Kentucky Law Journal

Volume 67 | Issue 4 Article 16

1979

Allied Structural Steel v. Spannaus: A Retrospective Look into the Future?

Timothy L. Mauldin
University of Kentucky

Allied Structural Steel v. Spannaus: A Retrospective Look Into The Future?

INTRODUCTION

Until recently, the contract impairment clause of the Federal Constitution[1] had faded into virtual obscurity. To the extent that the United States Supreme Court recognized the exercise of a valid police power, impingement on the protection afforded by the contract clause was allowed.[2] Today's Court, however, has seemingly sought little refuge in such reasoning.

On June 28, 1978, the Supreme Court decided *Allied Structural Steel v. Spannaus,*[3] in which contractual impairment by a state statute[4] was alleged. The Court held the statute to be inconsistent with the provisions of the contract clause, solidifying its recent inclination in *United States Trust v. New Jersey,*[5] and reactivating the clause as a constitutional restraint. More importantly, these two recent holdings may signal a resurrection of economic substantive due process,[6] despite an earlier official pronouncement of its death.[7]

---

[1] U.S. CONST. art. I, § 10: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts."

[2] In Manigault v. Springs, 199 U.S. 473, 480 (1905), the Court discussed the police power with respect to its relationship with the contract clause:

> It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals.

[3] 438 U.S. 234 (1978).

[4] MINN. STAT. § 181B.04 (1974).

[5] 431 U.S. 1 (1977).

[6] The due process clause provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. This traditional concept of due process was extended in Lochner v. New York, 198 U.S. 45 (1905), in an effort to protect the public from business, social, or economic regulations which the Court considered to be an unwise interference with the economic system of that day, hence, "economic due process."

[7] In Williamson v. Lee Optical Co., 348 U.S. 483, 488 (1955), Justice Douglas

I. DEVELOPMENT OF THE CONTRACT CLAUSE AND SUBSTANTIVE DUE PROCESS

A. *Early Application of the Contract Clause and the Emergence of Economic Due Process*

Early use of the contract clause evidenced the Court's eagerness to exert control over arbitrary acts of state legislatures which infringed on both private property[8] and corporate interests.[9]

With the ratification of the fourteenth amendment[10] in 1868, the concept of due process also became a limitation on state power. Since that time, the Court's application of due process has roughly paralleled its interpretation of the contract clause although the all-encompassing effect of due process has diminished the importance of the contract clause.[11]

Initial interpretations of due process placed few limits on state police power.[12] However, this permissive view of the police power failed permanently to solidify itself into the concept of

---

wrote: "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought."

[8] *See, e.g.*, Fletcher v. Peck, 10 U.S. (6 Cranch) 328 (1810) (state legislature prohibited from rescinding its land grants to purchasers).

[9] Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 463 (1819) (state legislature prohibited from materially altering a corporate charter governing a college). *See also* Johnson, *The Contract Clause of the United States Constitution*, 16 KY. L.J. 222, 228 (1928), where the author notes the power and importance of the contract clause after the *Dartmouth College* decision:

> Thus, in the brief space of a decade, Marshall, with his consumate skill as an analyst and logician and his passionate devotion to stability, had taken the contract clause from its obscure and confused origin and made it one of the most vital of all the constitutional provisions. So well was the task performed that succeeding generations of the judiciary have largely been engaged in the process of restriction and limitation of the clause in the interest of legitimate legislative discretion and control.

[10] For an in-depth analysis of the events leading to ratification and effects immediately thereafter, see Fairman, *Does the Fourteenth Amendment Incorporate the Bill of Rights? The Original Understanding*, 2 STAN. L. REV. 5 (1949).

[11] For a discussion of the supplanting of the contract clause by the due process doctrine, see Hale, *The Supreme Court and the Contract Clause: II* (pt. 2), 57 HARV. L. REV. 621 (1944). *See also* Note, *The Contract Clause of the Federal Constitution*, 32 COLUM. L. REV. 476, 487-88 (1932).

