



KOHL v. UNITED STATES
SUPREME COURT OF THE UNITED STATES
91 U.S. 367
March 27, 1876

JUSTICE STRONG...[Eminent domain used to purchase land for a “federal building.”] It has not been seriously contended...that the United States government is without power to appropriate lands or other property within the States for its own uses, and to enable it to perform its proper functions. Such an authority is essential to its independent existence and perpetuity which cannot be preserved if the obstinacy of a private person, or if any other authority, can prevent the acquisition of the means or instruments by which alone governmental functions can be performed. **The powers vested by the Constitution in the general government demand for their exercise the acquisition of lands in all the States. These are needed for forts, armories, and arsenals, for navy-yards and light-houses, for custom-houses, post-offices, and court-houses, and for other public uses.** If the right to acquire property for such uses may be made a barren right by the unwillingness of property-holders to sell, or by the action of a State prohibiting a sale to the Federal government, the constitutional grants of power may be rendered nugatory, and the government is dependent for its practical existence upon the will of a State, or even upon that of a private citizen. This cannot be...

So, at this early stage (1876) we at least know that land for use as forts, armories, arsenals, navy-yards, light-houses, custom-houses, post-offices and court-houses qualify as “public uses.” We also know that States (or lesser government units) cannot stand in the way of an otherwise proper **Federal** acquisition.

...When the power to establish post-offices and to create courts within the States was conferred upon

the Federal government, included in it was authority to obtain sites for such offices and for court-houses...**The Constitution itself contains an implied recognition of [the power of eminent domain] beyond what may justly be implied from the express grants. The fifth amendment contains a provision that private property shall not be taken for public use without just compensation. What is that but an implied assertion, that, on making just compensation, it may be taken?**

Interesting!

Justice Patterson, a Framers, called eminent domain a “despotic power”; yet, he recognized it as essential. In the American colonies, property was taken to promote economic growth. “Mill Acts,” for example, allowed grist mill owners to erect dams and flood property (for compensation) to promote industry. Congress was slow to use this power and did not generally act to “take” property until well after the Civil War. Prior to that, the Federal Government relied upon the States to “take,” then dealt directly with the States if the Feds needed ground.

“**Eminent domain condemnation**” is not the same animal as “**derelict building condemnation.**” In the latter, government does not generally “take” property. Instead, it tears it down because, for example, it is dangerous. Then, it goes after the owner to collect the cost of doing so, but “ownership” generally remains with the “original owner.”