regime predating plaintiff's acquisition of the property. In *Palazzolo v. Rhode Island*,[726] the Court forcefully rejected the absolute version of the notice rule, regardless of rationale. Under such a rule, it said, "[a] State would be allowed, in effect, to put an expiration date on the Takings Clause."[727] Whether any role is left for preacquisition regulation in the takings analysis, however, the Court's majority opinion did not say, leaving the issue to dueling concurrences from Justice O'Connor (prior regulation remains a factor) and Justice Scalia (prior regulation is irrelevant). Less than a year later, Justice O'Connor's concurrence carried the day in extended dicta in *Tahoe-Sierra*,[728] though the decision failed to elucidate the factors affecting the weighting to be accorded the pre-existing regime.

The "or otherwise" reference, the Court explained in *Lucas*,[729] was principally directed to cases holding that in times of great public peril, such as war, spreading municipal fires, and the like, property may be taken and destroyed without necessitating compensation. Thus, in *United States v. Caltex, Inc.*,[730] the owners of property destroyed by retreating United States armies in Manila during World War II were held not entitled to compensation, and in *United States v. Central Eureka Mining Co.*,[731] the Court held that a federal order suspending the operations of a nonessential gold mine for the duration of the war in order to redistribute the miners, unaccompanied by governmental possession and use or a forced sale of the facility, was not a taking entitling the owner to compensation for loss of profits. Finally, the Court held that when federal troops occupied several buildings during a riot in order to dislodge rioters and looters who had already invaded the buildings, the action was taken as much for the owners' benefit as for the general public benefit and the owners must bear the costs of the damage inflicted on the buildings subsequent to the occupation.[732]

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[726] 533 U.S. 606 (2001).

[727] 533 U.S. at 627.

[728] 535 U.S. at 335.

[729] 505 U.S. at 1029 n.16.

[730] 344 U.S. 149 (1952). In dissent, Justices Black and Douglas advocated the applicability of a test formulated by Justice Brandeis in Nashville, C. & St. L. Ry. v. Walters, 294 U.S. 405, 429 (1935), a regulation case, to the effect that "when particular individuals are singled out to bear the cost of advancing the public convenience, that imposition must bear some reasonable relation to the evils to be eradicated or the advantages to be secured."

[731] 357 U.S. 155 (1958).

[732] National Bd. of YMCA v. United States, 395 U.S. 85 (1969). "An undertaking by the government to reduce the menace from flood damages which were inevitable but for the Government's work does not constitute the Government a taker of all lands not fully and wholly protected. When undertaking to safeguard a large area