[12] *See* The Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1873). *See also* New Orleans Gas Co. v. Louisiana Light Co., 115 U.S. 650 (1885).

due process. As the twentieth century approached, emphasis was placed on individual civil liberties and property rights.[13] The *laissez-faire* attitude of the Court toward business interests provided a basis upon which the contract clause protections of individual contractual freedom could be reasserted.[14]

This trend toward *laissez faire* culminated with the Court's five to four decision in *Lochner v. New York,*[15] which cemented into the law a new view of due process. In *Lochner,* state interference with private labor contracts was held to have violated due process.[16] "Economic due process" had arrived. No longer were state legislatures given free reign in the economic and social regulation of their inhabitants. *Laissez faire*[17] had become the philosophy of the time.[18]

---

[13] *See* Allgeyer v. Louisiana, 165 U.S. 578, 584-85, 589 (1897).

[14] *Id.* at 591. In Mugler v. Kansas, 123 U.S. 623, 669 (1887), state legislatures were warned against promulgating overreaching legislation "under the guise of police regulation, to deprive the owner of his liberty and property without due process of law."

[15] 198 U.S. 45 (1905).

[16] *Id.* at 64.

[17] Justice Holmes' dissent argued that "a constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of *laissez faire.*" He further pointed out that "[t]he fourteenth amendment does not enact Mr. Herbert Spencer's Social Statics." *Id.* at 74.

[18] Following the Court's recognition of due process as the safeguard of economic liberty, litigation predicated on the contract impairment clause dissipated. *See* Hale, *The Supreme Court and the Contract Clause: II* (pt. 2), 57 HARV. L. REV. 621 (1944). The efficacious application of the substantive due process doctrine as a safeguard of varied individual rights, coupled with the contractual limits inherent in the contract clause effectively preempted the use of that clause to some extent. For further discussion of contract clause limitation, *see* Note, *The Contract Clause of the Federal Constitution,* 32 COLUM. L. REV. 476, 487-88 (1932). However, the contract clause did not become obsolete. Although use of the clause as a cause of action was limited in those years immediately following *Lochner,* the few decisions which were handed down produced holdings consistent with the due process precedent. *See* W.B. Worthen Co. v. Kavanaugh, 295 U.S. 56 (1935)(destruction of creditor's remedies violates the contract clause); W.B. Worthen Co. v. Thomas, 292 U.S. 426 (1934)(statute permitting exemption of insurance proceeds from garnishment proceedings violates the contract clause); Coombes v. Getz, 285 U.S. 189 (1934)(the right to enforcement of a contractual obligation comes within the protection of the contract clause). *See also* Adkins v. Children's Hospital, 261 U.S. 525 (1923). The Court, in ruling a minimum wage law violative of fifth amendment due process of law, stated that "freedom of contract is . . . the general rule and restraint the exception; and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances." *Id.* at 546.

B. Blaisdell *and the Demise of Substantive Due Process*

The Great Depression brought a new rash of litigation alleging the impairment of contracts.[19] At first, many of those cases succeeded; the Court provided relief from state action which impinged on individual economic rights.[20] But in *Home Building & Loan Association v. Blaisdell,*[21] the Court relaxed these constitutional restrictions on legislative action. In *Blaisdell,* a Minnesota law that permitted state courts to extend the redemption period after a foreclosure sale was upheld[22] despite allegations of contract impairment.[23] The Court took note of the economic crisis precipitated by the Depression and justified its holding because of that emergency.[24] However, the Court qualified this move, stating that any state action taken "could only be of a character appropriate to that emergency and could be granted only upon reasonable conditions."[25]

In *City of El Paso v. Simmons,*[26] the Court found a state's action reasonable when challenged under the contract clause, even in the absence of an economic emergency. The vital interests of the state took precedence over the obligation of contract.[27] The demise of the contract clause, as well as the Court's

---

[19] *See, e.g.,* Treigle v. Acme Homestead Ass'n, 297 U.S. 189 (1936); W.B. Worthen Co. v. Kavanaugh, 295 U.S. 56 (1935); W.B. Worthen Co. v. Thomas, 292 U.S. 426 (1934); Coombes v. Getz, 285 U.S. 189 (1934).

