondents' mines in order to free gold mine labor for essential war work. The Government acknowledges that, during the war, it lacked any legal authority to order the transfer of civilian manpower.

Viewing L-208 in this light, I cannot agree with the Court's conclusion that the Order was simply a "regulation" incident to which respondents happened to suffer financial loss. Instead, I believe that L-208 effected a temporary "taking" of the respondents' right to mine gold which is compensable under the Fifth Amendment.

L-208 was the only order promulgated during World War II which, by its terms, required a lawful and productive industry to shut down at a severe economic cost. As a result of the Order, the respondents were totally deprived of the beneficial use of their property. Any suggestion that the mines could have been used in such a way (that is, other than to mine gold) so as to remove them from the scope of the Order would be chimerical. Not only were the respondents completely prevented from making profitable use of their property, but the Government acquired all that it wanted from the mines -- their complete immobilization and the resulting discharge of the hardrock miners. It is plain that, as a practical matter, the Order led to consequences no different from those that would have followed the temporary acquisition of physical possession of these mines by the United States.

In these circumstances, making the respondents' right to compensation turn on whether the Government took the ceremonial step of planting the American flag on the mining premises is surely to permit technicalities of form to dictate consequences of substance. In my judgment, the present case should be viewed precisely as if the United States, in order to accomplish its purpose of freeing gold miners for essential work, had taken possession of the gold mines and allowed them to lie fallow for the duration of the war. Had the Government adopted the latter course, it is hardly debatable that respondents would have been entitled to compensation. *United States v. Pewee Coal Co.* (1951).

As the Court recognizes, governmental action in the form of regulation which severely diminishes the value of property may constitute a "taking." . . . In my opinion, application of this principle calls here for the conclusion that there was a "taking," for it is difficult to conceive of a greater impairment of the use of property by a regulatory measure than that suffered by the respondents as a result of L-208.

None of the cases relied on by the Government precludes our acknowledging the confiscatory nature of L-208 and according respondents just compensation. Except in the extraordinary situation where private property is destroyed by American armed forces to meet the exigencies of the military situation in a theatre of war, see *United States v. Caltex, Inc.* (1952), no case in this Court has held that the Government is excused from providing compensation when property has been "taken" from its owners during wartime in the interest of the common good. Cases such as *Yakus v. United States* (1944) involving the wartime regulation of prices, rents, and profits, are wide of the mark. In all of them, the Government was administering a nationwide regulatory system, rather than a narrowly confined order directed to a small, singled-out category of individual concerns. Furthermore, none of the regulations involved in those cases prohibited the profitable exploitation of a legal business. . . .

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. . . . [T]he Court was rightfully reluctant to sanction compensation for losses resulting from wartime regulatory measures which, under conditions of total mobilization, have ramifications touching everyone in one degree or another. But where the Government proceeds by indirection, and accomplishes by regulation what is the equivalent of outright physical seizure of private property, courts should guard themselves against permitting formalities to obscure actualities. . . .

We should treat L-208 as being what, in every realistic sense, it was, a temporary confiscation of respondents' property. . . .