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THE CONTRACT CLAUSE: THE USE OF A STRICT STANDARD OF REVIEW FOR STATE LEGISLATION THAT IMPAIRS PRIVATE CONTRACTS—
ALLIED STRUCTURAL STEEL CO. V. SPANNAUS

A potential conflict of interests arises whenever a state enacts social or economic legislation that impairs an existing contractual obligation. This conflict is the result of a confrontation between two seemingly irreconcilable constitutional doctrines. The first is the police power of the state, under the tenth amendment, to enact legislation for the protection of the health, morals and welfare of its citizens. The second is the restriction of that power under the contract clause to enact legislation that impairs contractual obligations. When such a confrontation occurs, the relative importance of each interest must be balanced to determine which is paramount. In Allied Structural Steel Co. v. Spannaus, the United States Supreme Court recently upheld the tenets of the contract clause when it invalidated a Minnesota statute pertaining to pension reform because it impaired the contractual obligations between Allied Structural Steel Company and its employees. While this decision reaffirmed the viability of the contract clause and gave greater protection to individual contractual rights, it seemingly denied the states the power to enact legislation which they deem essential for the protection of their citizens' welfare.

The purpose of this Note is to examine the Court's recent holding in Allied. To effectuate this analysis, the Note will give a brief survey of prior contract clause case law. It will further present the possible impact of the decision on future social and economic legislation. Finally, it will argue that

1. When the nation was united, the existing states were apprehensive about losing their control and power. A division of power was established between the Federal and State governments and the 10th amendment guaranteed: "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively ..." U. S. Const. amend. X.

2. This restriction is set out in U.S. Const. art. I, § 10, which states: No state shall enter into any Treaty, Alliance or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any thing but gold and silver coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or Grant any Title of Nobility.

Id. (emphasis added).


5. 98 S.Ct. at 2726.
pension reform legislation benefits the general welfare and that a state, therefore, should be permitted, on the strength of its police power, to impair the obligations of contracts in this area.

HISTORICAL BACKGROUND

To comprehend the current viability of the contract clause and the decision reached in Allied, it is necessary to examine the historical development of the clause. The clause and the other restrictions found in the tenth section of Article I were the result of the Framers' concern over specific abuses of state power. One such abuse arose after the Revolutionary War, when states began to pass laws in favor of debtors. These laws permitted the liquidation of debts by the tendering of depreciated money or worthless property, which in turn had the detrimental effect of undermining trade and destroying credit of an economy already shaken by war. The contract clause was adopted to restrict such legislation and to protect the contractual rights of creditors.

6. The contract clause has been the subject of many commentaries which discuss its development in greater depth than possible in this Note. See generally B. Wright, The Contract Clause of the Constitution (1938) [hereinafter cited as Wright]; Hale, The Supreme Court and the Contract Clause, 57 Harv. L. Rev. (pts. 1-3) 512, 621, 852 (1944) [hereinafter cited as Hale]. Note, The Continuing Vitality of the Contract Clause of the Federal Constitution, 40 S. Cal. L. Rev. 576 (1967).

7. See note 2 supra.

8. Unlike the fifth amendment which restricts the federal government's power to deprive a person of his property, the Framers did not make Art. I Section 10 a direct ban on the State's ability to deprive citizens of their property. It was not until ratification of the fourteenth amendment that the states were so restricted. It should also be noted that Art. I, § 10 applies to states only. The federal government may impair contractual obligations if no fifth amendment prohibitions are violated by the legislation. See Hale, supra note 6, at 512-13.

9. Hale, supra note 6, at 512.

10. Justice Marshall, in his dissent in Ogden v. Saunders, 25 U.S. (12 Wheat.) 213 (1827), wrote that the economic troubles plaguing the country were "mischief" which had "become so alarming" that it was not only hurting commerce but "destroying the sanctity of private faith." Id. at 355. See also Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 428 (1934).

11. The contract clause, although "short and simple" has been proven to be "vast of comprehension and meaning." D. Watson, The Constitution of the United States 778-80 (1910). There are differing accounts concerning the actual insertion of the contract clause into the Constitution. It has been suggested that the clause was passed because the Framers, who were wealthy men and oftentimes creditors, feared that legislation relieving debtors would hurt their financial status. See Note, The Continuing Vitality of the Contract Clause of the Federal Constitution, 40 S. Cal. L. Rev. 576, 576 (1967). Furthermore, the clause received very little attention in state conventions when the adoption of the Constitution was debated. It has been generally agreed, however, that the clause was adopted to protect the individual from state interference. This is reflected by Justice Black's discussion of the contract clause in his dissent in City of El Paso v. Simmons, 379 U.S. 497 (1965). He noted "that men should not have to act at their peril, fearing always that the state might change its mind and alter the legal consequences of their past acts so as to take away their lives, their liberty or their property." Id. at 522.
Although originally established to restrict legislation which relieved debtors, the clause was expanded by the Court to apply to other types of contractual obligations, such as public land grants and corporate charters. However, the early history became less significant as the Court began to recognize limitations on the scope of contract clause protections.

The earliest restrictions occurred when the Court refused to extend the protection of contractual obligations to prospective or future contracts. Another restriction resulted when the Court made a distinction between the obligation of a contract and the remedies pertaining to its enforcement. The impact of this distinction was that the Court found that statutory modifications of contractual remedies did not necessarily impair the obligation of contracts and therefore, were deemed valid exercises of state power.

12. The early expansion of the clause is attributed to Justice Marshall. Marshall was a nationalist who regarded the contract clause as an opportunity to protect property rights from state interference. Beginning with Fletcher v. Peck, 10 U.S. (6 Cranch) 87 (1810), he turned the contract clause into a powerful instrument for the protection of private property. He continued his expansion of the clause until the Court refused to follow him in Ogden v. Saunders, 25 U.S. (12 Wheat.) 213 (1827), see note 15 and accompanying text, infra. In that case, the majority thought Marshall overextended his theory when he tried to expand the clause's protection of contractual rights to contracts to be made in the future. Wright, supra note 6, at 28. Wright also gives an extensive discussion of the clause's expansion. Id. at 27-88. See also C. Antieau, Modern Constitutional Law I 247 (1969); M. Shapiro & R. Tresolini, American Constitutional Law 218-20 (4th ed. 1975).

13. Fletcher v. Peck, 10 U.S. (6 Cranch) 87 (1810). In Fletcher, the Court expanded the applicability of the clause from private contracts made between two individuals to public contracts or those made between an individual and a State. The Supreme Court found a legislative repeal of a state land grant which had been obtained through corrupt political channels to be invalid. This conclusion was reached because the land grant was construed to be a contract; therefore, a repeal would constitute an impairment of contractual obligations.