[20] *See* cases in note 19 *supra.*

[21] 290 U.S. 398 (1934).

[22] *Id.* at 447.

[23] *Id.* at 404.

[24] *Id.* at 444.

[25] *Id.* at 445. In its decision the Court announced its standard of review for that particular legislation: "The question is not whether the legislative action affects contracts incidentally, or directly or indirectly, but whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end." *Id.* at 438.

In dissent, Justice Sutherland adopted a strict constitutionalist approach:

> [T]he question is not whether an emergency furnishes the occasion for the exercise of that state power, but whether an emergency furnishes an occasion for the relaxation of the restrictions upon the power imposed by the contract impairment clause; and the difficulty is that the contract impairment clause forbids state action under any circumstances, if it have the effect of impairing the obligation of contracts. That clause restricts every state power in the particular specified, no matter what may be the occasion.

Id. at 473 (Sutherland, J., dissenting).

[26] 379 U.S. 497 (1965).

[27] *Id.* at 508. The decision refused to strike down an amendment of a Texas law

cessation of its use of economic due process, now seemed certain. During this period, economic substantive due process met a similar fate. Alleged arbitrary legislation was sustained on the basis of rational cost spreading,[28] regulation of injurious business practices,[29] and the legislation's relationship to the "general welfare."[30]

However, recent events have indicated a possible change in the Court's due process philosophy. This evolution began with *United States Trust Co. v. New Jersey*.[31] This 1977 decision struck down a New Jersey statute which had repealed a contractual covenant between New York and New Jersey.[32] Importantly, the Court grounded its decision on the impairment of the state's contractual obligation with the bondholders, i.e., they held that the legislation had violated the contract clause.[33] The Court refused to resort to a "balancing test" in order to weigh the public good to a state's citizens against the private welfare of its creditors.[34]

This refusal resulted in the imposition of a stricter standard of review than had been applied in either *Blaisdell* or *El Paso*. Contract impairment would now be permitted only if it

---

which limited reinstatement rights to land upon default. Prior to the amendment, reinstatement rights had been unlimited. *Id.* at 498-501. In upholding the law, the Court recognized that "it is not every modification of a contractual promise that impairs the obligation of contract under federal law, any more than it is every alteration of existing remedies that violates the Contract Clause." *Id.* at 506-07. The Court also noted that "the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula." *Id.* at 508 (quoting *Blaisdell*, 290 U.S. at 428).

[28] Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976).

[29] North Dakota State Bd. of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156 (1973).

[30] Penn Cent. Transp. Co. v. New York City, 438 U.S. 104 (1978).

[31] 431 U.S. 1 (1977).

[32] The statute had limited the ability of the Port Authority of New York and New Jersey to subsidize mass transportation with revenues and reserves of bondholders of the Port Authority. *Id.* at 9-14. For a comprehensive discussion of the *United States Trust* litigation, *see* Comment, *Revival of the Contract Clause*, 39 OHIO ST. L.J. 195 (1978). *See also* McTamaney, *United States Trust Company of New York v. New Jersey—The Contract Clause in a Complex Society*, 46 FORDHAM L. REV. 1 (1977).

[33] 431 U.S. at 22-28. Despite the intervening social and economic problems of mass transportation, energy conservation, and environmental protection, the Court recognized that such problems were foreseeable at the time that the covenant was adopted. *Id.* at 28-32.

