COMMENTS

United States Trust Co. v. New Jersey—State Promises and the Contract Clause: An Untimely Resurrection

The contract clause of the Federal Constitution provides: "No state shall . . . pass any . . . Law impairing the Obligation of Contracts. . . ." As the only direct restraint on state actions affecting private property until the adoption of the fourteenth amendment, the contract clause was once fertile ground for constitutional litigation. But in the early twentieth century the growing importance of substantive due process as a check on state economic regulation obscured the provision's role. By the Depression era, the Supreme Court's eventual recognition of broad governmental powers to regulate economic activity had rendered the contract clause, along with substantive due process, "virtually moribund" in the constitutional scheme. The recent decision in United States Trust Co. v. New Jersey, however, subjects alleged impairments of state contracts to rigorous scrutiny under the contract clause and resurrects the provision as a powerful tool of judicial review.

This comment examines the impact of United States Trust on traditional contract clause doctrines and policies. After an initial discussion of the factual and legal background, a historical survey will show the decision employs a new approach to contract clause analysis. Next, this comment will analyze the Court's new approach, especially the Court's treatment of impairments when a state is a contractual party, its willingness to make policy judgments formerly left to legislative discretion, and the decision's

4. Id.
5. B. Schwartz, A Commentary on the Constitution of the United States: The Rights of Property 267 (1965). See 2 W. Crosskey, Politics and the Constitution 1054 (1953); Hale, The Supreme Court and the Contract Clause (pt. 3), 57 Harv. L. Rev. 852, 890-91 (1944). This comment, however, will argue the subsidiary thesis that prior to United States Trust Co. v. New Jersey, 431 U.S. 1 (1977), the contract clause still had a viable, if somewhat limited, role in the constitutional scheme. See text accompanying notes 80-83, 134-38 infra.
probable effect on any future municipal debt crises. Finally, in accord with Justice Brennan's dissent in *United States Trust*, this comment will conclude that the Court's former approach to contract clause issues was superior because the Court recognized the need for broad state powers to regulate governmental obligations.

I. BACKGROUND OF UNITED STATES TRUST

In 1962 the New York and New Jersey legislatures enacted legislation restricting the Port Authority of New York's operation of deficit producing commuter railroads.\(^7\) Although the legislation authorized the Port Authority to acquire and operate the bankrupt Hudson and Manhattan mass transit system,\(^8\) the legislatures also created a statutory covenant between the states and Port Authority bondholders as an additional security measure for private investors.\(^9\) By the covenant's terms, the states promised bondholders that the Port Authority would not apply any revenues or reserve funds for commuter railroad operations, except the Hudson and Manhattan or the "permitted railroad purposes" defined in the agreement.\(^10\) The covenant's "permitted purposes"

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9. 1962 N.J. Laws ch. 8, § 6 (prospectively repealed 1972); 1962 N.Y. Laws ch. 209, § 6 (prospectively repealed 1972). Port Authority bondholders feared that operating deficit-producing commuter rail services would endanger the entity's fiscal strength. When New Jersey proposed the acquisition of the Hudson and Manhattan, the Port Authority consented but insisted on the covenant as a security device to protect its credit rating. Kheel & Kheel, *supra* note 7, at 8-9. Stringent security measures, however, already protected Port Authority investors. Under the Port Authority's Consolidated Bond Resolution, the agency irrevocably pledges all revenues and reserve funds as security for bond issues. *Id.* at 9 n.44. In addition, the agency cannot issue new bonds unless projected revenues equal 130% of the debt service due in the year the Port Authority's current and proposed obligations are at a maximum. The Port Authority commissioners must also certify that new bond issues will not materially impair the agency's ability to satisfy its obligations. See United States Trust Co. v. New Jersey, 431 U.S. 1, 34-35 (1977) (Brennan, J., dissenting).

10. The covenant's "permitted purposes" allowed Port Authority involvement in railroad freight transportation and maintenance of tracks on existing Port Authority
allowed only self-supporting future rail projects or projects that could operate within "permitted deficits."\textsuperscript{11}

In practice, however, the covenant effectively barred the Port Authority from new rail transit operations.\textsuperscript{12} The legislatures prospectively repealed the covenant in 1972 to allow increased Port Authority participation in solving the Manhattan area's transportation problems.\textsuperscript{13} Yet prospective repeal failed to solve funding problems for new projects; the covenant still protected outstanding bonds until the year 2007.\textsuperscript{14} In the interim, the legislatures confronted mounting public concern over transit, energy, and pollution problems.

In 1974, during a national energy crisis, the legislatures retroactively repealed the 1962 covenant.\textsuperscript{15} The repeal was part of a general plan to meet the Manhattan area's transit problems and to bring the region's air quality into compliance with federal air pollution standards.\textsuperscript{16} The legislatures sought to discourage automobile traffic through higher tolls on Port Authority bridges and tunnels and to employ the increased revenue for improving and expanding commuter rail services.\textsuperscript{17} A congressional declaration of a national energy emergency also prompted the retroactive

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\item See Kheel & Kheel, supra note 7, at 10. Under the "permitted deficits" formula, the deficits from commuter rail operations could not exceed 10\% of the Port Authority's total bonded indebtedness. \textit{Id}. Yet the projected deficit in 1962 for operating the Hudson and Manhattan approximated the 10\% figure. \textit{Id}. Given the economics of mass transportation, self-sustaining commuter rail operations are impossible. \textit{Id}. Accordingly, the covenant effectively precluded any future Port Authority rail transit operations.


\item United States Trust Co. v. New Jersey, 431 U.S. 1, 36 n.2 (1977) (Brennan, J., dissenting).


\item United States Trust Co. v. New Jersey, 431 U.S. 1, 29 (1977).
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repeal. The United States Trust Company of New York, however, a holder and trustee of affected bonds, brought suit against both states contending the repeal impaired the obligation of Port Authority bond contracts.

The New Jersey trial court held the repeal constitutional. It found that the repeal neither materially impaired the bondholders' security nor adversely affected the bonds' secondary market value, except for a short term fall-off. The court held that the contract clause does not prohibit reasonable exercises of the state's police power. Relying on Justice Cardozo's opinion in W.B. Worthen Co. v. Kavanaugh, the court found the repeal reasonable because it did not destroy the bonds' quality as an acceptable investment for a rational investor. Most significantly, the trial court stated that parties who contract with a state deal with a sovereign entity; thus, the sovereign's power to alter obligations in the public interest inheres in the contract. Accordingly, the court rejected plaintiff's argument that impairments of state contracts require more stringent judicial scrutiny than those of private contracts. The New Jersey Supreme Court affirmed the judgment without discussing the constitutional issue.