14. In Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518 (1819), the Court further extended the applicability of the clause to corporate charters when it decided that a state could not interfere with charters made between a corporation and a state. The Supreme Court held that a charter was a contract, therefore, subsequent legislation altering its terms was an unconstitutional impairment of obligation. It should be noted that the protection granted to corporate charters was short lived because the states adopted reserve clauses in their constitutions which gave the states the right to amend or repeal charters of incorporation. Wright, supra note 6, at 60.

15. Ogden v. Saunders, 25 U.S. (12 Wheat.) 213 (1827). It was assumed by the Court that all contracts incorporate existing law. Therefore, any law enacted before a contract is made is impliedly considered part of the contract. Id. at 260. See also note 12 supra.


17. Cases which make a distinction between modification of remedy and obligation of contract include: Honeyman v. Jacobs, 306 U.S. 539, 542 (1939) (the requirement that a deficiency judgment be determined in a foreclosure suit was not found to be an impairment of contractual obligation); Antoni v. Greenhow, 107 U.S. 769, 775 (1882) (after coupons which were made receivable as payment of taxes were issued, a law was passed that required the holders of the coupons to pay for their taxes first in legal tender and then, after the validity of the coupons had been established, they would be honored; this was found to be a change in remedy and not an impairment of contract); Von Hoffman v. City of Quincy, 71 U.S. (4 Wall.) 535, 553-54 (1866) (imprisonment for a debt was not found to be part of a contract, therefore, a state could abolish a sentence without impairing the obligation of the contract); Sturges v. Crowninshield, 17 U.S.
With the advent of due process, the Court's use of the contract clause to prevent state interference with contractual rights declined significantly.\(^{18}\) The due process clause was favored because it had a broader scope of application. The versatile scope of the due process clause was attributed to the fact that it was not circumscribed by the precedent, such as the remedy versus obligation distinction, that restricted the scope of contract clause application.\(^{19}\) As contracts were considered to be a form of property, the Court was more inclined to use the broader due process clause, thus relegating the contract clause to a position of a "mere technical provision."\(^{20}\)

The most important limitation of the contract clause was the recognition by the Supreme Court, of the conflicting interest of state power, specifically the "inalienable"\(^{21}\) police power.\(^{22}\) The police power is the regulatory control employed by the state to protect the general welfare of its citizens.\(^{23}\) The Court had recognized the vitality of the police power by denying individuals the ability to use the contract clause as a shield against statutes passed for the common good.\(^ {24}\) Furthermore, it often gave deference to the state legislature's judgment of public needs.\(^ {25}\) This deferral, however, was

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\(^{18}\) (4 Wheat.) 122, 200 (1819) (imprisonment for a debt could be abolished without violating the contract's terms because imprisonment, though a remedy, was not found to be part of the contract. Therefore, to release a prisoner was not an impairment of a contractual obligation.).

\(^{19}\) See WRIGHT, supra note 6, at 258.


\(^{21}\) WRIGHT, supra note 6, at 258. Another commentator has suggested that "the results might be the same if the contract clause were dropped out of the Constitution, and the challenged statutes all judged as reasonable or unreasonable deprivations of property." Hale, supra note 6, at 890-91.

\(^{22}\) The police power is considered to be essential to a state's existence and cannot be contracted away. See Stone v. Mississippi, 101 U.S. 814 (1879), where the Court stated: "the legislature cannot bargain away the police power of a state." Id. at 817. See also U.S. Trust Co. v. New Jersey, 431 U.S. 1, 21 (1977); Home Bldg. & Loan Assn v. Blaisdell, 290 U.S. 398, 434-40 (1934).


\(^{24}\) See T. Cooley, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS 574 (8th ed. 1927).

\(^{25}\) In Hudson County Water Co. v. McCarter, 209 U.S. 349 (1908), the Court prevented a contract between two riparian owners from invalidating state legislation that prohibited the diversion of an important stream to another state for use therein. In so doing, the Court stated, "[o]ne whose rights; such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them." Id. at 357. See also Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 420 (1934).

\(^{25}\) See Manigault v. Springs, 199 U.S. 473 (1905), in which the court recognized that the police power "is an exercise of the sovereign right of the Government to protect the ... general welfare of the people, and is paramount to any rights under contract between individuals." Id. at 480. Furthermore, justification for this deference is due to the Court's belief that a state legislature "being familiar with local conditions, is, primarily, the judge of the necessity of such enactments." Chicago, Burlington & Quincy R.R. v. McGuire, 219 U.S. 549, 569 (1911) quoting McLean v. Arkansas, 211 U.S. 539, 547 (1909). See also Ferguson v. Skrupa, 372 U.S. 726 (1963).
not total—since the Court did consider the compelling purpose behind the clause—the protection of an individual’s contractual rights. Therefore, a balancing test was employed in each case to determine which interest was paramount. The potency of the police power, though, was such that legislation designed to ensure health, morals and welfare was frequently upheld.

In the leading modern case, Home Savings & Loan Association v. Blaisdell, the Court made an extensive review of previous contract clause case law and, in recognizing the importance of state police power, sustained the Minnesota Moratorium law. In so doing, the Court balanced the two competing interests to determine if they existed in “harmony with each other.” The decision established the general rule that an exercise of police power could be sustained, despite possible impairment of contractual obligations. Butcher’s Union Co. v. Crescent City Co., 111 U.S. 746 (1884) (legislation prohibiting butchering, receiving and landing livestock within the city limits of New Orleans was upheld despite the impairment of existing contracts for such business). Fertilizing Co. v. Hyde Park, 97 U.S. 659 (1878) (legislation prohibiting the manufacturing of fertilizer from dead animals within city limits was upheld). Stone v. Mississippi, 101 U.S. 814 (1879) (legislation that prohibited the operation of a lottery despite an existing contract for such action, was found to be valid); Beer Co. v. Massachusetts, 97 U.S. 25 (1877) (state control of liquor permitted despite appellants’ contract to manufacture beer).