[34] *Id.* at 29. The Court also pointed out reasonable alternatives which could have been implemented without contractual impairment. *Id.* at 30 n.28.

was deemed to be "reasonable and necessary to serve an important public purpose."[35]

II. *Spannaus:* THE DECISION

Allied Structural Steel v. Spannaus[36] held unconstitutional a Minnesota statute[37] which had been promulgated to regulate operation of pension plans provided by private employers. Suit was instituted by Allied Structural Steel (the employer) after it was assessed with the pension funding charge.[38]

Applicable only to private employers of one hundred or more employees providing pension benefits, the statute subjected such employers to a "pension funding charge" upon the termination of the pension plan or the closing of an office within the state if "pension funds were not sufficient to cover full pensions for all employees who worked at least 10 years."[39] Barely four months after passage of the statute, Allied closed its Minnesota office,[40] having paid into the pension trust insufficient funds to finance full pensions for all employees with at

[35] *Id.* at 25. The Court noted that in *El Paso,* unlike *United States Trust,* the presence of unforeseen circumstances prompted the holding sustaining that legislation. *Id.* at 31. The Court, in striking down the statute, also discussed the necessity of legitimate and reasonable legislation, as required by *Blaisdell. Id.* at 22. In applying the contract clause, the Court recommended: "The great clauses of the Constitution are to be considered in the light of our whole experience, and not merely as they would be interpreted by its Framers in the conditions and with the outlook of their time." *Id.* at 15-16, *quoting Blaisdell,* 290 U.S. at 443.

[36] 438 U.S. 234 (1978).

[37] Entitled "Nonvested Benefits Prior to Act," MINN. STAT. § 181B.04 (Supp. 1978) provided:

> Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by section 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

[38] Fleck v. Spannaus, 421 F. Supp. 20 (D. Minn. 1976).

[39] 438 U.S. at 238.

[40] *Id.* at 239.

least ten years seniority.[41] Although the closing of the office was anticipated prior to the passage of the statute,[42] a pension funding charge of approximately $185,000 was levied against the company.[43]

Allied alleged in the suit that the statute impaired its contractual obligations to its employees in violation of the contract clause of the Constitution.[44] This argument was rejected by the federal district court.[45] On direct appeal, the Supreme Court reversed, five to three, holding that the Minnesota statute violated the contract clause in working "a severe, permanent, and immediate change" in the contractual relationship of Allied with its employees.[46]

The Court in *Spannaus* first examined the severity of the contractual impairment. A "minimal" impairment would probably be disregarded,[47] while more severe contractual interference would be carefully scrutinized.[48] In finding that the Minnesota statute severely impaired the company's contractual obligation with its employees, the Court focused on the retroactive nature of the statute, the fact that it altered the company's obligation in a "vital area"—the funding of the pension plan and the unexpected nature of the liability.[49]

Distinguishing *Blaisdell,* the Court noted that the statute in *Spannaus* did not "protect a broad societal interest," that it was not enacted in the face of a "desperate" economic emergency such as existed in the 1930's, and that it infringed upon an area "never before subject to regulation by the state."[50]

Justice Brennan in his dissent took issue with two of these

---

[41] *Id.* at 239.

[42] *Id.* at 247.

[43] *Id.* at 239.

[44] *Id.* at 240.

[45] Fleck v. Spannaus, 421 F. Supp. 20, 23 (D. Minn. 1976).

[46] 438 U.S. at 250.

[47] *Id.* at 245. The Court took note of the *El Paso* decision as an example of "minimal" contractual impairment which would be permitted. *Id.* at 737 n.17. It is extremely doubtful that those parties in *El Paso* who had been deprived of their perpetual right to be reinstated as owners of land thought they had suffered a "minimal" intrusion. Indeed, their deprivation was much more permanent than that of the employer in *Spannaus* inasmuch as their land could not ever be "earned" back.

[48] *Id.* at 245.

[49] *Id.* at 246-47.

[50] *Id.* at 249-50.

findings. He found it "difficult to understand" that *Blaisdell* dealt with a "broad generalized social problem" and *Spannaus* did not.[51] Certainly the number of people adversely affected by the termination of a pension plan or the closing of a plant before benefits have vested is substantial. Also, the effect on such people, many of whom rely on their employer's pension plan, is severe: they have lost all expected benefits, even though they have worked more than ten years. Indeed, the statute in *Blaisdell* may not have been as broad as the one in *Spannaus*. Those in *Blaisdell* who received an extension on their mortgage payments were required to pay rent for the period of the extension.[52] Thus the number of people who were actually able to take advantage of this statute may have been substantially less than those adversely affected by mortgage foreclosures. In *Spannaus*, on the other hand, all those adversely affected by the pension plan were benefited by the statute.

