

South Dakota Newspapers
"We the People"
November 15, 2022

"Blaisdell: Constitutional Flexibility in
the Face of Crisis"

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The enormous pressures and hardships—financial, medical and psychological—inflicted on the citizenry by the Great Depression required creative governmental responses that stressed the limits of the Constitution.

In the face of the nation's gravest economic crisis, states struggled to find ways and means to keep Americans in their homes and on their farms. The historic job losses meant that millions could not meet mortgage obligations. Foreclosures forced citizens from their homes and into the streets, without any hope of state assistance since governmental coffers, once receptacles for tax dollars, were bare.

The Minnesota Moratorium Law, enacted on April 18, 1933, represented a humanitarian response to the crisis. Under the law, state courts were authorized, when urged by a hard-pressed debtor, to exempt property from foreclosure for the duration of the emergency, lasting no longer than May 1, 1935. Although the contract was modified, the debtor was required to pay \$40 per month during the extended payment period.

The Blaisdells were unable to meet their mortgage payments and successfully petitioned a Minnesota court for the moratorium extension. The Minnesota Supreme Court affirmed the lower court ruling. The Home Building & Loan Association, which held the Blaisdells' mortgage, appealed to the U.S. Supreme Court, asserting that the moratorium statute

violated the Contract Clause of the Constitution, located in Article 1, section 10: "No State shall enter into any Law . . . impairing the Obligation of Contracts." The provision, they contended, prevented the state from altering the terms of the mortgage.

In *Home Building and Loan Association v. Blaisdell* (1934), a case popularly known as the Minnesota Moratorium Case, the Court, in a 5-4 opinion written by Chief Justice Charles Evans Hughes, upheld the moratorium statute on the ground that the state police power was broad enough to alter the mortgage terms for a limited time. The landmark opinion was remarkable for its statesmanlike effort to balance two great constitutional principles—the Contract Clause and the Police Power—in a pragmatic, humanitarian manner that might save the housing and farm markets and, with it, the meaning that human beings attached to their homes and possessions.

Chief Justice Hughes' opinion for the Court emphasized some fundamental features of the Constitution. "Emergency does not create power," he wrote. "Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. While emergency does not create power, emergency may furnish the occasion for the exercise of power." The alternative proposition, namely, that emergencies create new powers, would have gutted the principle of limited constitutional government and the rule of law. Fortunately for America, the Hughes Court advanced no such proposition.

Hughes observed that the Contract Clause is not absolute and, while it may not be impaired, alteration is not impairment. The Clause limits the remedial processes that the state may employ, but "the state also continues to possess authority to safeguard the vital interests of its people." Hughes stressed the Court's commitment to maintaining the integrity of both

the Contract Clause and the police power through a balancing act that retained the core values of both principles. Hughes found "a growing appreciation of the necessity of finding a common ground between individual rights and the public welfare."

The Chief Justice declared: "It does not matter" that the moratorium law "has the effect of modifying contracts already in effect. Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of power is also read into contracts as a postulate of the legal order."

Neither principle—the Contract Clause or the police power—can be read to destroy the other, the Court said. They must be harmonized "to protect the vital interests of the community." The question, Hughes stated, "is the use of reasonable means to safeguard the economic structure upon which the good of all depends."

The police power of the state, the Court recognized, represented a reasonable tool with which to protect the "economic structure" of society. The Court had little choice but to uphold the moratorium law, for if it had not, there was no useful alternative to maintain the economic structure of the nation, "upon which the good of all depends." The devastating impact of the Great Depression on those with mortgages on homes and farms might have created circumstances in which banks held all the notes. But what value could be found in the possession of all the mortgages if there was not a market for them?

The dissenting Justices, known collectively as the Four Horsemen—George Sutherland, Willis Van Devanter, James McReynolds and Pierce Butler—argued that the Contract Clause should be interpreted literally. That approach would have ensured that

millions of Minnesotans would have spent the winters on the streets, with no foreseeable means of regaining their lost homes and farms.

The majority did not embrace that end, for it would have heralded the impotence of constitutional government to confront the grave economic crisis that afflicted the nation. Hughes, rather, cited with approval Chief Justice John Marshall's reminder of the utility of the Constitution, one "intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs."

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