

## Sec. 10—Powers Denied to the States

## Cl. 1—Treaties, Coining Money, Etc.

their officers.<sup>2079</sup> But where a municipal organization has ceased practically to exist through the vacation of its offices, and the government's function is exercised once more by the state directly, the Court has thus far found itself powerless to frustrate a program of repudiation.<sup>2080</sup> However, there is no reason why the state should enact the role of *particeps criminis* in an attempt to relieve its municipalities of the obligation to meet their honest debts. Thus, in 1931, during the Great Depression, New Jersey created a Municipal Finance Commission with power to assume control over its insolvent municipalities. To the complaint of certain bondholders that this legislation impaired the contract obligations of their debtors, the Court, speaking by Justice Frankfurter, pointed out that the practical value of an unsecured claim against a city is "the effectiveness of the city's taxing power," which the legislation under review was designed to conserve.<sup>2081</sup>

***Private Contracts and the Police Power.***—The increasing subjection of public grants to the police power of the states has been previously pointed out. That purely private contracts should be in any stronger situation in this respect obviously would be anomalous in the extreme. In point of fact, the ability of private parties to curtail governmental authority by the easy device of contracting with one another is, with an exception to be noted, even less than that of the state to tie its own hands by contracting away its own powers. So, when it was contended in an early Pennsylvania case that an act prohibiting the issuance of notes by unincorporated banking associations violated the Contract Clause because of its effect upon certain existing contracts of members of such association, the state Supreme Court answered: "But it is said, that the members had formed a contract between themselves, which would be dissolved by the stoppage of their business. And what then? Is that such a violation of contracts as is prohibited by the Constitution of the United States? Consider to what such a construction would lead. Let us suppose, that in one of the States there is no law against

<sup>2079</sup> *Mobile v. Watson*, 116 U.S. 289 (1886); *Graham v. Folsom*, 200 U.S. 248 (1906).

<sup>2080</sup> *Heine v. Levee Commissioners*, 86 U.S. (19 Wall.) 655 (1874). *Cf.* *Virginia v. West Virginia*, 246 U.S. 565 (1918).

<sup>2081</sup> *Faitoute Co. v. City of Asbury Park*, 316 U.S. 502, 510 (1942). Alluding to the ineffectiveness of purely judicial remedies against defaulting municipalities, Justice Frankfurter says: "For there is no remedy when resort is had to 'devices and contrivances' to nullify the taxing power which can be carried out only through authorized officials. See *Rees v. City of Watertown*, 19 Wall. [86 U.S.] 107, 124 [1874]. And so we have had the spectacle of taxing officials resigning from office in order to frustrate tax levies through mandamus, and officials running on a platform of willingness to go to jail rather than to enforce a tax levy (see *Raymond, State and Municipal Bonds*, 342–343), and evasion of service by tax collectors, thus making impotent a court's mandate. *Yost v. Dallas County*, 236 U.S. 50, 57 [1915]." *Id.* at 511.