Justice Brennan also noted that "the assertion that Minnesota here invaded an area never before subject to regulation takes an exceedingly restrictive view of the subject matter of the Act."[53] He felt that the state extensively regulates the "compensation afforded employees by large employers."[54] Even if this statute were the first statute in this area, such a criterion certainly seems unjustified. Assuming that the state is addressing a real problem, it should not matter that it is the first time the state has tried to solve it.

Also, the Court stated that the statute in *Spannaus* was not enacted in the face of an emergency as was the statute in *Blaisdell*.[55] However, the emergency status of the entire economy should not be as significant as the specific emergency addressed by the statute. Surely a significant problem addressed by the state should be given deference even without a

[51] *Id.* at 261 n.8 (Brennan, J., dissenting). The majority had noted that the legislation had "an extremely narrow focus" because it applied only to private employers of over 100 employees who had established pension plans. *Id.* at 248. Justice Brennan noted that "it is the existence of the pension plan that creates the need for this legislation." *Id.* at 261 n.8 (Brennan, J., dissenting).

[52] Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 420 (1934).

[53] 438 U.S. at 261 n.8 (Brennan, J., dissenting).

[54] *Id.* (Brennan J., dissenting).

[55] *Id.* at 249.

"broad and desperate" economic emergency. Indeed, such was the result in *City of El Paso v. Simmons.*[56] There, no "broad and desperate" emergency existed, yet the statute was upheld. The seriousness of the immediate problem addressed by the statute was sufficient to permit interference by the state.

Related to the discussion of "emergency," the Court noted that the *Spannaus* statute was not "limited to the duration of the emergency,"[57] as had been the *Blaisdell* statute, but was "permanent" and "irrevocable."[58] Again, this inquiry misses the point. The focus should not be on the duration of the statute, but on the need for whatever duration the statute possesses.

This "need," coupled with an inquiry into "reasonableness," formed the major structure of the Court's inquiry.[59] The results of this inquiry surely lead to the conclusion that the Court "subjectively values the interests of employers more highly than it does the legitimate expectation interests of employees."[60]

III. *Spannaus:* DEFERENCE

Justice Brennan's dissent in *Spannaus* took note of the 1976 Court decision in *Usery v. Turner Elkhorn Mining Co.,*[61] in which federally imposed retroactive disability benefits were upheld by the Court. Brennan analogized *Usery* to *Spannaus;*[62] however, the *Spannaus* majority did not perceive the same analogy.

How may the Court reconcile its decision in *Usery* and similar due process cases[63] with the *Spannaus* opinion? The *Spannaus* decision, in effect, did more than merely pronounce a state statute unconstitutional. By holding that the legislation was an attempt at regulating a serious social problem that did

---

[56] 379 U.S. 497 (1965).

[57] 438 U.S. at 242.

[58] *Id.* at 250.

[59] *Id.* at 247.

[60] *Id.* at 261 n.8 (Brennan, J., dissenting).

[61] 428 U.S. 1 (1976).

[62] 438 U.S. at 263 (Brennan, J., dissenting).

[63] *See, e.g.,* Ferguson v. Skrupa, 372 U.S. 726 (1963); Williamson v. Lee Optical Co., 348 U.S. 483 (1955); Nebbia v. New York, 291 U.S. 502 (1934).

not exist, was the majority not questioning the wisdom of the legislature—at least with respect to its ability to perceive the presence of pressing situations among its inhabitants which could only be remedied through a legislative forum? This determination appears irreconcilable with modern due process analysis: "The doctrine that prevailed in *Lochner, Coppage, Adkins, Burns,*[64] and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded."[65]