21. Id. at 181-82, 338 A.2d at 866. The trial court found that although the price of Port Authority bonds fell immediately after the repeal, the bonds had fully recovered their former value by the time of the trial. The court also noted that the bonds' "A" rating by Moody's and Standards & Poor's financial surveys remained the same after the repeal. Id. at 179, 338 A.2d at 864-65.
22. Id. at 197, 338 A.2d at 874.
25. Id. at 197, 338 A.2d at 872.
27. 69 N.J. at 253, 353 A.2d at 514 (1976). The United States Trust litigation in the New Jersey courts also contained a class action complaint seeking a declaratory judgment that the 1962 covenant was unconstitutional and requesting a court order directing the Port Authority to develop a comprehensive mass transit plan. Although the trial court dismissed the complaint, plaintiffs' appealed the decision to the state supreme court. Id. at 256-57, 353 A.2d at 515. A majority of the court affirmed the entire trial court decision. In a separate opinion, Justice Pashman, although concurring that the repeal was constitutional, argued that inadequate transit services and the resulting air pollution problems had created an emergency situation. Id. at 287, 353 A.2d at 533. Justice Pashman felt that
The United States Supreme Court, however, emphasized New Jersey's role as a party to the contract and held the law unconstitutional. Justice Blackmun's majority opinion noted a state cannot contract away an essential attribute of its sovereignty, such as its police power or power of eminent domain; if a state attempts to do so, the contract is void ab initio. Yet a state does have the power to enter into binding financial contracts. The Court found the 1962 covenant a "purely financial" obligation not within the inalienable state power doctrine. The repeal affected an operative contract and the crucial question was whether the impairment was permissible.

The opinion stressed that special judicial scrutiny is appropriate when a state impairs its own contract. The Court stated that although courts usually give wide deference to legislative discretion when state actions affect private contracts, complete deference to legislative judgments is inappropriate when legislation affects a state's own financial interest. Justice Blackmun reasoned that if states could reduce their financial obligations to spend money in the public interest at will, the contract clause would not protect the rights of state creditors. Thus, the Court refused to defer to the legislature's assessment of the repeal's "reasonableness" and "necessity" because the state was a contractual party.

The Court formulated a conjunctive standard of "reasonableness" and "necessity" to test the repeal's constitutionality. The Court analyzed the legislation's reasonableness

the complaint warranted a writ of mandamus directing the Port Authority to formulate a regional mass transportation plan and to complete its existing mass transit projects. Id. at 288, 353 A.2d at 533.

31. Id. at 24-25; see text accompanying notes 61-67 infra. Although the covenant's terms restricted only the Port Authority's use of funds, the practical effect and the apparent purpose of the covenant was to bar additional mass transit projects. See note 11 supra. Thus, the Court's characterization of the covenant as "purely financial" is somewhat misleading.
33. Id. at 26.
34. Id.
35. Id. at 29-32. This comment discusses three distinct conceptions of "reasonableness." First, the "changed circumstances" reasonableness standard the Court develops in United States Trust. See text accompanying notes 36-39, 119-23 infra. Second, the "reasonableness" standard the Court formerly applied in contract clause analysis. See
by contrasting the circumstances surrounding the covenant's adoption and subsequent repeal. The Court found that the earlier legislature foresaw and intended the covenant's restrictions on mass transit operations.\textsuperscript{36} Despite a mounting transit and energy crisis,\textsuperscript{37} and extensive federal environmental legislation,\textsuperscript{38} the Court also found that the new circumstances prompting the repeal were merely changes in degree, not of kind, from problems known to the legislature in 1962.\textsuperscript{39} Consequently, under the Court's changed circumstances standard, the covenant's repeal was not "reasonable" because the state failed to show the contract had unforeseen and unintended effects on state policy.

The repeal also failed to satisfy the Court's "necessity" criterion. First, the Court inquired whether total repeal of the covenant was necessary.\textsuperscript{40} It then suggested hypothetical alternatives for achieving the state's goals through limited modifications of the covenant and concluded such measures would be equally effective.\textsuperscript{41} Second, the Court found that the state had alternative measures available to attain the repeal's objectives without modifying the covenant at all.\textsuperscript{42} Accordingly, the repeal was not "necessary" because the Court found the state could have pursued its goals through less drastic means than total abrogation of the covenant.\textsuperscript{43} Although the Court recognized the state action served important public purposes,\textsuperscript{44} it held the repeal unconstitutional.

Justice Brennan's vigorous dissent, however, argued that the contract clause cannot bind states to contracts limiting the authority of successor legislatures to enact laws in the public interest.\textsuperscript{45} The dissent stressed that a fundamental premise of popular

\textsuperscript{36} 431 U.S. at 31-32.
\textsuperscript{37} See text accompanying notes 14-18 and note 27 supra.
\textsuperscript{38} See 431 U.S. at 35-41 (Brennan, J., dissenting).
\textsuperscript{39} Id. at 31-32.
\textsuperscript{40} Id. at 29-31.

\textsuperscript{41} Justice Blackmun suggested that the legislatures could have amended the covenant to remove restrictions from revenue generated by increased bridge and tunnel tolls. \textit{Id.} at 30 n.28. He also noted the legislatures could have modified the "permitted deficits" formula, or adopted procedures to obtain consent from bondholders for increased transit projects. \textit{Id.}

\textsuperscript{42} Justice Blackmun warned, however, that the Court expressed no opinion as to whether any of these lesser impairments would be constitutional. \textit{Id.}

\textsuperscript{43} \textit{Id.} at 31.
\textsuperscript{44} \textit{Id.} at 28-29.

\textsuperscript{45} \textit{Id.} at 33 (Brennan, J., dissenting).
democracy is that legislatures must remain responsive to the will of the electorate.\(^4\)

Accordingly, a rigid application of the contract clause threatens the functioning of the political system by binding legislatures to the policies inherent in their predecessor's contracts.\(^4\) Justice Brennan argued that one hundred years of precedent demonstrated the need for judicial deference to legislative actions challenged under the contract clause,\(^4\) and that the trial court's constitutional standard correctly resolved the litigation.\(^4\) The dissent warned that the Court not only departed from the policy values of previous decisions, but also fundamentally misconceived the nature of the contract clause guarantee when state contracts are at issue.\(^5\)

II. THE CONTRACT CLAUSE AND STATE PROMISES

Quite possibly the Constitution's framers did not intend the contract clause to apply to state contracts.\(^5\) The economic distress following the Revolutionary War led to state laws, usually favoring debtors, impairing the value of private contract rights.\(^5\) Discussions of the contract clause in the Constitutional Convention\(^5\) and The Federalist\(^5\) referred only to the goal of protecting contracts between individuals from legislative interference. No historical evidence indicates that the framers intended a broader application of the contract clause.\(^5\)

