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. Pewee Coal Co., Inc., 341 U.S. 114 (1951)**

*From May to October of 1943, the United States government possessed and operated the Pewee Coal Co. in order to prevent a coalminer strike in the midst of World War II. The mine operator filed suit in the federal court of claims to recover the operating losses it had suffered during this period. The court of claims ruled that the seizure of the mine was a constitutional taking requiring compensation, though it awarded a smaller amount than the company was seeking. The federal government appealed that ruling to the U.S. Supreme Court contending that the seizure of the mine was not a constitutional taking. The justices all agreed that the government’s temporary operation of the coal mine was a constitutional taking, but they disagreed over how best to determine the constitutionally required compensation. The majority held that the government was responsible for the operating losses incurred by the mine while under government control, but the dissenters thought there could be no compensable value when the government took temporary control over an ongoing but unprofitable enterprise.*

JUSTICE BLACK, delivered the opinion of the Court.

. . . .

We agree with the Court of Claims that there was a "taking" requiring the Government to pay Pewee. . . . The following are sufficient to show the general picture: on May 1, 1943, the President issued Executive Order 9340 directing the Secretary of Interior “. . . to take immediate possession, so far as may be necessary or desirable, of any and all mines producing coal in which a strike or stoppage has occurred or is threatened, . . . and to operate or arrange for the operation of such mines. . . .”

. . . . To convince the operators, miners, and public that the United States was taking possession for the *bona fide* purpose of operating the mines, the Government formally and ceremoniously proclaimed that such was its intention. It required mine officials to agree to conduct operations as agents for the Government; required the American flag to be flown at every mine; required placards reading "United States Property," to be posted on the premises, and appealed to the miners to dig coal for the United States as a public duty. Under these circumstances, and in view of the other facts which were found, it should not and will not be assumed that the seizure of the mines was a mere sham or pretense to accomplish some unexpressed governmental purpose instead of being the proclaimed actual taking of possession and control. . . . In *United States v. United Mine Workers* (1947)*,* there had been a government seizure of the mines under presidential and secretarial orders which, insofar as here material, were substantially the same as those issued in the present case. . . . We treated that seizure as making the mines governmental facilities "in as complete a sense as if the Government held full title and ownership." It follows almost as a matter of course from our holding in *United Mine Workers* that the Government here "took" Pewee's property and became engaged in the mining business.

Having taken Pewee's property, the United States became liable under the Constitution to pay just compensation. Ordinarily, fair compensation for a temporary possession of a business enterprise is the reasonable value of the property's use. *United States v. General Motors Co*. (1945). But, in the present case, there is no need to consider the difficult problems inherent in fixing the value of the use of a going concern, because Pewee neither claimed such compensation nor proved the amount. It proceeded on the ground that the Fifth Amendment requires the United States to bear operating losses incurred during the period the Government operates private property in the name of the public without the owner's consent. We believe that this contention expresses a correct general principle. . . .

Like any private person or corporation, the United States normally is entitled to the profits from, and must bear the losses of, business operations which it conducts. When a private business is possessed and operated for public use, no reason appears to justify imposition of losses sustained on the person from whom the property was seized. This is conceptually distinct from the Government's obligation to pay fair compensation for property taken, although, in cases raising the issue, the Government's profit and loss experience may well be one factor involved in computing reasonable compensation for a temporary taking. . . .

. . . . Whatever might have been Pewee's losses had it been left free to exercise its own business judgment, the crucial fact is that the Government chose to intervene by taking possession and operating control. By doing so, it became the proprietor and, in the absence of contrary arrangements, was entitled to the benefits and subject to the liabilities which that status involves.

*Affirmed*.

JUSTICE REED, concurring.

I agree that, in this case, there was a "taking" by eminent domain that requires the Government to pay just compensation to the owner of the property for its use. However, it is impossible for me to accept the view that the "taking" in this case requires the United States to bear all operating losses during the period it controls the property without the owner's consent or agreement. Such a view would lead to disastrous consequences where properties necessarily taken for the benefit of the Nation have a long record of operating losses, *e.g.,* certain railroads, coal mines, or television broadcasting stations. . . .

This is a temporary taking. The relatively new technique of temporary taking by eminent domain is a most useful administrative device: many properties, such as laundries, or coal mines, or railroads, may be subjected to public operation only for a short time to meet war or emergency needs, and can then be returned to their owners. However, the use of the temporary taking has spawned a host of difficult problems, especially in the fixing of the just compensation. . . .

Temporary takings can assume various forms. There may be a taking in which the owners are ousted from operation, their business suspended, and the property devoted to new uses. . . . A second kind of taking is where, as here, the Government, for public safety or the protection of the public welfare, "takes" the property in the sense of assuming the responsibility of its direction and employment for national purposes, leaving the actual operations in the hands of its owners as government officials appointed to conduct its affairs with the assets and equipment of the controlled company. . . .

. . . .

So far as the second kind of temporary "taking" is concerned, the Government's supervision of a losing business for a temporary emergency ought not to place upon the Government the burden of the losses incurred during that supervision unless the losses were incurred by governmental acts, *e.g.,* if the business would not have been conducted at all but for the Government, or if extra losses over what would have been otherwise sustained were occasioned by Government operations. Where the owner's losses are what they would have been without the "taking," the owner has suffered no loss or damage for which compensation is due. . . .

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JUSTICE BURTON, with whom CHIEF JUSTICE VINSON, JUSTICE CLARK, and JUSTICE MINTON concur, dissenting.

I agree that there was a "taking" of the mining property from May 1 to October 12, 1943, but I find no ground for allowing the respondent to recover the sum here sought as compensation for such taking.

This case is within the principle stated in *Marion & Rye Valley R. Co. v. United States* (1926), as follows:

"[E]ven if there was technically a taking, the judgment for defendant was right. Nothing was recoverable as just compensation, because nothing of value was taken from the company, and it was not subjected by the Government to pecuniary loss. Nominal damages are not recoverable in the Court of Claims."

Here, there is no showing by the company of any rental value due it as compensation for the Government's possession of its properties. There is no showing that anything of compensable value was taken by the Government from the company, or that the Government subjected the company to any pecuniary loss. . . .