Supplementary Material

Chapter 5: The Jacksonian Era—Individual Rights/Property/Contracts

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West River Bridge Co. v. Dix, 47 U.S. 507 (1848)

The Vermont legislature in 1795 passed a law incorporating the West River Bridge Company. The measure gave the company the right to build a bridge over the West River in Brattleboro and to collect tolls from the bridge for one hundred years. In 1843, Joseph Dix and other citizens in Brattleboro petitioned local officials to have a free road built across the West River. A local commission accepted that recommendation. The commission condemned the existing bridge and agreed to compensate the West River Bridge Company for their property. The West River Bridge Company, unhappy with the proposed arrangement, brought a lawsuit against Dix and the commissioners. The Company claimed that the condemnation order violated the contracts clause of the national constitution because the statute incorporating their company gave them the right to collect tolls for one hundred years. Dix responded that the proposed exercise of eminent domain did not violate the contract, as long as fair compensation was paid. The local county court and the Supreme Court of Vermont ruled that the commission had acted constitutionally. The West River Bridge Company appealed those decisions to the Supreme Court of the United States.

Justice McLean's majority opinion sustained the Vermont court rulings. He declared that states do not violate the contracts clause when they condemn land originally granted to private parties, as long as the state paid fair compensation. This seems similar to a takings clause analysis. In Barron v. Baltimore *(1833), the Supreme Court held that the takings clause of the Fifth Amendment does not limit state power. Does* Dix *blunt the practical impact of that decision by declaring that uncompensated state takings violate the contracts clause? Could Barron have won his case by relying on the contracts clause of the Constitution? How, if at all, does the contracts clause analysis in* Dix *different from the taking clause analysis in the cases that follow?*

JUSTICE McLEAN

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The power in a State to take private property for public use is undoubted. It is an incident to sovereignty, and its exercise is often essential to advance the public interests. This act is done under the regulations of the State. . . .

This act by a State has never been held to impair the obligations of the contract by which the property appropriated was held. The power acts upon the property, and not on the contract. A State cannot annul or modify a grant of land fairly made. But it may take the land for public use. This is done by making compensation for the property taken, as provided by law. But if it be an appropriation of property to public use, it cannot be held to impair the obligations of the contract.

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If the action of the State had been upon the franchise only, this objection would be unanswerable. The State cannot modify or repeal a charter for a bridge, a turnpike-road, or a bank, or any other private charter, unless the power to do so has been reserved in the original grant. But no one doubts the power of the State to take a banking-house for public use, or any other real or personal property owned by the bank. In this respect, a corporation holds property subject to the eminent domain, the same as citizens. . . .

The franchise no more than a grant for land can be annulled by the State. . . . [T]he property held under both is held subject to a public necessity, to be determined by the State. In either case, the property being taken renders valueless the evidence of right. But this does not, in the sense of the Constitution,

impair the contracts. The bridge and the ground connected with it, together with the right of exacting toll, are the elements which constitute the value of the bridge. The situation and productiveness of the soil constitute the value of land. In both cases, an estimate is made of the value, under prescribed forms, and it is paid when the property is taken for public use. And in these cases the evidences of right are incidents to the property.

No State could resume a charter, under the power of appropriation, and carry on the functions of the corporation. A bank charter could not be thus taken, and the business of the bank continued for public purposes. Nor could this bridge have been taken by the State, and kept up by it, as a toll-bridge. This could not be called an appropriation of private property to public purposes. There would be no change in the use, except the application of the profits, and this would not bring the act within the power. The power must not only be exercised *bona fide* by a State, but the property, not its product, must be applied to public use.

It is argued, that, if the State may take this bridge, it may transfer it to other individuals, under the same or a different charter. This the State cannot do. It would in effect be taking the property from A to convey it to B. The public purpose for which the power is exerted must be real, not pretended. If in the course of time the property, by a change of circumstances, should no longer be required for public use, it may be otherwise disposed of. But this is a case not likely to occur. The legality of the act depends upon the facts and circumstances under which it was done. If the use of land taken by the public for a highway should be abandoned, it would revert to the original proprietor and owner of the fee.

