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MORTGAGE MORATORIA SINCE 1933

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A. INTRODUCTION

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Such a blanket moratorium had advantages. Being absolute, it was easy to administer. It benefited all classes of mortgage debtors, and not merely particular groups.

The limitations of the moratorium in New York were also fairly obvious. The debtor was required to pay interest and taxes. This provision made the relief inadequate to the needs of many debtors. There had been comparatively few cases of foreclosures solely for nonpayment of principal. On the other hand, there were instances (particularly in the case of commercial properties) where it was unfair to the creditor, merely because current charges were met, to allow the debtor to retain the management of the property, when there was little or no chance that a rise in real estate values would ever restore the highly speculative equity of the debtor. The debtor might permit the property to deteriorate. Furthermore, there were cases where the

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The New York moratorium undoubtedly involved many more properties than the relief measures of western states. But even so, it would be a mistake to assume that it prevented liquidation entirely. During the relief period, foreclosures continued at a fairly rapid rate. From August 26, 1933, when the moratorium began, to August 16, 1937, New York lending institutions had foreclosed on claims of $962,557,801.60 and had acquired an additional $183,382,072.30 of properties by voluntary deed.[159] In addition, they had the right to foreclose on additional claims of $954,037,425.31, because of default in interest or taxes.[160] The Federal Home Loan Bank Board, in a survey covering 64.4 per cent. of the population of the State, reported 18,507 foreclosures for 1932, 19,980 for 1933, 23,395 for 1934 and 30,765 for 1935—more foreclosures for the years of the moratorium than before them.[161]

The most serious effect of the New York moratorium would appear to be that it prevented the voluntary adjustment or refinancing

mortgages existing in 1930 had been largely completed in other states. But it was still held in abeyance in New York.

The chief criticism that may be made of the New York moratorium is that it was too inclusive. Commercial properties, as well as farms and homes, were protected against the consequences of default in principal. Many of these commercial properties were hopelessly overfinanced, and liquidation at some time or other was virtually inevitable. The "good told times" would not return within a generation. In the light of later events, it is easy to condemn the New York moratorium as unwise and extravagant. Land values continued to decline in New York during the thirties. It became increasingly clear that the mortgagors of many properties could never pay off or refinance their indebtedness. Speaking in 1938 at a hearing of the Joint Legislative Committee on Mortgage Moratorium of the State of New York, James N. MacLean said:

> "As a matter of fact a correct analysis of present and past conditions discloses inevitably that the depression did not create an emergency at all in respect to these mortgages. It created instead a permanent condition, although at the beginning every body thought it was an emergency.
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> "The fact is that the experiences and the lessons taught by the depression produced a permanent drop in loan values of real property not only in respect to the suspended mortgages but generally. Investors have learned through the saddest of experiences that mortgages, hitherto regarded as the soundest and most gilt-edged of investments were really not sound at all, and that in time of economic distress these investments became instantly frozen and incapable of liquidation.
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> "This lesson has bitten deeply into the minds of lenders, both institutional and others. It will not be forgotten during the generation now living. It has produced a new vision of mortgage lending, and it is beyond hope that we shall ever return to the pre-depression percentages of loan values and appraisals.
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> "The mortgage structure existing before the depression was a house of cards. The moratorium has held it up for several years but its collapse is inevitable and always was inevitable.
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> "Viewing the matter with the aid of the hindsight of later events, it would probably have been better, from an economic standpoint, to have had no moratorium at all and to have left those affected to take the losses at the beginning of the depression which other investors had to take. As it is these investors, which include both lenders and owners who have invested in the equities, have been artificially and temporarily saved from loss which would otherwise have resulted from depressed business conditions, while

other classes of investors had to endure the storm. An unbiased student of economics would be likely to condemn this practice of thus preferring the investors in equities over others, especially when, as it must be admitted, the necessity of ending this protection and the effect of its termination will cause additional losses to other classes of investors by producing some recurrence of depressed business conditions."[163]

D. CONCLUSION

The moratoria of the last decade were not in themselves solutions to the mortgage problem. Economic conditions did not improve during the lull they provided, to enable distressed debtors to regain what they had lost. Probably few properties were saved from foreclosure solely by virtue of such relief. But moratory laws did give time—time for the federal government to introduce its refinancing measures, and possibly on that account in many cases served a useful purpose.

The utility of this device, from an economic point of view, will always remain in doubt. If the debtor has lost his equity, it may be contended, his interest should be liquidated. He should not be nurtured with false hopes by temporary relief. His mortgage should not be refinanced, so that he will continue to bear a burden that has proved too great. He should be saved from his own desires.

Government does not act in an atmosphere of rarified theory. In 1933 there were signs of considerable unrest in the country. Too many responsible citizens were being dispossessed by foreclosures. These people were home owners and farmers, on whose support Government must depend.

In most states, the primary purpose of the mortgage moratoria was to preserve the ownership of farms and homes. The action taken may have been misguided, but the motive should engender a feeling of sympathy. If, in prosperous years, it is proper for government to encourage its citizens to acquire homes and farms, it is at least natural in times of depression that government should seek by every plausible means to preserve the ownership it has sponsored.

Ironically, the Second World War has created the circumstances accounting for the cessation of mortgage moratoria in most states—the rising prices and values of a period of universal disturbance. The farmer now gets more for his product; the landlord more for his lease; the worker more for his wage. In many cases greater income eases fixed burdens. Mortgage debts that were onerous ten years ago are now lighter.

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[163] *Id.* at 79 ff.

But let us not suppose, because the mortgage moratoria of the Depression are terminating, that we have dealt with a social phenomenon peculiar to the times. With an eye to history, we can see that moratoria are symptoms of economic maladjustment, which have come repeatedly in the life of this nation, and which will probably reappear when the underlying causative factors come back.

As proof of this fact, we may observe that wartime has brought its own kind of moratorium—the Soldiers' and Sailors' Civil Relief Act—which seeks to protect that group of our population which has been particularly affected by the weight of the war. By this statute, servicemen and their dependents may obtain relief from a great variety of obligations, including mortgages, incurred before service. It is a matter causing no surprise that the original Act of 1940 has already been amended to extend the time during which relief may be had into the post-war period.