



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 7: The Republican Era – Powers of the National Government

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Hoe v. United States, 218 U.S. 322 (1910)

In 1883, Congress created the Civil Service Commission to oversee the creation of the civil service system that would insulate federal employees from electoral politics. One provision of that law directed the secretary of the interior to find "suitable and convenient rooms and accommodations" in the District of Columbia for the use of the Commission. In 1900, the secretary found new accommodations for the growing work of the Commission in a building owned by Robert Hooe, arranging to occupy for one year a building, excepting the basement, for \$4,000, which was the amount that had been appropriated by Congress for that purpose. When it moved in, however, the Commission took possession of the basement along the rest of the building. Hooe did not pursue legal action against the Commission to force it to vacate the basement. The next year, Congress again appropriated \$4,000 for the Commission's offices, but Hooe and his partner refused to renew the lease on the entire building, including the basement, for less than \$6,000. The lease was not renewed, but the Commission remained in the building for another year, and Hooe was given \$4,000 for the year. For the next year, the secretary of the interior requested an appropriation of \$6,000 for the building, and Hooe testified before Congress that he would not accept less than that amount for use of the property, but Congress again appropriated only \$4,000, and the Commission continued to use the entire building. The situation continued in this fashion until Hooe finally brought suit against the government in the U.S. Court of Claims in 1905 for \$9,000, which he asserted was the fair market value of the basement space that that Commission had occupied for those years. The claim was denied, and Hooe appealed to the U.S. Supreme Court, which affirmed the decision of the Court of Claim.

If Congress refuses to appropriate as much money as the executive branch wants to fund its activities, should the executive branch be able to simply act as it wants anyway and thus create judicially enforceable "implied contracts"? If the Civil Service Commission wanted to expand its activities beyond what the congressional budget would accommodate, could it simply act and let the affected individuals get their payment through the courts?

JUSTICE HARLAN delivered the opinion of the Court.

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Looking at the statutes in force at the time the transactions here in question occurred, we find that by § 3679 of the Revised Statutes, it was provided that "no department of the Government shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract for the future payment of money in excess of such appropriations;" and by § 3732, that "no contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment"

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. . . . [T]he plaintiffs and all others dealing with officers of the Government were distinctly advised as to the amount appropriated by Congress for any specified purpose, and knew, or are to be deemed to have known, that when they received such specified amount for the purpose named, it was intended by Congress to be in full compensation for the service rendered for the Government in that fiscal year. The plaintiffs received before the bringing of this suit the appropriation made by Congress specifically for rent of the building for the Civil Service Commission, during the entire period of the Commission's occupancy and use of it. . . . It is also true that the plaintiffs complained that the amount appropriated was inadequate, but they accepted and receipted for it as the sum appropriated by Congress for purposes of rent for the Commission, expecting or hoping, no doubt, that Congress would,



in due time, remedy the wrong which, as they insisted, had been and was being done to them in respect both of the building and its basement.

. . . . It is for Congress, proceeding under the Constitution, to say what amount may be drawn from the Treasury in pursuance of an appropriation. The statutes above referred to make it plain that the Secretary was without power to make any express contract for rent in excess of the appropriation made by Congress, particularly where, as here, Congress had taken care to say, in respect of each year's rent, that the appropriation shall be in full compensation for the specific purpose named in the appropriation act. It is equally clear that the Secretary could not, by his acts, create a state of things from which, in the absence of legislation on the subject, an implied contract could arise under which the Government would be liable, by reason of its constitutional duty, to make just compensation for the use of private property taken for public purposes. In such a case the remedy is with Congress, and not with the courts. . . .

. . . .
But it is contended by the plaintiffs that their right to recover does not depend upon contract, expressed or implied, but upon the duty, expressly imposed by the Constitution [in the Fifth Amendment], to make just compensation for private property taken for public use. . . . The claims here in question, it is argued, can be rested exclusively on the Constitution, without reference to any statute of the United States, or to any contract arising under an act of Congress. The argument is ingenious but it is unsound. It cannot be said that any claim for a specific amount of money against the United States is founded on the Constitution, unless such claim be either, expressly or by necessary implication, authorized by some valid enactment of Congress. . . . The constitutional prohibition against taking private property for public use without just compensation is directed against the Government, and not against individual or public officers proceeding without the authority of legislative enactment. The taking of private property by an officer of the United States for public use, without being authorized, expressly or by necessary implication, to do so by some act of Congress, is not the act of the Government. . . .

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The judgment must be *affirmed*.