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A Legal Mechanism for Nationalizing the Coal Industry (/full-blog/2013/07/a-legal-mechanism-for-nationalizing.html)

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In my last blog post I argued the coal industry should be nationalized because it’s too hard to regulate. [i] This step could be beneficial as part of a Green New Deal economic public works program. To pull the economy of Central Appalachia up, UK Law alum Harry Caudill argued for a Southern Mountain Authority, which would encompass nationalized coal and gas reserves. [ii] He believed that a democratic and planned economy was necessary to save the region from poverty and ecological destruction. [iii]

The name Caudill chose for this entity was obviously meant to evoke the Tennessee Valley Authority. [iv] However, where the TVA was conceived as a massive public works to bring employment and infrastructure to a region with no industry, the Southern Mountain Authority would require the
The wholesale absorption of a private industry into the public sector.

His plan meant literally seizing the mineral assets and mining equipment of the great oil and gas companies.

The Fifth Amendment, of course, prevents the wholesale expropriation of such assets without "just compensation." This cannot stand in the way of the Southern Mountain Authority.

There are examples of how to practice nationalization within our Anglo-American common law system. In twentieth century Britain, the need to marshal resources during two world wars and bitter industrial struggles ensured that the coal industry would be nationalized.

In 1947, the Labour government, backed by the militant miners' union, brought the coal industry into the public sector.

In Britain, the procedure by which the transfer of private property into public control was effected was a vesting provision in the nationalization act which provided that on the appointed day certain assets should vest in the corporation created by the act. This took either the direct form of vesting a public entity with real and personal property or the indirect form of vesting a public entity with the shares of a private corporation.

While the Labour government and the National Union of Miners both espoused an agenda of socialism on the installment plan at that time, scholars and British courts have juxtaposed this kind of nationalization to that practiced in the old Eastern bloc. The difference overcomes the Fifth Amendment problem:

The right to compensation is one of the features which distinguish the nationalization of basic industries in Britain from the expropriation of property carried out in communist countries.

Without prejudice, we can take the coal companies. Barring a social revolution that amends the Constitution, we will compensate the shareholders.

Some critics will note that "the era of big government is over" and that, under a very different Labour government, what's left of the British coal industry re-entered the private sector in 1994. Perhaps the United Mine Workers should be calling for the nationalization of Patriot, Peabody, and Arch?
Agree. Nationalization of the coal industry and an important natural resource solves, at this time, more social, economic and environmental problems with the industry than it would create.