

Chapter IX: *The Contract Clause Cases*

limited discussion, and it was confined to the question whether the clause had a solely retrospective effect. A proposal to insert "previous" before "Obligation" was made and rejected by the Committee on Style.¹⁵

In the ratifying conventions discussion of the Contract Clause was also limited. Luther Martin opposed it in the Maryland legislature on the grounds that it would prevent the states from giving relief to debtors in "times of . . . great public calamities and distress, and . . . extreme scarcity of specie";¹⁶ James Madison defended it as "a constitutional bulwark in favor of personal security and private rights," adding that "laws impairing the obligation of contracts are contrary to the first principles of the social compact and to every principle of sound legislation."¹⁷ Only a few documents raised the issue of whether the clause applied to public as well as private contracts. In the Virginia debates Patrick Henry, arguing that the states should be allowed to redeem currency in depreciated value, said that the clause "includes public contracts as well as private contracts between individuals," but Edmund Randolph, one of the Framers, responded that the clause had been directed at "the frequent interferences of the state legislatures with private contracts."¹⁸ In the North Carolina debates James Galloway also suggested that the clause would compel the state of North Carolina to redeem public securities in specie, and Framer W. R. Davis suggested that the Contract Clause "refers merely to contracts between individuals."¹⁹

The limited evidence available about the purpose of the Contract Clause thus suggests, first, that it was designed as one of several restrictions on the power of states to give relief to debtors in periods when the supply of specie was reduced; and, second, that its scope was limited to private contracts: it did not bind the states from altering the terms of their own contracts. A subsidiary point of interest was the discussion of the retrospective effect of the clause; in the context of that discussion it is difficult to tell whether the absence of the word "previous" before "Obligation" represented a decision to give the clause prospective effect or simply a tacit understanding that it could be taken only as retrospective in character, and thus the clarifying word "previous" was unnecessary.

Three propositions may be extracted from this discussion. First, to the extent that the basic problem addressed by the Court in the Contract Clause cases was the problem of legislative regulation of property rights, republican theory encompassed two apparently contradictory approaches to that problem, one elevating property rights beyond legislative interfer-

¹⁵ See *ibid.*, II, 636; IV, 59.

¹⁶ Quoted in *ibid.*, III, 214-15.

¹⁷ [J. Madison], *The Federalist* No. 44 (B. Wright, ed., 1961), 329.

¹⁸ Quoted in J. Eliot, *Debates in the*

Several State Conventions on the Adoption of the Federal Constitution (4 vols., 1861), III, 474.

¹⁹ Quoted in *ibid.*, IV, 191.