In *Williamson v. Lee Optical Co.,*[66] the Court held a state law which prohibited unlicensed optometrists to solicit optical appliances to be consistent with the due process clause of the fourteenth amendment.[67] Although the Court intimated that the law might be "needless" and "wasteful," it noted that it was for the states and not the courts to weigh the advantages and disadvantages of legislation.[68]

Similarly, a state statute which prohibited the business of "debt adjusting" unless incident to the practice of law survived a due process challenge in *Ferguson v. Skrupa.*[69] Noting that state legislatures "have broad scope to experiment with economic problems," the Court reiterated its established policy that it was not concerned "with the wisdom, need, or appropriateness of the legislation."[70]

---

[64] Lochner v. New York, 198 U.S. 45 (1905); Coppage v. Kansas, 236 U.S. 1 (1915); Adkins v. Children's Hosp., 261 U.S. 525 (1923); Jay Burns Baking Co. v. Bryan, 264 U.S. 404 (1924).

[65] Ferguson v. Skrupa, 372 U.S. 726, 730 (1963).

[66] 348 U.S. 483 (1955).

[67] *Id.*

[68] *Id.* at 487. Quoting Munn v. Illinois, 94 U.S. 113, 134 (1877), Justice Douglas, writing for the Court, stated, "For protection against abuses by legislatures the people must resort to the polls, not to the courts." *Id.* at 488.

[69] 372 U.S. 726 (1963).

[70] *Id.* at 730. This principle has been widely recognized by the Court. *See* Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976); Williamson v. Lee Optical Co., 348 U.S. 483 (1955); Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421 (1952); Daniel v. Family Insurance Co., 336 U.S. 220 (1949); Lincoln Union v. Northwestern Co., 335 U.S. 525 (1949); Olsen v. Nebraska, 313 U.S. 236 (1941); West Coast Hotel v. Parrish, 300 U.S. 379 (1937); Nebbia v. New York, 291 U.S. 502 (1934).

For other cases in which the Court has permitted deference of business and economic issue to the states, see Daniel v. Family Insurance Co., 336 U.S. 220 (1949); Lincoln Union v. Northwestern Co., 335 U.S. 525 (1949); Olsen v. Nebraska, 313 U.S. 236 (1941); West Coast Hotel v. Parrish, 300 U.S. 379 (1937).

In light of this willingness by the Court to defer issues to the states which are relatively insignificant when compared to the serious social and economic problems in *United States Trust* and *Spannaus,* these two lines of cases appear to be irreconcilable. Some degree of uniformity in the Court's deference of economic issues to the states is necessary in order that corrective measures taken by the states are not frustrated at a time when they are most needed. The states' remedial powers should not be inhibited by the mere fact that a contractual arrangement might be incidentally affected by their efforts.

> There is nothing sacrosanct about expectations rooted in contract that justify according them a constitutional immunity denied other property rights. Laws that interfere with settled expectations created by state property law (and which impose severe economic burdens) are uniformly held constitutional where reasonably related to the promotion of the general welfare.[71]

Are state legislatures not in the better position to determine the need for and the best method of statutory remedy? The Court has obviously disregarded its own words:

> Times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the widom of the law, it may not be annulled unless palpably in excess of legislative power.[72]

The decisions in *Spannaus* and *United States Trust* which restrict states' promulgation of legislation where contractual infringement is involved are most inopportune. In these types of fiscal uncertainty, it is imperative that the states retain any type of legislative license they may have been granted in order that they may provide economic and social stability for their citizens. With respect to essential legislation which might incidentally impair a contract, this license has been revoked.

Results of the Court's unwillingness to defer important issues to state control can be better understood when a party,

---

[71] Allied Structural Steel v. Spannaus, 438 U.S. 234, 261 (Brennan, J., dissenting).

[72] Nebbia v. New York, 291 U.S. 502, 537-38 (1934).

in this case, the employees of Allied Structural Steel, suffers an injury.