Marshall Court decisions, however, soon applied the clause to state promises.\(^5\) Addressing the argument that state contracts

46. Id. at 45 (Brennan, J., dissenting).
47. Id.
48. Id. at 46 (Brennan, J., dissenting).
49. Id. at 56-57 (Brennan, J., dissenting).
50. Id. at 45 (Brennan, J., dissenting).
51. See B. SCHWARTZ, supra note 5, at 270; Merrill, supra note 3, at 639. The adoption of the eleventh amendment in 1798 also supports an inference that the framers did not intend the contract clause to apply to state promises. In Chisholm v. Georgia, 2 U.S. (2 Dall.) 419 (1793), the Supreme Court allowed an out-of-state creditor to recover a war debt from Georgia in a suit tried in a federal court. The states, fearing for their treasuries, reacted by ratifying the eleventh amendment which denies federal courts jurisdiction in suits between nonstate residents and a state. See generally Abrahams & Mattis, The Duty to Decide vs. the Daedalian Doctrine of Abstention, 1 U.P.S. L. Rev. 1, 50 (1977).
52. See generally Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 454-65 (1934) (Sutherland, J., dissenting).
53. B. SCHWARTZ, supra note 5, at 274; Merrill, supra note 3, at 639.
54. THE FEDERALIST No. 44 (J. Madison).
55. In fact, several members of the Constitutional Convention disputed such a suggestion. See B. SCHWARTZ, supra note 5, at 274.
56. Fletcher v. Peck, 10 U.S. (6 Cranch) 87 (1810) (state law anulled deeds obtained in prior state land sale); New Jersey v. Wilson, 11 U.S. (7 Cranch) 164 (1812) (land tax immunity granted by state not revocable against subsequent purchasers); Trustees of
were outside the scope of the contract clause, Chief Justice Marshall stated: “The words themselves contain no such distinction. They are general and are applicable to contracts of every description.”

57. He also commented that the framers adopted the clause to “establish a great principle, that contracts should be inviolable.”

58. Yet this great principle was also capable of binding legislatures to foolish or corrupt policies embodied in their predecessor’s contracts.

59. Chief Justice Marshall’s application of the clause to state contracts thus created a basic conflict between judicial protection of contract rights and the legislative power to implement new social policy.

In later years the Court became sympathetic to the argument that states could not abridge their legislative power by contract. By the late nineteenth century, the Court had adopted the doctrine that legislatures could not bargain away a state’s police power. The doctrine developed in cases where a state granted


57. Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 137 (1810).

58. Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122, 206 (1819). The inherent constitutional values the contract clause promotes, however, make Chief Justice Marshall’s thesis highly questionable. Historical evidence demonstrates that the framers adopted the clause not only to protect the integrity of contract rights, but also to promote a stable climate for trade and industry. See C. Beard, AN ECONOMIC INTERPRETATION OF THE CONSTITUTION OF THE UNITED STATES 178-83 (1913). Although a policy of protecting contract rights applies equally to state and private obligations, the limited impact of impairments of state contracts disrupts commercial activity far less than impairments of contracts between individuals. Furthermore, a stable business climate presupposes a government with the authority and ability to protect the social order. When public contracts threaten a state’s ability to safeguard society, then state compliance with such contracts violates an underlying policy of the contract clause. Accordingly, the contract clause’s twin policies of protecting individual contract rights and social stability may conflict when a state impairs its own contracts. Given the framers’ inattention to the unique problems of state contract impairments, see B. Schwartz, supra note 5, at 270, 274, Chief Justice Marshall’s extension of the contract clause was actually a “creative act of the first magnitude and one which resulted in a virtual metamorphosis of the organic provision as it had left the Framers’ hands.” Id. at 274.

59. In Fletcher v. Peck, 10 U.S. (6 Cranch) 87 (1810), for example, speculators bribed all but one legislator to obtain passage of an act authorizing an extensive land sale. An enraged public elected new lawmakers who promptly revoked the deeds obtained under the former act. The Court’s decision, which invalidated the revoking legislation, did not meet with great public approval. See B. Schwartz, supra note 5, at 274-76.


61. The Court, in Stone v. Mississippi, 101 U.S. 814 (1879), explained the doctrine’s rationale:

[T]he power of governing is a trust committed by the people to the government, no part of which can be granted away. The people, in their sovereign capacity, have established their agencies for the preservation of the public health and the
contract rights directly affecting the public’s health,\textsuperscript{62} safety,\textsuperscript{63} or morals;\textsuperscript{64} when the subsequent exercise of the contract rights threatened these interests, the Court allowed the state to impair its prior promise. The doctrine’s rationale rested on the Court’s determination that legislatures lacked the capacity to contract away a state’s basic governmental powers.\textsuperscript{65} The inalienable police power doctrine prevented the contract clause from binding states to contracts endangering vital public interests.\textsuperscript{66} Yet the doctrine also contained an important limit: the Court upheld impairments only when a contract’s subject matter compromised a state’s “inalienable” powers.\textsuperscript{67}

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\textsuperscript{62}E.g., Northwestern Fertilizing Co. v. Village of Hyde Park, 97 U.S. 659 (1878) (ordinance prohibiting transportation of dead animals through a town upheld despite fertilizer plant’s charter).
\textsuperscript{63}E.g., Chicago B. & Q.R.R. v. Nebraska ex rel. Omaha, 170 U.S. 57 (1898) (ordinance requiring maintenance of public viaduct built by railroad companies did not impair prior contract right to construct the viaduct).
\textsuperscript{64}E.g., Boston Beer Co. v. Massachusetts, 97 U.S. 25 (1878) (prohibition act did not impair prior charter to brew beer).
\textsuperscript{65}See Hale, \textit{The Supreme Court and the Contract Clause} (pt. 2), 57 \textit{Harv. L. Rev.} 621, 654-63 (1944); Merrill, \textit{supra} note 3, at 660-67.
\textsuperscript{66}See B. Schwartz, \textit{supra} note 5, at 283-87.
\textsuperscript{67}See Note, \textit{The Constitutionality of the New York Municipal Wage Freeze and Debt Moratorium: The Resurrection of the Contract Clause}, 125 U. Pa. L. Rev. 167, 179 (1976) [hereinafter cited as Resurrection of the Contract Clause]. Although the Court in \textit{United States Trust} found the covenant’s subject-matter was “purely financial” and thus treated it as an enforceable contract, see text accompanying notes 30-31 \textit{supra}, the Court’s approach in previous contract clause decisions challenges the covenant’s validity. In \textit{Board of Liquidation v. McComb}, 92 U.S. 531 (1876), for example, the Court invalidated legislation diluting a reserve tax fund pledged as security for a bond issue. Nevertheless, the Court stated:

We are not prepared to say that the legislature of a State can bind itself, not to create a further debt, or not to issue any more bonds. Such an engagement could hardly be enforced against an individual; and, when made on the part of a State, it involves, if binding, a surrender of a prerogative which might seriously affect the public safety.