27. See, e.g., Atlantic Coast Line R.R. Co. v. Goldsboro, 239 U.S. 548 (1914) (legislation regulating safety precautions was upheld despite a contract between the railroad and the town for the use of the land); Hudson County Water Co. v. McCarter, 209 U.S. 349 (1908) (legislation forbidding the diversion of the flow of a major stream was upheld although individual contracts existed permitting such action); Manigault v. Springs, 199 U.S. 473 (1905) (legislation permitted the building of a dam despite contracts forbidding such action); Butcher’s Union Co. v. Crescent City Co., 111 U.S. 746 (1884) (legislation prohibiting butchering, receiving and landing livestock within the city limits of New Orleans was upheld despite the impairment of existing contracts for such business); Fertilizing Co. v. Hyde Park, 97 U.S. 659 (1878) (legislation prohibiting the manufacturing of fertilizer from dead animals within city limits was upheld).
28. Stone v. Mississippi, 101 U.S. 814 (1879) (legislation that prohibited the operation of a lottery despite an existing contract for such action, was found to be valid); Beer Co. v. Massachusetts, 97 U.S. 25 (1877) (state control of liquor permitted despite appellants’ contract to manufacture beer).
29. See, e.g., Pierce Oil Corp. v. City of Hope, 248 U.S. 498 (1919) (city ordinance forbidding the storage of oil within 300 feet of any dwelling did not impair the obligations of any contracts); Hadacheck v. Sebastian, 239 U.S. 394 (1915) (upheld a state law that ordered the removal of a brick kiln from a residential area despite a contract to use the land); Chicago, Burlington & Quincy R.R. v. McGuire, 219 U.S. 549 (1911) (the Court found the state legislative power to regulate railroad benefit plans a reasonable exercise of police power despite existing contracts releasing the railroad from liability).
30. 290 U.S. 398 (1934). This case debated the validity of the Minnesota Moratorium Law passed in 1933. The Law, enacted during the Depression, provided a temporary extension of mortgage redemption periods. During the time granted, the mortgagee retained possession of the land and was required to apply a reasonable rental value to the mortgage. The appellant claimed the law impaired the obligation of its contract with the appellee by granting such an extension of time for redemption.
31. Id. at 427-42.
32. Chief Justice Hughes, writing for the majority, said, “the State also continues to possess authority to safeguard the vital interests of its people.” Id. at 434.
33. Id. at 427-40. The Court stated:
Undoubtedly, whatever is reserved of state power must be consistent with the fair intent of the constitutional limitation of that power. The reserved power cannot be construed so as to destroy the limitation, nor is the limitation to be construed to destroy the reserved power in its essential aspects. They must be construed in harmony with each other.
Id. at 439.
obligations, only if "legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end." The majority determined that the state legislation at issue was reasonable because it was enacted for an emergency situation, addressed a legitimate societal interest, was tailored to the emergency, and was limited to the duration of that emergency while the conditions imposed were reasonable. Thus, the impact of the Blaisdell decision was to establish a new standard for the review of contract clause cases which provided that legislation in this area was constitutionally valid only if it had a legitimate goal and reasonable means.

Blaisdell, however, did not guarantee protection to all state legislation that impaired contractual obligations. Instead, subsequent decisions found state legislation which impaired contracts unconstitutional because the state interest in the controversial statute was not sufficient to outweigh the constitutional restrictions of the contract clause. The Court, in reaching its conclusions, relied on the newly established standards of Blaisdell to balance the reasonableness of the disputed legislation against the contract clause. In its application of these standards, however, the Court did not judge the legislation at issue by examining it for all possible legitimate goals, but rather a specific test developed for another set of circumstances was applied. Legislation was, therefore, found unconstitutional when there was no evident emergency or the legislation was not temporary in nature.

Although the cases immediately following Blaisdell have never been overruled, they have been modified. The Court began to relax its strict application of the Blaisdell standards by examining the legislation at issue for reasonable means used to implement a goal deemed to be legitimate. For example, in City of El Paso v. Simmons, the majority held that "not every modification of a contractual promise impairs the obligation of a contract under federal law." El Paso involved a Texas statute that limited

34. Id. at 438 (emphasis added).
35. Id. at 444-47.
36. See, e.g., Worthen Co. v. Thomas, 292 U.S. 426 (1934). In Worthen, appellant had obtained a writ of garnishment on appellee's life insurance policy. The Arkansas legislature subsequently passed a law exempting such policies from garnishment. When appellant's writ of garnishment was dismissed, he claimed impairment of his contractual obligation. The Court, upon its review of the case, found the Arkansas legislation invalid under the contract clause because it was neither temporary nor conditioned upon the existence of an emergency. Id. at 433-34.
37. Id.
38. Again, in Triegle v. Acme Homestead Ass'n, 297 U.S. 189 (1936), the Court struck down legislation that regulated the right to withdraw funds from saving and loan associations because it impaired individuals' contract rights. Although adopted to protect the solvency of such associations and ergo the economy, the Court found the legislation unconstitutional. Once again the Court using the Blaisdell guidelines found state legislation not reasonably adapted to its goals because it did "not purport to deal with any existing emergency and the provisions are neither temporary nor conditional." Id. at 195.
39. See note 34 supra.
41. Id. at 506-07.
previously unrestricted reinstatement rights of a defaulting land purchaser. A statute had been passed which provided that the State Land Board could sell a person's land who had failed to make the interest payments on the property. The defaulting party could buy the land back by paying the full amount owed to the Treasury. At the time, there were no time limits established to restrict the redemption of the land. Years later, an amendment to the statute established such a limitation. The appellee was not allowed to redeem his land because of the amendment and therefore, claimed an impairment of his original contract. Despite this claim and the lack of an apparent emergency, the majority upheld the legislation because it benefitted the public interest by effectively utilizing the land to provide revenue for the public school system. The Court, however, did remark that the promise which was impaired was not a central undertaking of the contract. This case was important to the development of the contract clause because the Court once again recognized the inherent value of state legislation designed for the general welfare. In addition, the debated legislation was not analyzed in terms of previously established standards, but was examined for the existence of a legitimate goal and reasonable means to reach that goal as directed by the Blaisdell decision.

In United States Trust Co. v. New Jersey, the most recent contract clause case decided prior to Allied, the Court recognized the importance of

42. Id. at 514.

43. The Supreme Court, in Veix v. Sixth Ward Bldg. & Loan Ass'n, 310 U.S. 32 (1940), rejected the requirement that an emergency situation exist to justify state legislation that impairs the obligations of contracts. In that case, legislation was passed to regulate the withdrawal of funds from building and loan associations. The Court disregarded the need for temporary regulation or an emergency situation and ruled that legislation deemed important enough for an emergency can also exist on a permanent basis. Id. at 39. The majority examined the legislature's purpose for enacting the amendment and concluded: "[w]ith institutions of such importance to its economy, the State retains police powers adequate to authorize the enactment of statutes regulating the withdrawal of shares." Id. at 38.