Due to the failure of employers fully to inform their employees of their property rights existing under pension plans, employees' expectations of adequate retirement funds are often erroneous.[73] This problem is compounded by the further failure of the employer adequately to contribute to the pension fund, thereby resulting in employee benefits which are significantly below employee expectations.[74] It was the recognition of this problem which prompted Minnesota's legislature to promulgate its pension act.[75]

The Court's invalidation of this statute has indeed produced harsh results. Due to the plant's shut-down, all accrued rights of the pension-covered employees were forfeited. Compounding this inequity was the windfall which the company stood to collect, merely by closing its plant. This windfall would consist of the unvested pension benefits from the closed plant, which now could be applied to reduce future contributions to similar pension funds.[76]

Of course, the large financial burden levied on the company cannot go unnoticed. The majority pointed out that the company which had been "sufficiently enlightened as voluntarily to agree to establish pension plans for its employees"[77] was, in effect, being penalized for its solicitude. The additional fact that the legislation was imposed on pension plans that were already in effect might tend to promote some sympathy for Allied's plight.[78] However, whatever inconvenience Allied would have encountered would be of its own creation. Minnesota was not arbitrarily imposing fines on unsuspecting busi-

[73] Allied Structural Steel v. Spannaus, 438 U.S. 234, 252 (Brennan, J., dissenting).

[74] *Id.* (Brennan, J., dissenting). The subject of contract expectations was discussed by the *El Paso* Court:"Laws which restrict a party to those gains reasonably to be expected from the contract are not subject to attack under the Contract Clause, notwithstanding that they technically alter an obligation of a contract." City of El Paso v. Simmons, 379 U.S. 497, 515 (1965).

[75] 438 U.S. at 252 (Brennan, J., dissenting).

[76] *Id.* at 254 (Brennan, J., dissenting).

[77] *Id.* at 250.

[78] The majority noted that the case of W.B. Worthen Co. v. Thomas, 292 U.S. 426 (1934), stressed the retroactive nature of the statute in deciding that the disputed legislation violated the contract clause. 438 U.S. at 243.

nesses. Rather, the statute merely required that an employer who establishes a pension plan for its employees fund it adequately.[79] Allied established a pension plan by its own volition. That it should have a legal duty to fund the plan sufficiently, as well as a moral duty not to deceive its employees, is not at all unreasonable.

IV. *Spannaus:* FORERUNNER OF ECONOMIC DUE PROCESS?

Regardless of the difficulty the Court encounters in resolving future conflicting interests involving contractual infringement, it appears that the once similar standards of review for due process violations and contractual impairment have parted company. The stricter standard of review employed in contract cases such as *United States Trust* and *Spannaus* has left an unanswered question: Will future Court decisions adopt a similar stringent approach for substantive constitutional review of state socioeconomic legislation?

Under such a standard, it would not be difficult to hypothesize the result of economic due process review of a state statute. Without a finding of an unexpected emergency, legislation would be stricken as unconstitutional which affected existing economic interests more than an insignificant degree.

It is not outside the realm of possibility that such a change in constitutional review might occur within the present Court. The majority's refusal in *Spannaus* to adopt the primary contention of Justice Brennan's dissent smacks of adherence to the due process decisions of the *Lochner* era.

Brennan did not argue that any existing contractual impairment should be justified; he stated that no contractual rights had been impaired.[80] He contended that the Minnesota statute merely created an additional contractual duty of the employer.[81] To maintain that contractual impairment is synonymous with the creation of new contractual duties as did the Court, Brennan wrote, "is nothing less than an abuse of the English language."[82]

---

[79] 438 U.S. at 254, n.3 (Brennan, J., dissenting).

[80] *Id.* at 257-58 (Brennan, J., dissenting).

[81] *Id.* (Brennan, J., dissenting).

[82] *Id.* at 258 (Brennan J., dissenting).

