

in kind,⁶²³ but more recently has cast some doubt on this assertion.⁶²⁴ Just compensation is measured “by reference to the uses for which the property is suitable, having regard to the existing business and wants of the community, or such as may be reasonably expected in the immediate future, . . . [but] ‘mere possible or imaginary uses or the speculative schemes of its proprietor, are to be excluded.’”⁶²⁵ The general standard thus is the market value of the property, *i.e.*, what a willing buyer would pay a willing seller.⁶²⁶ If fair market value does not exist or cannot be calculated, resort must be had to other data which will yield a fair compensation.⁶²⁷ However, the Court is resistant to alternative standards, having repudiated reliance on the cost of substitute facilities.⁶²⁸ Just compensation is especially difficult to compute in wartime, when enormous disruptions in supply and governmentally imposed price ceilings totally skew market conditions. Holding that the reasons which underlie the rule of market value when a free market exists apply as well where value is measured by a government-fixed ceiling price, the Court permitted owners of cured pork and black pepper to recover only the ceiling price for the commodities, despite findings by the Court of Claims that the replacement cost of the meat exceeded its ceiling price and that the pepper had a “retention value”

United States v. Chandler-Dunbar Co., 229 U.S. 53 (1913); United States v. Twin City Power Co., 350 U.S. 222 (1956). Attorneys’ fees and expenses are not embraced in the concept. *Dohany v. Rogers*, 281 U.S. 362 (1930).

Applying the owner’s-loss standard, the Court addressed a state program requiring lawyers to deposit client funds that cannot earn net interest in a pooled account generating interest for indigent legal aid. *Brown*, 538 U.S. at 237. Assuming a taking of the client’s interest, his pecuniary loss is nonetheless zero; hence, the just compensation required is likewise. *Brown* is in tension with the Court’s earlier treatment of a similar state program, where it recognized value in the possession, control, and disposition of the interest. *Phillips v. Washington Legal Found.*, 524 U.S. 156, 170 (1998).

⁶²³ *Van Horne’s Lessee v. Dorrance*, 2 U.S. (2 Dall.) 304, 315 (C.C. Pa. 1795); *United States v. Miller*, 317 U.S. 369, 373 (1943).

⁶²⁴ *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 150–51 (1974).

⁶²⁵ *Chicago B. & Q. R.R. v. Chicago*, 166 U.S. 226, 250 (1897); *McGovern v. City of New York*, 229 U.S. 363, 372 (1913). *See also* *Boom Co. v. Patterson*, 98 U.S. 403 (1879); *McCandless v. United States*, 298 U.S. 342 (1936).

⁶²⁶ *United States v. Miller*, 317 U.S. 369, 374 (1943); *United States ex rel. TVA v. Powelson*, 319 U.S. 266, 275 (1943). *See also* *United States v. New River Collieries Co.*, 262 U.S. 341 (1923); *Olson v. United States*, 292 U.S. 264 (1934); *Kimball Laundry Co. v. United States*, 338 U.S. 1 (1949). Exclusion of the value of improvements made by the government under a lease was held constitutional. *Old Dominion Land Co. v. United States*, 269 U.S. 55 (1925).

⁶²⁷ *United States v. Miller*, 317 U.S. 369, 374 (1943).

⁶²⁸ *United States v. 564.54 Acres of Land*, 441 U.S. 506 (1979) (condemnation of church-run camp); *United States v. 50 Acres of Land*, 469 U.S. 24 (1984) (condemnation of city-owned landfill). In both cases the Court determined that market value was ascertainable.