The Court went a step further in East New York Sav. Bank v. Hahn, 326 U.S. 230 (1945) when it declared that the police power of a state may be treated as an implied term in every contract. Id. at 232. This case involved a moratorium law enacted by the New York legislature. In 1944, an action to foreclose property was commenced but was barred by the moratorium law. Appellees claimed that since the law passed after the contract was made, there was an unconstitutional impairment of his rights. Although this case was similar to Blaisdell in that it sustained a mortgage moratorium, the Court was not concerned with the existence of an emergency situation. Instead the majority respected the legislature's lengthy study, which led to the enactment of the legislation. But see Worthen v. Kavanaugh, 295 U.S. 56 (1935) where the Court found that the legislation passed to regulate the payment of assessments unconstitutionally impaired contractual obligations. In this case, one reason for the decision was that the legislation passed "[w]ith studied indifference to the interests of the mortgagee or to his appropriate protection. . . ." Id. at 60. The Hahn Court finally concluded, in recognizing a State's power to legislate for the good of the public, that "[o]nce we are in this domain of the reserve power of a State we must respect the 'wide discretion on the part of the legislature in determining what is and what is not necessary.'" 326 U.S. at 233, quoting Manigault v. Springs, 199 U.S. 473, 480 (1905).

44. 431 U.S. 1 (1977).
the state's reserved powers but found the challenged legislation to be unconstitutional. In this case, the state had issued bonds which contained a covenant providing for the use of the funds to generate revenue for the Port Authority. Several years after the issuance of the bonds, the state repealed the covenant in an attempt to free the funds for use in the expansion of the mass transit system. The bondholders subsequently brought suit to stop the repeal claiming it impaired the obligations of their contracts in that it eliminated an important security provision protecting the use of their money. The majority, again examined the legislation for reasonable means used to implement legitimate goals but employed a more in-depth standard to review the reasonableness of the legislation. The majority focused its attention on the fact that the state was a party to the disputed contract and concluded that courts should not blindly defer to a state legislature where the statute benefits its financial interest.\textsuperscript{45} Furthermore, in examining the reasonableness of the statute, the Court found that alternative means to accomplish the legislative goal had existed which would not impair the contractual obligation and, therefore, it found that the law was unnecessary.\textsuperscript{46} The contract clause was, again, employed as an important limitation on the reserved powers of a state. The majority, acknowledging the importance of reserved powers and the need for a test to balance the conflicting interests, established a need for a more stringent standard of review for state legislation which impaired the obligations of contracts in which the state was a party.

\textbf{FACTS AND PROCEDURAL HISTORY}

In 1963, the Allied Structural Steel Company\textsuperscript{47} established and became the sole contributor to a pension fund plan.\textsuperscript{48} Among its provisions were several requirements which an employee had to satisfy in order to obtain vested pension rights.\textsuperscript{49} Once vested, the employee had a nonforfeitable...

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\textsuperscript{45} Id. at 25-26. Conversely, the Court may defer to the legislature when private contracts are involved because the State, in enacting the statute, can be an unbiased participant. \textit{Id.}

\textsuperscript{46} Id. at 29-30. The Court found alternate means, such as tax revenue, to raise the money necessary for the expansion of the mass transit facilities.

\textsuperscript{47} Allied Structural Steel Company (hereinafter referred to as Allied Steel) was a Delaware corporation with an office in Minnesota. Fleck v. Spannaus, 412 F. Supp. 366, 367-68 (D. Minn. 1976).

\textsuperscript{48} Allied Steel had an unrestricted right to amend or terminate the plan and there were no enforcement provisions to guarantee that the company made any contributions. 98 S.Ct. at 2719. Allied Steel qualified under 26 U.S.C. § 404 (1976) for a single employer plan. 98 S.Ct. at 2718. The Internal Revenue Code permitted Allied Steel to treat its contributions to the pension fund as a deduction for tax purposes. See, 26 U.S.C. § 404 (1976).

\textsuperscript{49} The requirements of the Pension Plan for vested rights were as follows:

1. An employee, aged 65, could have retired with vested rights and would have received 1% of his/her average monthly earnings multiplied by his/her total years of service with the company.

2. An employee, aged 60, could have retired with vested rights if he/she had worked for the company for a minimum of 15 years.
right to an interest in the fund. Until his rights became vested, however, an employee could lose any interest he had accrued if he was discharged for cause or if Allied Steel closed its offices or terminated its pension plan.

In April 1974, Minnesota passed the Private Pension Benefit Protection Act to protect the pension rights of employees working within the state. The Act required every Minnesota company or company with a Minnesota office having a pension plan to provide vested rights to all Minnesota employees who had worked with the company for ten or more years. The provisions of the Act were triggered if a company closed its Minnesota office or terminated its pension plan. In addition, a pension funding charge was imposed on any company if its pension funds were insufficient to provide full pensions for the employees protected by the Act.

3. An employee, who was at least 55 years of age, had vested rights if the sum of his/her years of age plus the years of his/her service with the company equalled 75.

4. An employee, who was under the age of 55, had vested rights if the sum of his/her age plus the years of his/her service with the company equalled 80.

Therefore, there was no minimum year requirement for obtaining vested rights in the pension plan. Early vesting was, instead, based on the number of years an employee had worked for Allied Steel plus his age. This meant that the only certain way to obtain vested rights was to reach 65 before the employee's job was terminated or before Allied Steel terminated the Pension Plan.


51. Upon termination of the Pension Plan, the assets would be distributed according to the seniority of the employees. Distributions in this manner often resulted in excluding those employees with little or no seniority because the company apportioned only that money currently in the fund. Allied's order of distribution was as follows:

1. To those employees who were retired and were receiving pension benefits would go the equivalent actuarial value of their remaining pension payments.

2. To those eligible for retirement.

3. If any balance remained, to all other employees covered under the Plan.

98 S.Ct. at 2719.

52. MINN. STAT. §§ 181B.01-181B.17 (1974) (hereinafter referred to as the "Act").

53. MINN. STAT. § 181B.03 (1974) provided:

Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees . . . a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service . . . of such employees . . . who have completed ten or more years of any covered service under the pension plan of the employer and whose vested 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 vested pension benefits which are compromised or settled to the satisfaction of the commissioner . . .


54. Id. "Present value of total amount of vested pension benefits" is defined by the Act as:

that sum of money which is earning interest in a secure investment from the date of cessation of operations onward would equal the value of the vested pension benefit on the date on which the plan participant reached normal retirement age minus that sum of money which is set aside . . . to finance pension benefits for plan participants.

Shortly thereafter, Allied Steel began to close its Minnesota operations according to plans made prior to the passage of the Act. The company discharged eleven of its thirty Minnesota employees and since none of the employees had worked with Allied Steel for ten years, they were ineligible for any interest in the fund distribution. As a result of this denial of benefits to the employees, the company was found to be in violation of the Act and was assessed a $185,000 funding charge.

Allied Steel brought suit in the United States District Court seeking declaratory and injunctive relief. The company claimed that the Act unconstitutionally impaired its contractual obligations with its employees, in that it required the distribution of pension money to the nine employees. A three-judge panel rejected the company's claim and upheld the Act as it applied to Allied Steel. Allied Steel then appealed to the United States Supreme Court which reversed the lower court decision and held the Act to be unconstitutional.