The basis for Brennan's reasoning was the 1829 decision in *Satterlee v. Matthewson.*[83] In that case, the Court held that a state act which validated a contract which had been held invalid by the courts of that state prior to the promulgation of the act did not impair any contractual obligations.[84] The Court further noted that so long as the particular act caused no impairment, the fact that its application was retroactive was not forbidden by the Constitution.[85] "Since *creating* an obligation where none had existed previously is not an *impairment* of contract . . . legislation increasing the obligation of an existing contract is not an impairment."[86]

The majority expressly relied upon *Georgia Ry. & Power Co. v. Decatur*[87] and *Detroit United Ry. v. Michigan*[88] to reject Brennan's thesis.[89] Both of those cases specifically held that state legislation placing additional duties upon existing contractual arrangements could not pass constitutional muster.[90] However, these decisions were handed down by a Court still loyal to *Lochner.*[91] In effect, the majority's assertion that an

[83] 27 U.S. (2 Pet.) 380 (1829).

[84] *Id.* at 412-13.

[85] *Id.* at 413.

[86] Allied Structural Steel v. Spannaus, 438 U.S. at 258-59 (Brennan, J., dissenting).

[87] 262 U.S. 432 (1923).

[88] 242 U.S. 238 (1916).

[89] Allied Structural Steel v. Spannaus, 438 U.S. at 245, n.16.

[90] In Georgia Ry. & Power Co. v. Decatur, the town of Decatur, Georgia brought suit against the railway company, seeking to enjoin them from increasing fares on their street cars. The town relied on a minimum rate agreement which it had entered into with the railway company. The railway company sought to increase rates in that portion of the corporate limits of the town which were not part of the town when the agreement was made. The Court found that to require the lower rates would impose an additional burden upon the railway, thereby impairing its contractual obligation with the town.

Detroit United Ry. v. Michigan reached a similar result. The railway company operated a street car line for which city ordinances had established fares. Annexation of property outside the city limits encompassed parts of the railway's lines which were not covered by the ordinances which established rates. The city contended that the railway lines within the annexed area should be governed by the provisions of the existing city ordinances. However, the Court determined that extension of the ordinances to the railway lying within the extended limits of the city would violate the contract clause.

[91] The Court at the time of the decisions in *Georgia Ry.* and *Detroit United Ry.* had yet to refute the *Lochner* substantive due process doctrine. It was not until 1938, in West Coast Hotel Co. v. Parrish, 300 U.S. 379, that the Court departed from the

additional contractual duty constitutes impairment is based on Court decisions founded on a due process doctrine expressly repudiated by subsequent Court decisions. Thus this holding necessarily suggests that the potential for economic due process review might lie within the thinking of the majority of the Burger Court.

The adoption of economic substantive due process by the Court would have the undesirable effect of limiting the ability of state legislatures to control and remedy business and economic conditions which threaten commerce and the public welfare. Such action would remove the Court from its constitutionally imposed confines. Despite previous assurances to the contrary,[92] the Court would, in effect, become a "superlegislature."

CONCLUSION

The *Spannaus* decision confirmed the Supreme Court's willingness to invalidate state legislation which it deems to be damaging to existing contractual arrangements, despite the existence of pressing social and economic crises. The Court in *Spannaus* and *United States Trust* refused to grant deference to the states and to recognize the necessity of the legislation in each case to deal with what were obviously serious socioeconomic problems. Historical tendencies for the contract clause and the due process doctrine roughly to parallel one another necessarily directs attention to the possibility that the Court might utilize its current contract clause philosophy to resurrect economic substantive due process. Most assuredly, the Court has taken the first step in that direction.

Timothy L. Mauldin

---

economic due process doctrine in a permanent fashion, specifically overruling Adkins v. Children's Hospital, 261 U.S. 525 (1923), which had embraced the substantive due process tenet of *Lochner*.

[92] The Court in Ferguson v. Skrupa, 372 U.S. 726 (1963), recognized its inherent limitations: "We refuse to sit as a 'superlegislature to weigh the wisdom of the legislation' . . . ." *Id.* at 731, quoting Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421, 473 (1952). The *Ferguson* Court added: "Whether the legislature takes for its textbook Adam Smith, Herbert Spencer, Lord Keynes, or some other is no concern of ours." 372 U.S. at 732. *See also* note 7 *supra* and accompanying text for further discussion.