the contrary, the Court ruled, although a state "legislature may prescribe a form of procedure to be observed in the taking of private property for public use, . . . it is not due process of law if provision be not made for compensation. . . . The mere form of the proceeding instituted against the owner . . . cannot convert the process used into due process of law, if the necessary result be to deprive him of his property without compensation." [594] Although the guarantees of just compensation flow from two different sources, the standards used by the Court in dealing with the issues appear to be identical, and both federal and state cases will be dealt with herein without expressly continuing to recognize the two different bases for the rulings.

The power of eminent domain is inherent in government and may be exercised only through legislation or legislative delegation. Although such delegation is usually to another governmental body, it may also be to private corporations, such as public utilities, railroad companies, or bridge companies, when they are promoting a valid public purpose.[595]

Public Use

Explicit in the Just Compensation Clause is the requirement that the taking of private property be for a public use; one cannot be deprived of his property for any reason other than a public use, even with compensation.[596] The question whether a particular intended use is a public use is clearly a judicial one,[597] but the Court has always insisted on a high degree of judicial deference to the legislative determination.[598] "The role of the judiciary in determining whether that power is being exercised for a public use is an extremely narrow one." [599] When it is state action being challenged under the Fourteenth Amendment, there is the additional factor of the Court's willingness to defer to the highest court of the state in

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[594] Chicago B. & Q. R.R. v. City of Chicago, 166 U.S. 226, 233, 236–37 (1897). *See also* Sweet v. Rechel, 159 U.S. 380, 398 (1895).

[595] Noble v. Oklahoma City, 297 U.S. 481 (1936); Luxton v. North River Bridge Co., 153 U.S. 525 (1895). One of the earliest examples of such delegation is Curtiss v. Georgetown & Alexandria Turnpike Co., 10 U.S. (6 Cr.) 233 (1810).

[596] Fallbrook Irrigation Dist. v. Bradley, 164 U.S. 112, 158–59 (1896); Cole v. La Grange, 113 U.S. 1, 6 (1885).

[597] "It is well established that in considering the application of the Fourteenth Amendment to cases of expropriation of private property, the question what is a public use is a judicial one." City of Cincinnati v. Vester, 281 U.S. 439, 444 (1930).

[598] Kelo v. City of New London, 545 U.S. 469, 482 (2005). The taking need only be "rationally related to a conceivable public purpose." Id. at 490 (Justice Kennedy concurring).

[599] Berman v. Parker, 348 U.S. 26, 32 (1954) (federal eminent domain power in District of Columbia).