ANALYSIS OF MAJORITY OPINION

The Allied Court, by denying the Minnesota legislature the power to enact pension reform legislation, provided further evidence that the contract clause was "not a dead letter." The majority acknowledged the importance of the state police power but emphasized that there must be some limitation on this power if the contract clause is to remain meaningful. These observations set the tone for the decision and made apparent that the

56. 98 S.Ct. at 2717.
57. Allied Steel and the fiduciaries of its pension plan originally brought suit in the United States District Court for the Northern District of Illinois for declaratory and injunctive relief. The suit was transferred to the United States District Court for the District of Minnesota under 28 U.S.C. § 1404. The District Court of Minnesota held that the Act had not been preempted by ERISA for the purposes of the suit and issued an order convening a three-judge court. Fleck v. Spannaus, 412 F. Supp. 366 (D. Minn. 1976).
58. The three-judge court certified several questions to the Minnesota Supreme Court concerning the provisions of the Act and held that the individual plaintiffs, two employees of Allied Steel and the pension fund trustee lacked standing. In addition, the court appointed a special master to take evidence and make findings on certain factual matters. Fleck v. Spannaus, 421 F. Supp. 20 (D. Minn. 1976). Pursuant to the certification order, the Minnesota Supreme Court held that the Act was applicable to the instant case. Fleck v. Spannaus, Minn. (1977), 251 N.W.2d 334 (1977). The three-judge District Court entered judgment on September 2, 1977, which it revised on September 21, 1977. Fleck v. Spannaus, 449 F.Supp. 644 (D. Minn. 1977) (denying the injunction and upholding constitutionality).
59. The Supreme Court noted probable jurisdiction under 28 U.S.C. § 1253 and subsequently held the Act unconstitutional as applied to Allied Steel. 98 S.Ct. at 2720.
60. 98 S.Ct. at 2721. See also U.S. Trust Co. v. New Jersey, 431 U.S. I (1977) where the Court stated: "the Contract Clause was [not] without meaning in modern constitutional jurisprudence, or that its limitation on state power was illusory." Id. at 16.
61. 98 S.Ct. at 2721.
Court would continue the trend of carefully examining social and economic legislation as previously established in United States Trust Co. v. New Jersey.\(^{62}\)

The majority began its analysis by examining the severity of the contractual impairment. The legitimate goal-reasonable means test of Blaisdell was acknowledged\(^{63}\) but the Court decided to add an additional step to the procedure, whereby it would make an initial assessment regarding the severity of the impairment. The Court noted that if the impairment was found to be minor\(^{64}\) it, accordingly, would defer to the judgment of the legislature. If, however, the impairment was determined to be severe, it would then engage in a “careful examination of the nature and purpose of the legislation.”\(^{65}\) The majority found that the pension legislation was a severe impairment of the contractual obligations.\(^{66}\) This determination was based on two considerations. First, the impairment was found to be unanticipated, and second, it was retroactive.

The Court concluded that Allied Steel’s expectations were severely altered because the company was forced to make an unanticipated recalculation of contributions over the past ten years in order to satisfy the Act’s requirements.\(^{67}\) In its brief, Allied Steel argued that its contributions to the pension plan were determined by actuarial computation and that these tables took into account such factors as the probable number of employees who would never receive benefits. Thus, to force it to distribute benefits which neither the employees nor the company had anticipated would create a severe impairment of contractual obligations.\(^{68}\)

In his dissenting opinion, Justice Brennan refuted this point stating that the majority overlooked the fact that, irrespective of what Allied Steel may or may not have anticipated, in order to be effective the plan should have been adequately funded at all times.\(^{69}\) Therefore, while the actual recalcu-

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\(^{62}\) See notes 44-46 and accompanying text, supra.

\(^{63}\) 98 S.Ct. at 2722.

\(^{64}\) The Court emphatically stated: “There can be no question of the impact of the Minnesota Private Pensions Benefits Act upon the company’s contractual relationships with its employees. The Act substantially altered these relationships by superimposing pension obligations upon the company conspicuously beyond those that it had agreed to undertake.” Id. at 2720. The effect of the Act on Allied Steel's contract was to compel the company, upon its closing, to pay for all employees who had worked for ten or more years with the company. Previously, Allied Steel had to pay only for those employees with vested rights under the pension plan. Under the plan's age and year formula, the only employees who had worked for ten years and had vested rights were those who were sixty-five years of age. See note 49 supra. This represented a change in the number of people who would qualify under the Act which did not use age as a factor.

\(^{65}\) 98 S.Ct. at 2723.

\(^{66}\) Id. at 2723.

\(^{67}\) Id.


\(^{69}\) 98 S.Ct. at 2727.
lation may have been unanticipated, the resulting amount should not have been. Nor should there have been any large discrepancy between the amount to be paid and the amount in the fund because the company should have been contributing sufficient funds each year to create a reserve for future payments. This argument may be unrealistic, however, because a plant closing may be unanticipated by both the employees and the company. Thus, the company's actuarial computations of the fund's prospective needs would not necessarily account for such a closing. Furthermore, the express terms of the plan conditioned the distribution of benefits upon the availability of the money at the time of the closing and not upon the amount which should have been in the fund in the first place.

The second reason for the majority's finding that the impairment was severe was that the Act's requirements were retroactive in an area vital to the contract. Retroactivity was found because the Act imposed the legal duty of paying benefits, a central element of the contract, for employees who had worked for Allied Steel prior to its passage. In making this determination, El Paso v. Simmons was correctly distinguished. The Court in El Paso held that the controversial legislation, which limited a previously unlimited time for redemption of reclaimed land, did not affect a matter that induced the parties to enter into a contract. As the parties did not consent to the terms of the contract based on the redemption possibilities, their expectations under the contract were not impaired and, thus, the legislation was found to be valid. In the instant case, the company's obligation to provide benefits to its employees under the terms of the contract was central to the agreement. Since the legislation affected the essence of the contract, the majority correctly determined that the retroactive effect of the Act was a substantial impairment.

There has been, however, a long-standing debate over the problem of retroactive legislation. While retroactive statutes have never been favored
by the Court, not all such legislation has been found to be unconstitutional. The statutes found to be constitutional were those deemed to be reasonable because their adverse effects were outweighed by the need for the legislation.\textsuperscript{76} Therefore, since it is necessary to examine legislation with retroactive effects for reasonableness, the \textit{Allied} majority found support for its strict review of the statute.