\textit{Id.} at 535. Thus, the financial restrictions contained in the 1962 covenant are arguably an impermissible abdication of the legislature’s power. See Kheel & Kheel, \textit{supra} note 7, at 17-18.

The 1962 covenant, however, survived a similar attack on its validity in Kheel v. Port of New York Authority, 331 F. Supp. 118 (S.D.N.Y. 1971). \textit{aff’d}, 457 F.2d 46 (2d Cir.), \textit{cert. denied}, 409 U.S. 983 (1972). In \textit{Kheel}, plaintiff argued that the covenant was an unconstitutional delegation of future legislative authority to provide mass transit services. 331 F. Supp. at 119. The trial court, however, rejected the constitutional argument as “illusory” and “premature.” \textit{Id.} at 122.
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In 1934, the Court in *Home Building & Loan Association v. Blaisdell*, 68 made a "comprehensive restatement of the principles underlying the application of the Contract Clause." 69 The Court upheld Minnesota’s mortgage moratorium law passed during the depths of the Depression. The legislation, limited in duration and prefaced by a declaration of economic emergency, protected defaulting mortgagors from foreclosure sales if they applied to a local court and made reduced monthly payments. 70 Chief Justice Hughes reasoned that the constitutional policy of protecting contract rights presupposed the existence of state governments with the authority to safeguard the vital interests of the people; 71 thus, a "reservation of a reasonable exercise of the protective power of the state is read into all contracts." 72 The Court formulated a new standard for permissible contract impairments: "whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end." 73 *Blaisdell*, therefore, established that the contract clause permitted reasonable exercises of the reserved legislative power to protect vital public interests. 74

*Blaisdell* also provided a new analytical approach to contract clause litigation. First, the legislative power to alter obligations no longer depended on the content of the affected contract. 75 The Court emphasized that the external circumstances of economic distress justified the state’s exercise of its reserved legislative power. 76 Second, the Court expressly noted that the reservation

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68. 290 U.S. 398 (1934).
71. Id. at 435.
72. Id. at 444.
73. Id. at 438.
74. Chief Justice Hughes based his interpretation of the contract clause on the approach Justice William Johnson developed a century earlier in *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213 (1827) (state insolvency act does not impair obligation of contracts entered into after passage of the statute). See Hale, supra note 5, at 880. Justice Johnson argued that the framers intended the contract clause to prevent "arbitrary and tyrannical legislation over existing rights." 25 U.S. (12 Wheat.) at 285. Yet "[s]ocieties exercise a positive control as well over the inception, construction, and fulfilment of contracts." Id. at 285-86. Noting that the framers wrote the constitution for "an advanced state of society," id. at 282, Justice Johnson reasoned that a reading of the contract clause requiring "rigid literal fulfilment" of contracts "could not have been the intent of the constitution." Id. at 285. Accordingly, Justice Johnson concluded "[i]t is the motive, the policy, the object, that must characterize the legislative act, to affect it with the imputation of violating the obligation of contracts." Id. at 290-91; see Home Bldg. & Loan Ass’n v. Blaisdell, 290 U.S. 398, 428-29, 443-44 (1934).
76. 290 U.S. at 444.
of legislative power formed a part of all contracts—private and state contracts alike. Finally, Blaisdell established that legislatures retained the power not only to impair contracts threatening the public’s health, safety, or morals, but also to make reasonable alterations of contracts affecting the public’s economic interests. Blaisdell, therefore, did not focus on the subject matter of the affected contract; instead, the Court centered its inquiry on the “reasonableness” of the challenged legislation.

Blaisdell’s reasonableness standard, although superficially similar to the “rational relation” due process standard pronounced the same year in Nebbia v. New York, did not devitalize the contract clause. The Court’s analysis of reasonableness centered on the economic emergency facing the legislature and the legislation’s effect on the contracts’ value. The Court found the moratorium’s temporary measures did not impair the integrity of the mortgagors’ repayment obligation. Thus, Blaisdell, unlike Nebbia, required more than a showing that the legislation had a “rational relation to a proper legislative purpose.” The Blaisdell standard also required that the circumstances surrounding the legislation warranted the state’s exercise of its reserved protective power, and that the measures left the basic contractual obligation intact. Moreover, the Court’s subsequent applications of Blaisdell’s reasonableness standard did not invariably uphold contested legislation; contract clause decisions following Blaisdell

77. Id. at 435-36; see Minnesota Gas Co. v. Public Serv. Comm’n, 523 F.2d 581, 585 (8th Cir. 1975), cert. denied, 424 U.S. 915 (1976).
78. 290 U.S. at 437. Blaisdell’s analysis also avoided wooden classifications of how a law affected a contract. Formerly, the Court upheld laws that affected only remedial contract rights, see, e.g., Penniman’s Case, 103 U.S. 714 (1881) (abolishing imprisonment for debt does not impair underlying obligation to repay), but struck down laws directly modifying the scope of contractual performance. See, e.g., Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122 (1819) (state insolvency law discharging debts contracted prior to the act struck down).
79. See 290 U.S. at 447.
81. 290 U.S. at 447. Although Blaisdell’s test of reasonableness centered on the limited duration of the legislation and the economic emergency which the state was experiencing, later decisions employing Blaisdell’s approach required neither an emergency nor a time limit on the relief. See, e.g., Veix v. Sixth Ward Bldg. & Loan Ass’n, 310 U.S. 32 (1940) (state may restrict shareholders’ right to withdraw funds from savings and loan associations without declaration of an economic emergency or limited time period).
employed its basic approach to both overturn and uphold state laws.\textsuperscript{83}

In \textit{W.B. Worthen Co. v. Kavanaugh},\textsuperscript{84} the Court employed a \textit{Blaisdell} analysis to overturn legislation affecting state contracts. The decision invalidated a state law reducing the remedies available to holders of delinquent municipal bonds.\textsuperscript{85} Justice Cardozo's analysis centered on the social circumstances prompting the repeal and the reasonableness of the legislative action. He stated: "What controls our judgment at such times is the underlying reality rather than the form or label."\textsuperscript{86} Although a legislative declaration of public emergency accompanied the law,\textsuperscript{87} the Court stated that the public welfare would not excuse unreasonable reductions of the bonds' security.\textsuperscript{88} The Court found the act unreasonable because it destroyed the bonds' quality as an "acceptable investment for a rational investor."\textsuperscript{89} \textit{Kavanaugh}, then, refined the basic approach of \textit{Blaisdell}. The \textit{Kavanaugh} Court analyzed the practical effect the contested legislation had on the contracts' value and, in its "rational investor" test, formulated an explicit standard for permissible alterations of state contracts.