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. . . . The power of appropriation by a State has never been held by any judicial tribunal as impairing the obligation of a contract, in the sense of the Constitution. And this power has been frequently exercised by all the States, since the adoption of the Constitution. In the fifth article of the amendments to the Constitution it is declared, 'Nor shall private property be taken for public use without just compensation.' This refers to the action of the federal government, but a similar provision is contained in all the State constitutions. Now the Constitution does not prohibit a State from impairing the obligation of a contract unless compensation be made, but the inhibition is absolute. So that if such an act come within the prohibition, the act is unconstitutional. But this power has been exercised by the States, since the foundation of the government, and no one has supposed that it was prohibited by that clause in the Constitution which inhibits a State 'from impairing the obligations of a contract.'

The only reasonable result, therefore, to which we can come is, that the power in the State is an independent power, and does not come within the class of cases prohibited by the Constitution. This view gives effect to the Constitution in imposing a salutary restraint upon legislation affecting contracts, but leaves the States free in their exercise of the eminent domain, which belongs to their sovereignties, is essential for the advancement of internal improvements, and acts only upon property within their respective jurisdictions. The powers do not belong to the same class. That which acts upon contracts and impairs their obligation only is prohibited.

JUSTICE WOODBURY

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. . . [A]ll the property in a State is derived from, or protected by, its government, and hence is held subject to its wants in taxation, and to certain important public uses, both in war and peace. . . . Where a charter is granted after laws exist to condemn property when needed for public purposes, others might well rest such a right on the hypothesis, that such laws are virtually a part and condition of the grant itself. . . . But, however derived, this eminent domain exists in all governments. . . . I concur in the views of the court, that it still remains in each State of the Union in a case like the present, having never been granted to the general government so far as respects the public highways of a State, and that it extends to the taking for public use for a road any property in the State, suitable and necessary for it. . . . But whether it could be taken without compensation, where no provision exists like that in the fifth amendment of the Constitution of the United States, or that in the Vermont constitution, somewhat

similar, is a more difficult question, and on which some have doubted. . . . I do not mean to express any opinion on this, as it is not called for by the facts of this case. But compensation from the public in such cases prevails generally in modern times, and certainly seems to equalize better the burden. . . .

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[I]f any property of any kind is not so situated as to be either in the direct path for a public highway, or be really needed to build it, the inclination of my mind is, that it cannot be taken against the consent of the owner. Because, though the right of eminent domain exists in some cases, it does not exist in all, nor as to all property, but probably as to such property only as, from its locality and fitness, is necessary to the public use. . . .

Nor do I agree that, in all cases of a public use, property which is suitable or appropriate can be condemned. The public use here is for a road, and the reasoning and cases are confined chiefly to bridges and roads, and the incident to war. But the doctrine, that this right of eminent domain exists for every kind of public use, or for such a use when merely convenient, though not necessary, does not seem to me by any means clearly maintainable. It is too broad, too open to abuse. Where the public use is one general and pressing, like that often in war for sites of batteries, or for provisions, little doubt would exist as to the right. . . . So as to a road, if really demanded in particular forms and places to accommodate a growing and changing community, and to keep up with the wants and improvements of the age,—such as its pressing demands for easier social intercourse, quicker political communication, or better internal trade,—and advancing with the public necessities from blazed trees to bridle-paths, and thence to wheel-roads, turnpikes, and railroads.

But when we go to other public uses, not so urgent, not connected with precise localities, not difficult to be provided for without this power of eminent domain, and in places where it would be only convenient, but not necessary, I entertain strong doubts of its applicability. Who ever heard of laws to condemn private property for public use, for a marine hospital or state prison?

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It is not enough that there is an act of incorporation for a bridge, or turnpike, or railroad, to make them public, so as to be able to take private property constitutionally, without the owner's consent; but their uses, and object, or interests, must be what has just been indicated,—must in their essence, and character, and liabilities, be public within the meaning of the term 'public use.' There may be a private bridge, as well as private road, or private railroad, and this with or without an act of incorporation.

In the present instance, however, the use was to be for the whole community, and not a corporation of any kind. The property was taken to make a free road for the people of the State to use, and was thus eminently for a public use, and where there had before been tolls imposed for private profit and by a private corporation so far as regards the interest in its tolls and property.

And the only ground on which that corporation, private in interest, was entitled in any view originally to condemn land or collect tolls was, that the use of its bridge was public, was open to all and at rates of fare fixed by the legislature and not by itself, and subject to the revision and reduction of the public authorities.

It may be, and truly is, that individuals and the public are often extensively benefited by private roads, as they are by mills, and manufactories, and private bridges. But such a benefit is not technically nor substantially a public use, unless the public has rights . . .

JUSTICE WAYNE delivered a dissenting opinion.