

by the Supreme Court. In *Kohl v. United States*⁵⁸⁶ any doubts were laid to rest, as the Court affirmed that the power was as necessary to the existence of the National Government as it was to the existence of any state. The federal power of eminent domain is, of course, limited by the grants of power in the Constitution, so that property may only be taken for the effectuation of a granted power,⁵⁸⁷ but once this is conceded the ambit of national powers is so wide-ranging that vast numbers of objects may be effected.⁵⁸⁸ This prerogative of the National Government can neither be enlarged nor diminished by a state.⁵⁸⁹ Whenever lands in a state are needed for a public purpose, Congress may authorize that they be taken, either by proceedings in the courts of the state, with its consent, or by proceedings in the courts of the United States, with or without any consent or concurrent act of the state.⁵⁹⁰

“Prior to the adoption of the Fourteenth Amendment,” the power of eminent domain of state governments “was unrestrained by any federal authority.”⁵⁹¹ The Just Compensation Clause of the Fifth Amendment did not apply to the states,⁵⁹² and at first the contention that the Due Process Clause of the Fourteenth Amendment afforded property owners the same measure of protection against the states as the Fifth Amendment did against the Federal Government was rejected.⁵⁹³ However, within a decade the Court rejected the opposing argument that the amount of compensation to be awarded in a state eminent domain case is solely a matter of local law. On

⁵⁸⁶ 91 U.S. 367 (1876).

⁵⁸⁷ *United States v. Gettysburg Electric Ry.*, 160 U.S. 668, 679 (1896).

⁵⁸⁸ *E.g.*, *California v. Central Pacific Railroad*, 127 U.S. 1, 39 (1888) (highways); *Luxton v. North River Bridge Co.*, 153 U.S. 525 (1894) (interstate bridges); *Cherokee Nation v. Southern Kansas Ry.*, 135 U.S. 641 (1890) (railroads); *Albert Hanson Lumber Co. v. United States*, 261 U.S. 581 (1923) (canal); *Ashwander v. TVA*, 297 U.S. 288 (1936) (hydroelectric power). “Once the object is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear. For the power of eminent domain is merely the means to the end.” *Berman v. Parker*, 348 U.S. 26, 33 (1954).

⁵⁸⁹ *Kohl v. United States*, 91 U.S. 367 374 (1876).

⁵⁹⁰ *Chappell v. United States*, 160 U.S. 499, 510 (1896). The fact that land included in a federal reservoir project is owned by a state, or that its taking may impair the state’s tax revenue, or that the reservoir will obliterate part of the state’s boundary and interfere with the state’s own project for water development and conservation, constitutes no barrier to the condemnation of the land by the United States. *Oklahoma ex rel. Phillips v. Atkinson Co.*, 313 U.S. 508 (1941). So too, land held in trust and used by a city for public purposes may be condemned. *United States v. Carmack*, 329 U.S. 230 (1946).

⁵⁹¹ *Green v. Frazier*, 253 U.S. 233, 238 (1920).

⁵⁹² *Barron v. Baltimore*, 32 U.S. (7 Pet.) 243 (1833).

⁵⁹³ *Davidson v. City of New Orleans*, 96 U.S. 97 (1878). The Court attached most weight to the fact that both due process and just compensation were guaranteed in the Fifth Amendment while only due process was contained in the Fourteenth, and refused to equate the missing term with the present one.