In \textit{Faitoute Iron \& Steel Co. v. City of Asbury Park},\textsuperscript{90} the Court specifically applied the approach of \textit{Blaisdell} and \textit{Kavanaugh} to uphold legislation allegedly impairing state contracts. The contested law allowed New Jersey to take over insolvent municipalities and implement binding plans adjusting the creditors' claims.\textsuperscript{91} Justice Frankfurter stated: "Impairment of an obligation means refusal to pay an honest debt; it does not mean contriving ways and means for paying it."\textsuperscript{92} He said the state retained the power to maintain its political subdivisions and noted the plan actually aided the creditors.\textsuperscript{93} Accordingly, the

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\item \textsuperscript{83} E.g., \textit{W.B. Worthen Co. v. Thomas}, 292 U.S. 426 (1934). In \textit{Thomas}, the Court struck down a law retroactively exempting the proceeds of life insurance policies from garnishment. Chief Justice Hughes reaffirmed the principles of \textit{Blaisdell}, id. at 432-34, but found the law unreasonable under \textit{Blaisdell}'s standards.
\item \textsuperscript{84} 295 U.S. 56 (1935).
\item \textsuperscript{85} Id. at 62-63.
\item \textsuperscript{86} Id. at 62.
\item \textsuperscript{87} Id. at 59.
\item \textsuperscript{88} Id. at 60.
\item \textsuperscript{89} Id.
\item \textsuperscript{90} 316 U.S. 502 (1942).
\item \textsuperscript{91} The plan, however, required consent of 85% of the creditors before it could be implemented. Id. at 504-05.
\item \textsuperscript{92} Id. at 511.
\item \textsuperscript{93} Id. at 515-16.
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Court held that the state action had not, as in Kavanaugh, destroyed the bonds’ quality as an acceptable investment. Although the legislation affected “purely financial” state contracts, Asbury Park nevertheless allowed the legislature to exercise its reserved power to protect the public.

The Blaisdell line of cases, then, interpreted the contract clause in light of both the legislative power to serve social interests and the provision’s protection of contract rights. The economic and political upheavals of the Depression era forced the Court to recognize that the clause’s “prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula.” Although Blaisdell’s reasonableness standard allowed legislatures to exercise their reserved power to protect the people’s vital interests, the Court still employed the contract clause to check oppressive legislation. Most importantly, none of the cases suggested a state’s impairment of its own obligation deserved more intensive judicial scrutiny than actions affecting private contracts.

The last contract clause decision before United States Trust also refused to distinguish state from private impairments. In City of El Paso v. Simmons, the Court upheld a law limiting to five years a formerly unrestricted right of defaulting purchasers of state land to reinstate their claims. The legislature sought to alleviate the land speculation, title clouds, and state financial losses that the perpetual reinstatement rights created. Justice White’s majority opinion, following Blaisdell’s approach, gave the usual wide deference to the legislature’s appraisal of the need for the act and the reasonableness of the legislation’s means. Although the impairment in Simmons totally destroyed plaintiff’s contract, the Court found the perpetual reinstatement right had not substantially induced the original buyers’ undertaking and held that the repeal did not impair a protected contract right. Justice Black’s dissent, however, argued that the contract clause does not permit a state to repudiate its own obligations

94. Despite Justice Cardozo’s caution that the “rational investor” test of Kavanaugh stated only the “outermost limits,” 295 U.S. at 60, Justice Frankfurter nevertheless explicitly applied it in Asbury Park, 316 U.S. at 515.
96. See text accompanying notes 80-89 supra, note 138 infra.
97. See Hale, supra note 5, at 890-91.
99. Id. at 515-16.
100. Id. at 508-09.
101. Id. at 514-15.
without compensating the injured parties, and implied that impairments of state contracts require special treatment.\textsuperscript{102}

III. UNITED STATES TRUST APPROACH

United States Trust's major innovation is the Court's intensive scrutiny of state contract impairments. The Court emphasized the special nature of state financial obligations. Relying on pre-\textit{Blaisdell} authority, the Court reasoned that when a state borrows money, the state acts as if it were an individual;\textsuperscript{103} thus, a state's interest in financial matters is identical to an individual's self-interest.\textsuperscript{104} From this viewpoint, New Jersey's repeal of the covenant was analogous to an individual unilaterally changing the terms of a contract. Consequently, the Court concluded not only that the state's "self-interest" precludes judicial deference when a legislature alters purely financial contracts,\textsuperscript{105} but

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102. \textit{Id.} at 527-29 (Black, J., dissenting). Justice Black's dissent invited comparison between Perry v. United States, 294 U.S. 330 (1935) and Norman v. Baltimore & O.R.R., 294 U.S. 240 (1935). Both decisions addressed the validity of a congressional measure abrogating "gold clauses" in all contracts. "Gold clauses" purported to give obligees a right to demand payment in gold. B. \textsc{Schwartz}, \textit{supra} note 5, at 291. The \textit{Norman} decision upheld the measure's application to private contracts as an exercise of Congress's power to regulate the value of currency. 294 U.S. at 316. The \textit{Perry} decision, however, stated that Congress did not have the power to abrogate gold clauses in the federal government's own contracts. 294 U.S. at 354. The Court stated:

There is a clear distinction between the power of the Congress to control or interdict the contracts of private parties when they interfere with the exercise of its constitutional authority, and the power of the Congress to alter or repudiate the substance of its own engagements when it has borrowed money under the authority which the Constitution confers.

\textit{Id.} at 350-51. Although the majority opinion in \textit{United States Trust} cites \textit{Perry} as authority for a "dual standard" of contract clause review, 431 U.S. at 26 n.25, \textit{Perry} is dubious precedent for such a proposition. First, the \textit{Perry} Court explicitly distinguished the federal obligation at issue from the obligations of "States or municipalities." 294 U.S. at 348. Second, \textit{Perry} did not involve a constitutional provision protecting contract or property rights; instead, the issue in \textit{Perry} centered on the conflict between Congress's power to regulate the value of currency, U.S. \textsc{Const.} art. I, \S\ 8, cl. 5, and the constitutional command that the "validity of the public debt of the United States . . . shall not be questioned." U.S. \textsc{Const.} amend. XIV, \S\ 4. Thus, the conflict between these provisions created \textit{Perry}'s dual standard. See United States Trust Co. v. New Jersey, 431 U.S. 1, 53 n.16 (1977) (Brennan, J., dissenting). Finally, the \textit{Perry} Court's "dual standard" was clearly obiter dictum, see 294 U.S. at 358-61 (Stone, J., concurring), because the Court held plaintiff could not prove he suffered damages and was thus denied recovery. 294 U.S. at 358.

