

Judicially Sanctioned Orwellianism: Do We Still Have the Freedom to Contract?

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This Note discusses the freedom to contract vis-à-vis the inherent police power of the State. It is argued that the active participation of the State in private transactions has inadvertently resulted in the erosion of the individual's freedom to contract. The State, through the legislature, may now interfere with any and all contracts, by altering the remedies for their enforcement, or, if necessary, even delve into the substance of such agreements by imposing new conditions on the parties or relieving the latter of the undertakings they entered into.

The Note then discusses the roots of the non-impairment clause, which is of American origin. It also provides a legal definition of impairment by citing jurisprudence on the matter. It similarly traces the roots of the police power of the State. The Note argues that police power is also a flexible, changing concept. Thus, it is impossible to limit or predict with absolute certainty the matters that may or may not be subject to its exercise.

The Note then goes on to discuss the interplay between police power and the non-impairment clause through case law. The basic principle that can be seen is that no law that is enacted or takes effect subsequent to an existing contract may void or otherwise amend in any manner the substantive parts of the latter. It argues that there is only one limitation on police power when contracts are involved, that is, the exercise of the power must be a valid one.

The Note concludes that a cursory reading of the cases on the matter will show that abrogation of the non-impairment clause has no doctrinal underpinnings. Ultimately, the Note provides for several principles to be observed to facilitate the harmonization of the two concepts, namely: vested rights should be respected; factual circumstances should be examined; impairment should be minimized; unnecessary construction should be avoided.