A determination that the contractual impairment to Allied Steel's contract was severe, would not, in and of itself, be sufficient to find the Minnesota legislation unconstitutional.\textsuperscript{77} Hence, the Court directed its attention to the reasonableness standard, the traditional means of determining the constitutionality of legislation which impairs contractual rights.\textsuperscript{78} The majority applied the legitimate goal-reasonable means test of \textit{Blaisdell} and \textit{United States v. New Jersey}. First, it determined the necessity and reasonableness of the statute by examining two factors: emergency conditions and the scope of the legislation. Secondly, it evaluated the legitimacy of the statute's goal by examining the societal interest furthered by the legislation.

The emergency standard enunciated in \textit{Blaisdell}\textsuperscript{79} held that under existing emergency circumstances, a state may take the appropriate action to protect its citizens' welfare even though such action might impair contractual obligations. Since there were no economic emergencies at the time the Act was passed, the majority concluded that the legislation did not qualify under this standard.\textsuperscript{80} Emergencies, however, are not the only element that can justify state legislation. Although the \textit{Blaisdell} Court emphasized the emergency nature of the Minnesota Moratorium law as a reason for its validity, it did acknowledge that "[e]mergency does not increase granted power or remove or diminish the restrictions imposed on power granted or reserved."\textsuperscript{81} The majority in \textit{Allied} also recognized that the lack of an

pneumoconiosis, including those miners who had left their job before the amendment was passed. Although the case was decided on a 14th amendment due process basis, the \textit{Allied} dissent noted its similarity to contract clause case law. \textit{See also} Chase Sec. Corp. v. Donaldson, 325 U.S. 304 (1945); League v. Texas, 184 U.S. 156 (1902); Smith, \textit{Retroactive Laws and Vested Rights}, 6 TEX. L. REV. 409 (1928).

\textit{See generally} Linkletter v. Walker, 381 U.S. 618 (1965) (the court used a three pronged test to determine if retroactive legislation could stand); FHA v. Darlington, 358 U.S. 84 (1958); Lichter v. United States, 334 U.S. 742 (1948).

\textsuperscript{76} 98 S.Ct. at 2723. The Court stated that such a finding would push the inquiry to a careful examination, not a conclusion.

\textsuperscript{77} \textit{See} notes 30-35 and accompanying text \textit{supra}.

\textsuperscript{78} \textit{290 U.S. 398, 444 (1934)}.

\textsuperscript{79} \textit{98 S.Ct. at 2725}.

\textsuperscript{80} \textit{290 U.S. 398, 425 (1934)}.

\textit{Blaisdell} emphasized the fact that the issue of legislative interference with contracts should be based on the overall reasonableness of the legislation and that all variables surrounding the enactment of the legislation should be examined. An emergency is one variable that can justify the legislation, but it is not the only variable with such powers. \textit{Id. at 426}. This furthered the Stephenson v. Binford, 287 U.S. 251 (1932) decision in which the Court found a highway control act to be reasonable because it was passed to safeguard the interests of the citizens. The Court, therein, stated it does not "matter that the legislation has the result of modifying or abrogating contracts already in effect." \textit{Id. at 276}. See
emergency alone was insufficient to deny validity to the Act. It appears that the emergency standard was raised simply to demonstrate that the Act did not have the attributes of laws which previously were upheld.

In searching for other constitutional weaknesses, the Court found the legislation to be narrow in scope because it applied to so few people. This claim was substantiated by the majority's belief that the Act applied only to Minnesota employers with one hundred or more employees who terminated their plans or operations. The Court opined that the legislation could not be considered a reasonable solution to a broad societal problem when its scope was so limited.

In discussing this issue, the majority seemed to disregard the number of employees who would actually benefit from the legislation and instead focused on the number of employers it would affect. The Act was not designed, however, with the intent of benefitting the employers; it was designed to protect the employees. Thus, this societal interest in protecting the employees seems to have been overlooked by the majority. Furthermore, the Act would indirectly protect taxpayers. If pension rights were not guaranteed, many individuals could be left with little money in their later years, and taxpayers would have to provide some type of economic support to those denied pension benefits. Thus, there were more people protected by the Act than the majority had calculated. More importantly, it has been well established that a state need not address every aspect of a general welfare problem which it is attempting to remedy. Since pension reform is a multifaceted and complex area, the legislature should not have been expected to solve every pension also East New York Savings Bank v. Hahn, 326 U.S. 230 (1945) (legislation passed during a temporary economic emergency was found constitutional despite contractual impairment but the Court held that the emergencies are not necessary to make such a finding); Veix v. Sixth Ward Building & Loan Ass'n, 310 U. S. 32 (1940) (upheld legislation which impaired contractual obligations, despite the lack of an emergency situation).

82. 98 S.Ct. at 2725 n.4.

83. Id. at 2725. The appellant's brief went into detailed analysis of this point emphasizing the fact that Minnesota is an agricultural state where but a minority of the public enjoys private pension benefits.

84. The very name of the legislation suggests this. Furthermore, the sections are designed to deal with aspects of employee pension rights. See, e.g., MINN. STAT. §§ 181B.04-181B.07 (1974).

85. Congress recognized this problem in a hearing that led to the enactment of the Employee's Retirement Income Security Act, 29 U.S.C. §§ 1001-1081 (1974): "One of the most important matters of public policy facing the nation today is how to assure that individuals who have spent their careers in useful and socially productive work will have adequate incomes to meet their needs when they retire." S. REP. No. 383, 93rd Cong., 2d Sess. (1974); [1974] U.S. CODE CONG. & AD. NEWS 935, 939.

86. See Railway Express Agency v. New York, 336 U.S. 106 (1949) where the Court declared that "[i]t is [not a] requirement . . . that all evils of the same genus be eradicated or none at all." Id. at 110.
problem at one time.87 It has been recognized that when judicial or legislative resolution can "strike at the evil where it is most felt" a great deal can then be accomplished.88

One major goal of the Act was a guarantee, for all employees, of vested rights in pension funds after fewer working years than were generally required by most pension contracts. Assuring employees of future income is a major area for pension reform. Yet, the majority seemingly disregarded this important facet of the Act when it concerned itself with extrinsic but related matters.89 The scope of the legislation and the existence of emergency circumstances are important but the Court's primary focus should have been on the stated purpose of the legislation. Instead, the majority made very few references to the inherent value of the Act.90 The Court's emphasis on the collateral effects of the legislation failed to give the state's interest enough importance.

To determine the legitimacy of the state's goals to be achieved through the enactment of the Act, the majority examined the societal interest in the legislation. The test for determining the legitimacy of this goal is often whether or not the legislation is designed for the general populace. In the instant case, the majority decided that the Act did not meet this standard because it felt that few people would benefit from it.91 Moreover, the Court gave but a cursory glance to the actual legislative intent and noted that the state failed to come forward with any proof that the statute was necessary and reasonable.