103. "The truth is, States and cities, when they borrow money and contract to repay it with interest, are not acting as sovereignties. They come down to the level of ordinary individuals." Murray v. Charleston, 96 U.S. 432, 445 (1878), \textit{quoted with approval in} United States Trust Co. v. New Jersey, 431 U.S. 1, 25 n.23 (1977).

104. \textit{See} text accompanying notes 143-46 \textit{infra}.

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also that the broad reserved power doctrine of *Blaisdell* is inappropriate.\(^{106}\)

*Blaisdell*'s reserved power doctrine,\(^{107}\) however, is especially appropriate when a state alters its own contract because courts should balance the contract clause's prohibition against any resulting abridgment of legislative duties.\(^{108}\) In *Asbury Park*, the state's duty to protect the stability of its political subdivisions justified alterations of "purely financial" bonds;\(^{109}\) in *Simmons*, the legislature's need to correct its predecessor's errors allowed repudiation of a prior state commitment.\(^{110}\) In both cases, the Court held that the contract clause permitted legislative efforts to serve important public interests despite the states' roles as contractual parties. In *United States Trust*, however, the Court's analysis of "purely financial" state obligations limits the reserved power doctrine to its pre-*Blaisdell* form: the Court recognizes a reserved legislative power to alter state obligations only when the subject matter of a contract, not its practical effect, threatens the public interest.

*United States Trust*'s treatment of purely financial state obligations and the reserved power doctrine also departs from the analytical approach of modern contract clause decisions. The main thrust of *Blaisdell* and its progeny was a reasonableness test of alleged impairments based on the situation's practical realities.\(^{111}\) Modern decisions repeatedly criticized the wooden approach of older cases that turned upon how the Court classified the state action.\(^{112}\) In *United States Trust*, however, the Court's "purely financial" label reverts to the pre-*Blaisdell* approach: the technical classification of the contract as purely financial ended inquiry into whether the covenant frustrated the legislature's power to protect the public.\(^{113}\) *United States Trust* departs from the *Blaisdell* approach of analyzing alleged impairments in light of their social context. The Court's restrictive analysis of the

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106. Id. at 22-23.
107. See text accompanying notes 68-83 supra.
108. See Merrill, supra note 3, at 640-41, 649.
109. Faitoute Iron & Steel Co. v. City of Asbury Park, 316 U.S. 502 (1942); see text accompanying notes 90-94 supra.
113. See 431 U.S. at 24-25; text accompanying notes 61-67 supra.
reserved power doctrine stresses the formal nature of the affected contract, not its practical effect.

The Court’s analysis, moreover, departs not only from past contract clause decisions, but also from the analysis of state sovereignty employed in National League of Cities v. Usery. In National League of Cities, a divided Court struck down the extension of federal minimum wage standards to states and their political subdivisions. Justice Rehnquist’s majority opinion held that the federal legislation displaced the states’ sovereign capacity to prescribe wages for employees who carry out traditional governmental functions and thus, under the federal system of government embodied in the Constitution, the legislation was not within Congress’s power to regulate interstate commerce. The Court stated that one “undoubted attribute” of state sovereignty is the power to determine the wages of state employees, and examined the impact the wage regulations would have on state functions. Thus, the Court’s analysis of state sovereignty in National League of Cities looked beyond the purely financial nature of wage decisions and gauged their practical effect on state responsibilities. In United States Trust, however, the Court found the affected contract was “purely financial” and held, without further inquiry, that the covenant did not displace any “essential attributes of sovereign power.” Although past contract clause

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115. 426 U.S. at 851-52.
116. Id. at 845.
117. Id. at 846-51.
118. 431 U.S. at 23-25. The terms “police power,” or “legislative reserved power,” or state “sovereignty” designate nothing more than the residuum of political power the Federal Constitution leaves the states. See Merrill, supra note 3, at 657. Modern contract clause decisions prior to United States Trust balanced the contract clause’s prohibition against the state’s competing interest in protecting the public through its reserved, “sovereign” powers. See text accompanying notes 68-79 supra. In United States Trust, unlike National League of Cities, the contract clause, as an explicit restraint on state power, weakens the argument that state “sovereignty” justifies impairments of state obligations. Nevertheless, members of the Court have shown sympathy to variations of “sovereignty” arguments in cases where states allegedly have violated other constitutional restraints. See Milliken v. Bradley, 418 U.S. 717 (1974) (lower court’s interdistrict school desegregation plan rejected, in part, for disrupting the structure of state public education system); Mayor of Philadelphia v. Educational Equality League, 415 U.S. 605 (1974) (judicial sanctions against discriminatory appointment practices by state officials may interfere with state sovereignty); Michelman, supra note 114, at 1166. Furthermore, the holding in National League of Cities rests on the principal, drawn from the structure of the Constitution, that certain state functions are free from federal regulation. Logically, under the Court’s analysis in National League of Cities, a state should be free not only
decisions and National League of Cities recognized the need to
give states discretion in regulating their own financial affairs, 
United States Trust not only ignores the effect of financial obliga-
tions on state responsibilities, but also requires rigorous judicial 
scrutiny of laws affecting state contracts under its “reasonable 
and necessary” standard.

United States Trust’s definition of “reasonableness” requires 
a showing that “changed circumstances” prompted the contrac-
tual impairment. Under the Court’s approach, successor legisla-
tures can modify only contracts that have unforeseen and uninten-
tended effects on state policy.\textsuperscript{119} The Court cited Simmons as 
authority for its reasonableness criterion.\textsuperscript{120} Although the 
Simmons Court did note the unforeseen effects a nineteenth cen-
tury statute had on the state’s public land system,\textsuperscript{121} neither the 
Court’s holding nor analysis purported to restrict “reasonable” 
legislation to similar fact situations.\textsuperscript{122} Instead, the Simmons 
Court stressed that the circumstances leading to the challenged 
legislation warranted corrective measures.\textsuperscript{123} United States Trust, 
however, rejects the Court’s former approach of analyzing the 
reasonableness of legislative measures in the light of the actual 
social problems facing the legislature. Most significantly, under 
United States Trust’s changed circumstances analysis, the con-
tract clause renders legislatures powerless to alter state contracts 
despite changing conceptions of public policy and pressing social 
problems.

