

that retrospectively affects rights to sue, such as shortening or lengthening statutes of limitation, and the like, although these have typically arisen in state contexts. In one decision, the Court sustained an award of additional compensation under the Longshoremen's and Harbor Workers' Compensation Act, made pursuant to a private act of Congress passed after expiration of the period for review of the original award, directing the Commission to review the case and issue a new order, the challenge being made by the employer and insurer.⁵⁷⁹

Deprivation of Liberty: Economic Legislation.—The proscription of deprivation of liberty without due process, insofar as substantive due process was involved, was long restricted to invocation against legislation deemed to abridge liberty of contract.⁵⁸⁰ The two leading cases invalidating federal legislation, however, have both been overruled, as the Court adopted a very restrained standard of review of economic legislation.⁵⁸¹ The Court's hands-off policy with regard to reviewing economic legislation is quite pronounced.⁵⁸²

NATIONAL EMINENT DOMAIN POWER

Overview

"The Fifth Amendment to the Constitution says 'nor shall private property be taken for public use, without just compensation.' This is a tacit recognition of a preexisting power to take private property for public use, rather than a grant of new power."⁵⁸³ Eminent domain "appertains to every independent government. It requires no constitutional recognition; it is an attribute of sovereignty."⁵⁸⁴ In the early years of the nation the federal power of eminent domain lay dormant as to property outside the District of Columbia,⁵⁸⁵ and it was not until 1876 that its existence was recognized

⁵⁷⁹ *Paramino Co. v. Marshall*, 309 U.S. 370 (1940).

⁵⁸⁰ See "Liberty of Contract" heading under Fourteenth Amendment, *infra*.

⁵⁸¹ *Adair v. United States*, 208 U.S. 161 (1908), overruled in substance by *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177 (1941); *Adkins v. Children's Hospital*, 261 U.S. 525 (1923), overruled by *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

⁵⁸² *E.g.*, *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166 (1980); *Schweiker v. Wilson*, 450 U.S. 221 (1981).

⁵⁸³ *United States v. Carmack*, 329 U.S. 230, 241–42 (1946). The same is true of "just compensation" clauses in state constitutions. *Boom Co. v. Patterson*, 98 U.S. 403, 406 (1879). For in-depth analysis of the eminent domain power, see 1 NICHOLS ON EMINENT DOMAIN (Julius L. Sackman, 2006).

⁵⁸⁴ *Boom Co.*, 98 U.S. at 406.

⁵⁸⁵ Prior to this time, the Federal Government pursued condemnation proceedings in state courts and commonly relied on state law. *Kohl v. United States*, 91 U.S. 367, 373 (1876); *United States v. Jones*, 109 U.S. 513 (1883). The general statutory authority for federal condemnation proceedings in federal courts was not enacted until 1888. Act of Aug. 1, 1888, ch. 728, 25 Stat. 357. See 1 NICHOLS ON EMINENT DOMAIN § 1.24[5] (Julius L. Sackman, 2006).