A final argument raised in Justice Brennan's dissent was that the impairment of Allied Steel's contract was not prohibited by the contract clause. Justice Brennan noted that the contract clause had historically been applied to cases involving the dilution or abrogation of contractual obligations.92 In the present case a duty was added to Allied Steel's obligations since the statute now required that Allied Steel provide employees, previously ineligible under the plan, with pension benefits. This was not a dilution of a con-

87. Pension benefits can be analogized to unemployment benefits as they are both directed towards the same good of aiding employees. In Carmichael v. Southern Coal Co., 301 U.S. 495 (1937), the Court upheld unemployment legislation despite Due Process objections. The legislation was found to be valid because it helped to support the needy. Id. 515-16. The Court recognized that unemployment is a large problem and in establishing a system of benefits, the "legislature is not bound to occupy the whole field." Id. at 519-20.

88. Id. at 519-20.

89. This was the same argument raised by the dissenting opinion in U.S. Trust v. New Jersey, 431 U.S. 1 (1977). The dissenters in that case argued that the majority failed to confront the facts because they never took issue with the state's defense of the repeal. The state accounted for its transportation problems and needs for the disputed legislation.

90. The majority made few references to the purpose of the Act. It gave a brief statement of the Act in its discussion of the facts but only to show its effect on the Allied Steel contract, rather than a demonstration of its possible importance. 98 S.Ct. at 2720. Another fleeting reference to the purpose was made when the majority gave a cursory glance to the district court's interpretation of the intent. Id. at 2724.

91. See note 84 and accompanying text supra.

92. 98 S.Ct. at 2726.
tractual obligation, the dissent argued and, therefore, the contract clause did not apply. This argument, however, may be refuted by examining the definition of "impairment of obligation." The Court has held that any law which "enlarges, abridges or in any manner changes this intention" impairs the contractual obligation. Thus, the Court was justified for its use of the contract clause because the addition of an obligation to pay for employees previously not covered may be construed to be an "enlargement" of the contract.

**Impact On Future Legislation**

The effect of the *Allied* decision is to limit a state's power to enact legislation despite its intended benefit to society. Previously, the courts had supported social and economic legislation designed to promote general welfare despite any resulting impairment of contractual obligations. *Allied*, nonetheless, represents a possible change in the Court's attitude toward the contract clause. After *United States Trust* and *Allied*, it appears that the contract clause may be given a position of more importance as a protection of individual freedom from state interference.

It appears that the *Allied* majority has extended the stringent standard of review established in *United States Trust* to private contracts. *United States Trust* distinguished between public and private contracts and held that public contracts require closer examination than private ones. *Allied* has eliminated this distinction and it now seems that all state legislation deemed to cause a severe impairment of contract obligations will be subject to this stringent standard of review.

This departure from judicial deference to state legislation and the increased respect for the individual's contractual rights may affect all social and economic legislation. The decision places a new burden on the state to explicitly demonstrate the purported validity of its legislative actions. The Court has demonstrated that it will look for a statement of purpose for the state legislation and will not automatically assume its importance. The inherent value of the legislation, therefore, will not be sufficient; it must be clearly articulated by the state in order to withstand a contract clause challenge.

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93. See, e.g., Satterlee v. Matthewson, 27 U.S. (2 Pet.) 380 (1829) which upheld state legislation that enlarged a contract. This case involved a contract between a landlord and a tenant which was found to be invalid by the state Supreme Court. The legislature subsequently passed an act which rendered the contract valid. The Supreme Court of the United States held that the legislation was constitutional and did not impair the obligations of the contract, it just reinstated them.

94. As Justice Johnson aptly noted in Fletcher v. Peck, 10 U.S. (6 Cranch) 87 (1810), "where to draw the line, or how to define or limit the words 'obligation of contracts,' will be found a subject of extreme difficulty." Id. at 143.


96. See note 45 and accompanying text supra.

97. 98 S.Ct. at 2724.
PENSION REFORM AS A LEGITIMATE STATE INTEREST

A final effect of Allied was to deny a state the right to legislate in an area that it believed to be vital to its citizens' welfare. A state undoubtedly has an interest in protecting the pension rights of the people working within its borders. The history of pension plans has shown a rapid development in the importance of these plans to our society.\(^9\) Originally, pensions were considered to be a gratuity, arising often from a feeling of moral obligation.\(^9\) Today, however, pensions play an indispensable role in our society not only as a source of income to many retired workers but also as a source of capital to be used for reinvestment in the economy. This importance was overlooked by the Allied majority when it made its determination.

The major purpose of pension plans is to provide a source of income for the elderly.\(^1\)\(^0\) The retired man or woman oftentimes requires support through funds other than his or her own earnings. A logical way to achieve this support is through a pension.\(^1\)\(^0\) Although a private pension plan does not always provide sufficient income for the retired person, it certainly augments any other income they may receive.\(^1\)\(^0\) The need for legal enforcement of pension plans is manifested by the fact that few people ever receive their expected benefits.\(^1\)\(^0\) American taxpayers already support retirees with

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102. Income is one of the major problems of the elderly. It has been noted that social security is available to most of the elderly population but those benefits are rarely sufficient to cover the cost of living. See, e.g., R. NADER & K. BLACKWELL, YOU AND YOUR PENSION 13 (1973). The assurance of a pension income not only provides financial stability but also a sense of relief to the individual and a benefit to society. The Chicago Tribune recently printed a series of articles entitled "Growing Old in America" which discussed the problems of income for the elderly. Chicago Tribune, October 3, 1978, § 1 at 1. The author's emphasis was on social security and its insufficient funding but he noted that private pension plans have helped many. The problem is that over half of the work force still has no private pension coverage.

103. Statistics show that only four to eight percent of all participants in domestic plans have received benefits since 1950. Coleman & Herlands, Private Pension Plans: The Prospects for Reform, 5 COLUM. HUMAN RIGHTS L. REV. 465 (1973). Such statistics and problems led to the enactment of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1081 (1974). ERISA guaranteed vesting and funding requirements, termination insurance and rules about fiduciary responsibility. Commentators have noted, however, that ERISA did not solve all the problems; in fact, it increased the cost of providing pension benefits. This, in turn, can lead to layoffs or termination of a plan. Therefore, a need for reform to guarantee
an annual tax subsidy. If few people receive their expected funds, the taxpayers will ultimately pay more to other sources of government aid programs to support those who never receive their expected income. If private pensions were legislatively and judicially regulated, this burden on the public could be averted.