The Court’s definition of “necessary” legislation under the 
contract clause also imposes a strict standard of review. Quite 
simply, if the Court can hypothesize less drastic means that could 
arguably serve the state’s ends, the legislation is unconstitu-
tional.\textsuperscript{124} Although in previous decisions the Court noted that the

\textsuperscript{119} 431 U.S. at 31-32; see text accompanying notes 36-39 supra. Chief Justice 
Burger’s brief concurring opinion noted that permissible contract alterations required the 
state to show “that it did not know and could not have known the impact of the contract 
on that state interest at the time that the contract was made.” 431 U.S. at 32 (Burger, 
C.J., concurring).
\textsuperscript{120} 431 U.S. at 31.
\textsuperscript{121} City of El Paso v. Simmons, 379 U.S. 497, 515-16 (1965).
\textsuperscript{122} See text accompanying notes 98-102 supra.
\textsuperscript{123} 379 U.S. at 516-17.
\textsuperscript{124} See text accompanying notes 41-43 supra. The Court’s standard of review resem-
contract clause did not permit states to repudiate their own obligations, the Court nevertheless deferred to legislative determinations of what measures were appropriate and centered its analysis on the legislation's effect on the contract's value. In *United States Trust*, however, the Court rejected the argument that the state's policy determinations are matters for legislative discretion when legislation affects state contracts. Instead, the Court's present approach requires the judiciary to second guess legislative decisions on highly complex, localized, and volatile issues of economic and social policy. *United States Trust* replaces the deferential reasonableness test of *Blaisdell* and its progeny with rigorous review of state economic policy challenged under the contract clause.

If applied literally, the Court's new standard would have yielded different results in previous contract clause cases. Financial depressions are a foreseeable risk whenever a state entity issues bonds. Under *United States Trust*, the state's program in *Asbury Park* to revitalize financially embarrassed municipalities was unreasonable; because financial depressions are a foreseeable risk, the legislature could not plead municipal insolvency took them by surprise. Furthermore, the state's actions were not necessary; theoretically, the state had the alternative of statewide taxes to support the troubled bonds. Similarly, in *Simmons* the state could have exercised its power of eminent domain and purchased the unlimited redemption rights rendering the legislature's means not strictly necessary under *United States Trust*. Although the Court stated the contract clause is not an "absolute bar" to alterations of state financial promises, *United States Trust*’s "reasonableness" and "necessity" test imposes a stringent standard of contract clause review.

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126. See text accompanying notes 84-94 supra.
127. *431 U.S. at 30-31.*
128. *Id. at 60* (Brennan, J., dissenting).
129. *Id. at 59* (Brennan, J., dissenting).
130. *Id.*
131. *Id. at 25.*
IV. POLICY VALUES OF UNITED STATES TRUST

The Court's resolution of the conflicting policy considerations in United States Trust also breaks with recent contract clause interpretations. The contract clause is a limit on legislative power similar to other constitutional provisions protecting private property rights. Modern constitutional jurisprudence, however, especially in the area of substantive due process, has granted wide latitude to state policy in economic matters. A comparison of the contract clause's relation to other constitutional guarantees of property rights prior to United States Trust illustrates the Court's present rejection of judicial deference in contract clause disputes.

Although some commentators have argued Blaisdell's reasonableness test totally subsumed the contract clause within fourteenth amendment principles, the contract clause retained independent significance after Blaisdell. Economic due process decisions, such as Ferguson v. Skrupa, indicate that the Court will not overturn economic regulations unless they violate some other specific constitutional guarantee. Consequently, despite the demise of substantive economic due process, the contract clause still provided explicit protection against unlimited state interference with contract rights. Furthermore, the fourteenth amendment applies the fifth amendment's protection of property, and hence contract rights, to the states. Contract clause decisions following Blaisdell, however, invalidated laws that were arguably not uncompensated "takings" of private property because the state merely altered the legal remedies available for enforcing contract rights. Thus, the state actions were constitu-

132. The fifth amendment's prohibition against "takings" of private property restrains the federal government and, through the fourteenth amendment, the states.

133. See, e.g., Ferguson v. Skrupa, 372 U.S. 726 (1963) (state economic regulations are constitutional unless they violate an explicit federal constitutional prohibition or federal law); Goldblatt v. Hempstead, 369 U.S. 590 (1962) (regulations prohibited former beneficial use of property but were not an uncompensated "taking" under the fifth amendment); B. Schwartz, supra note 5, at 264-65.

134. See Hale, supra note 5, at 885; Resurrection of the Contract Clause, supra note 67, at 179.


136. See Linde, supra note 82, at 185.


138. For example, in W.B. Worthen Co. v. Thomas, 292 U.S. 426 (1934), discussed supra note 83, the state, by exempting life insurance proceeds from garnishment did not expropriate property from anyone. Instead, the state merely refused creditors the right to compel payment from a particular source of income. Moreover, the state did not "take" any property for a public use. Thus, the preconditions of a compensable "taking" under
tional but for the contract clause. Accordingly, the Blaisdell line of cases did not render the contract clause superfluous in the constitutional scheme.

Nevertheless, Blaisdell's deferential standard was consistent with the Court's general withdrawal from strict judicial review of government economic policy. The Court's pronouncements that legislatures have "broad scope to experiment with economic problems," and that the Court was not a "superlegislature to weigh the wisdom of legislation" sounded the death knell of substantive economic due process.139 Although the contract clause escaped a similar fate, the Court still recognized that a state's reserved power to protect the public welfare was paramount to contract rights and that "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.'"140 Among the innumerable explanations offered for the Court's minimal scrutiny of actions affecting economic rights,141 perhaps the most compelling justification is that the inequity, complexity, and importance of economic activity in modern capitalist society requires elected representatives, not the judiciary, to determine the limits of permissible economic policy.142 Yet in United States Trust, a majority of the Court now considers judicial deference inappropriate when a state allegedly impairs its own contracts.

The Court's departure from the policy of judicial deference rests on a superficial notion of a state's "self-interest" in its financial contracts.143 The covenant at issue in United States Trust demonstrates that no matter how obligations are classified, they can severely limit a state's ability to safeguard its citizens. Thus, state alterations of financial contracts clearly affect the public's interests. Furthermore, a legislature acts only through elected representatives, and all legislative policy is the collective expres-

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the fifth amendment were not present. See Goldblatt v. Hempstead, 369 U.S. 590 (1962); B. Schwartz, supra note 5, at 264-65.


141. Commentators have interpreted this position as (1) merely part of a broader withdrawal from judicial review of legislative action, (2) recognition that courts lack the institutional resources and competence to decide economic policy questions, and (3) a judicial reaction to the excesses of the Lochner era. See generally McCloskey, Economic Due Process and the Supreme Court: An Exhumation and Reburial, 1962 Sup. Ct. Rev. 34.

