

tension was expressed by Mr. Justice Brandeis in Lynch v.

United States: 1/

The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment . . . . When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals . . . . As Congress had the power to authorize [the contracts at issue], the due process clause prohibits the United States from annulling them, unless, indeed, the action taken falls within the federal police power or some other paramount power. (Emphasis added.)

A great number of opinions have been written and a vast body of literature created in an effort to accommodate the contract and due process clauses with the reserved rights of the state and federal governments. 2/

For the purposes of this analysis, it is sufficient to say that a delicate weighing of interests would be required in light of the facts in order to predict the potential outcome of any particular action by the United States. A variety of factors have been considered important by the courts in making such determinations: whether the government action merely reduces the value of property or deprives the owner of "all or most of his interest"; whether

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1/ 292 U.S. 571, 579 (1934).

2/ See F. Bosselman, D. Callies & J. Banta, The Taking Issue (1973); Hale, The Supreme Court and the Contract Clause, 57 Harv. L. Rev. 512, 621, 852 (1944); Warren, The Contract Clause of the Constitution (1938).