Furthermore, private pension funds are very important because of their effect on retirees and the capital market. This effect is due, primarily, to the substantial amount of money in the funds and the various uses for that money. For example, the increase in net savings through pension funds, has greatly supplemented the personal savings of thousands of workers. It must also be noted that tax benefits can arise for the employer, because it may take a deduction for contributions to a trust, set up for employee pension benefits. Thus, pension funds can play a vital role in the present and future economic status of both employees and employers.

Moreover, the accumulated capital is often used to generate new capital through investment and, as a result, workers have acquired substantial equity in many types of corporate stocks and government bonds. This implies that the funds possibly could be used to gain control of private corporations. Therefore, the pension reserves are important and could be employed to create new capital not only for the retired employees but also for the national economy.

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105. Statistics indicate that the percentage of people over 65 years of age is steadily increasing: in 1900, there were 3 million people over the age of 65 (four percent of the population), in 1950 there were 12¼ million people over the age of 65 (eight and one half percent of the population), by the year 2000 it has been predicted that there will be 26 million people over the age of 65 (approximately 11 percent of the population). As the percentage of people over 65 has increased, the percentage of those still working has decreased: in 1890, 39.9 percent of those over 65 held jobs; by 1950, only 23 percent of those over 65 were still in the labor market. SYMPOSIUM, PRIVATE PENSION AND THE PUBLIC INTEREST 2 (1970). These statistics imply that there will be more people without jobs in the future. The state does have an interest in providing for these people through pension reform legislation.

106. See S. REP. No. 127, 93rd Cong., 2d Sess. 2-3 (1973); Daniels v. Int'l Brotherhood of Teamsters, 561 F.2d 1223, 1237 (7th Cir. 1977).

107. In 1976, over 160 billion dollars were credited to private pension funds. STATISTICAL ABSTRACT OF THE UNITED STATES 332 (1977). It has been predicted that by 1980, pension funds will have a total reserve of 200 billion dollars. TAGGART, supra note 101, at 69. Furthermore, these vast reserves are not depleted by large amounts every year in payments. For example, in 1975 the total assets credited to private pensions were 145 billion dollars. Of that amount, only 12 billion was disbursed. Id. Thus, a substantial amount remains in these funds, which, in turn, can and does affect the economy.

108. In a study of the breakdown of individuals' savings, it was shown that in 1960, 9.3 billions of all dollars saved came from pension reserves. By 1976, that figure had risen to 24.7 billion dollars. STATISTICAL ABSTRACT OF THE UNITED STATES 439 (1977). See also TURE, supra note 104, at 2.


110. TURE, supra note 103, at 2.

111. TAGGART, supra note 100, at 69.
It cannot be denied that pension reform is important to society. It involves a substantial amount of capital and it affects the lives of every worker. Thus, there is a definite need for regulations such as the Private Pension Benefits Protection Act. Without such regulation, the funds may be misused and employees who depend on their pension rights could be divested of their expected benefits. Requirements that guarantee the employee pension rights, as does the Act, become very important because they guarantee the employee a share of the benefits. Guaranteed vested helps to eliminate the possibility that a worker may lose those benefits because he was laid off for one day or the company closed its operations: "[F]rom the standpoint of the whole system of social economy, no employer has the right to engage men in any occupation that exhausts the individual's industrial life...and then leaves the remnant floating on society at large as a derelict at sea." Furthermore, through legislation such as the National Labor Relations Act, the Welfare and Pension Plan Disclosure Act and the Employee Retirement Income Security Act, Congress has recognized the vital need for pensions and their regulation. If the courts are not willing to support the state pension reform legislation, many people who depend on retirement benefits will ultimately suffer. Therefore, it is time for the courts to acknowledge the need for pension reform and the inherent reasonableness of such legislation.

CONCLUSION

Although the Private Pension Benefits Protection Act has been preempted by the Employee Retirement Income Security Act of 1974, the importance of the Allied decision has not been diminished. The Court's denial of a state's power to enact legislation which it considers to be vital for the management and control of pension funds.

112. In a recent district court case concerning pension funds and security regulations, the court recognized the need to have the S.E.C. regulate pension plans. Daniels v. Inter. Brotherhood of Teamsters, 561 F.2d 1223 (7th Cir. 1977). If pension plans are important enough to be regulated by the S.E.C., it seems logical that they are important enough for state regulation. The Daniels decision was reversed in International Brotherhood of Teamsters v. Daniels, 47 U.S.L.W. 4135 (1979). This decision, however, did not declare pension plans to be unimportant, in fact, it did not address this issue. Instead, the Court held that pension plans did not qualify as a security and that ERISA gave sufficient protection to the plans.


116. Id. §§ 301-309.

117. Id. §§ 1001-1081 (1974).

118. The Minnesota Pension Benefits Act has been pre-empted by the Employee Retirement Income Security Act of 1974. 29 U.S.C. § 1001-1081 (1974) (ERISA). ERISA signifies Congressional awareness of the importance of private pensions and their impact on general welfare. The purpose of ERISA is to guarantee minimum standards, including early vesting to all employees who work for private companies. 29 U.S.C. §§ 1051-1061 (1974). Moreover, because the contract clause applies only to state law, ERISA is exempt from its restrictions. See note 1 supra.
welfare and the reaffirmance of the individual's right to contract without state interference represents a shift in the emphasis of contract clause interpretation.

Since its inception, there has been no per se rule of application for the contract clause. There has never been a category of contracts that has been innately free from state legislation. Instead, the Court has established guidelines, contingent on the reasonableness of the legislation, for the application of the clause. The United States Trust case had emphasized a dual standard of analysis using a more stringent standard of review for laws which affected contracts in which the state is a party than for laws interfering with contracts between private individuals. Allied also enunciated a dual standard of review but did not make the same distinction. Instead, Allied's standard is based on the severity of impairment, with the stringent standard of review to be applied to laws which severely impair contractual obligations rather than to those which have a minimal effect. The Court, however, neglected to offer any guidelines for this determination of severity, apparently leaving the issue to judicial discretion. If this is so, the judiciary may have too significant a role in determining the validity of legislation because it will ultimately decide if the legislation impairs an obligation of a contract to such an extent that the statute must fail.

Two years ago, Justice Brennan wrote in his dissent in United States Trust, "[g]iven that this is the first case in some 40 years in which this Court has seen fit to invalidate purely economic and social legislation on the strength of the contract clause, one may hope that it will prove a rare phenomenon. . . ."119 Allied proved, however, that the Court's new respect for the contract clause may not be rare. Instead, it continued the trend of subordinating police power legislation to contractual obligations. It now appears that the contract clause will once again be employed as a protection of individual contractual rights, possibly to the detriment of the state's ability to pass legislation for the benefit of the general welfare.

Carlen A. Petersen

119. 431 U.S. 1, 60 (1977).