142. See Merrill, supra note 3, at 665-66.

sion of diverse private interests. Accordi\nAccordingly, whether the Court \nreviews private or public contract impairments, the only “self-
interest” a state has is a democratically determined public inter-
est. The Court’s notion of a state’s “self-interest” ignores the 
need for judicial deference to the workings of the political pro-
cess; the Court scrutinizes a legislature’s exercise of the protec-
tive power as if the state were a greedy debtor fleeing a creditor. 
Thus, the rationale of the Court’s rigorous scrutiny of state obli-
gations is a glib equation of individual and state “self-interest.”

Although the Court’s rigorous scrutiny may encourage more 
careful fiscal management by state and local governments, the 
Court’s special treatment of state contract impairments is unnec-
essary. Whether a proposed state action concerns public or pri-
ivate obligations, the ability of interested parties to defend their 
interests politically is identical. State creditors may challenge the 
need for such action or propose alternative methods of achieving 
the desired goals. The Court apparently accepts judicial defer-
ence when a state alters private obligations, but rejects it when a 
state alters its own contracts; yet, in either instance, the politi-
cal safeguards of contract rights are the same. Furthermore, state 
contract alterations have immediate consequences on a state’s 
borrowing power. Given the dependence of state and local govern-
ments on private financing, powerful market restraints inhibit 
state interference with their debt contracts. Accordingly, United 
States Trust’s rationale for more intensive scrutiny of state con-
tract impairments is highly questionable.

United States Trust’s intensive scrutiny also discounts the 
public’s interest in modifying state contractual obligations. 
Blaisdell interpreted the contract clause in light of both its pro-	ection of contract rights and, through the reserved power doc-
trine, the often countervailing needs of the public. United States 
Trust, however, protects bondholders suffering negligible damage 
from the covenant’s repeal and strikes down the bipartisan efforts 
of two state legislatures to serve important public interests. The

144. See Linde, supra note 82, at 170.
145. Cf. id. at 169-72 (courts must respect the complex political processes of law-
making because of their more democratic nature).
147. Professor Tribe suggests that a stricter reading of the contract clause will also 
help protect the contractual rights of public employees. L. Tribe, supra note 118, at 471. 
Yet public employers generally economize in times of fiscal distress by reducing their work 
force. Accordingly, the contract clause provides no practical help for unemployed public 
workers.
149. Id. at 37 (Brennan, J., dissenting).
Court's rejection of judicial deference and the broad reserved power doctrine gives the policy of fiscal integrity preferential treatment when state contracts are at issue.

The Court in United States Trust, then, departs from both the analytical framework and policy values of previous contract clause decisions. The Blaisdell line of cases not only applied a uniform standard of review for state and private contracts, but also deferred to reasonable legislative policy in economic matters. Nevertheless, the contract clause still checked political abuses of state power. United States Trust, however, binds legislatures to decisions of earlier years and thus infringes the right of citizens to redirect state policy through the electoral process. The vitality of modern democratic institutions depends on their ability to resolve complex economic problems with a minimum of judicial intervention. Yet, by judicial decree, the Court binds New Jersey to a policy determination made in an era when energy, transit, and the environment received scant attention. Unfortunately, United States Trust resurrects the contract clause as a "potent instrument for overseeing important policy determinations of the state legislature."

V. United States Trust and the Municipal Debt Crisis

The impact of United States Trust extends far beyond the decided case. The prospect of future state and municipal debt crises is a national concern. The 1975 New York City fiscal crisis led to a state imposed three-year moratorium on enforcing short-term city obligations. City creditors challenged the action, but lower state courts and a federal district court upheld the law from contract clause attacks. Although the New York Court of Appeals eventually struck down the law on state constitutional grounds, the court refused plaintiffs' request to order immediate payment allowing the city and state additional time to find an alternative solution.

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150. See text accompanying notes 83-89 supra.
152. 431 U.S. at 33 (Brennan, J., dissenting).
155. Flushing Nat'l Bank v. Municipal Assistance Corp., 40 N.Y.2d 731, 358 N.E.2d 848, 390 N.Y.S.2d 22 (1976). The court held the moratorium violated the state constitution's pledge of "full faith and credit" to government obligations. Yet in effect, the court,
In any future municipal debt crisis, the rationale of United States Trust would probably reject similar moratorium legislation under the contract clause. First, the purely financial nature of the government contracts triggers rigorous scrutiny of the legislation. Second, when a municipality issues bonds the risk of future default always exists; thus, subsequent alterations of the bonds' terms are unreasonable because the state could foresee the circumstances prompting the moratorium. Finally, a moratorium is not "necessary" because a state always has the hypothetical alternatives of further reducing city services, laying off employees, or diverting general funds to preserve the financial integrity of political subdivisions. Accordingly, a debt moratorium affecting municipal bonds would fail the "reasonable and necessary" test. United States Trust, therefore, seriously restricts a state's policy alternatives when responding to a municipal debt crisis.

Although the decision's rationale seems to preclude debt moratorium legislation affecting government obligations, a state may justify such measures despite United States Trust. Justice Blackmun distinguished Asbury Park by noting that the legislation, enacted after the city's default, actually aided the creditors, even though the state reduced the bonds' original face value. Because of the difficulties in enforcing claims against insolvent municipalities, creditors may suffer far more from a municipal bankruptcy or default than a temporary debt moratorium. If measures aiding creditors after default may be constitutional, then logically the Court should permit a debt moratorium preventing default because such a measure also aids creditors. Otherwise, under United States Trust, a state could not declare a moratorium to prevent default, but could alter financial obligations after default occurs. Clearly, such a prospect illustrates the need for elected representatives to have a broad range of policy options for solving government budget crises, especially in light of the vital functions government services fulfill in modern society. Hopefully, in the future a majority of the Court will heed Justice Brennan's dissent and not wield the contract clause as a "regulator of the municipal bond market."
VI. CONCLUSION

The Court's previous approach to contract clause issues avoided rigid judicial review of state economic policy without rendering the clause a nullity. The Court's former test of whether the state action employed reasonable means to achieve a public purpose, in light of the legislature's protective powers, equitably balanced individual rights and the public welfare. Furthermore, the deferential approach of Blaisdell and its progeny allowed state policy to reflect the current political desires and social needs of the public. United States Trust, however, breaks sharply from the analytical approach and public policy values of modern contract clause decisions. The Court lays greater stress on the protection of state creditors than the competing interest of the state's ability to safeguard the public interest. In an era where political turmoil over government fiscal policy is commonplace, United States Trust is an untimely resurrection of the contract clause as a rigid guardian of state and city creditors.

Clifford D. Foster Jr.