

From "33 Questions about American History You're Not Supposed to Ask" by Thomas E Woods, Jr. 2007  
ISBN 978-0-307-34669-8  
QUESTION 26

Three Rivers Press

CAN THE FEDERAL GOVERNMENT DO

WHATEVER IT THINKS WILL PROVIDE

FOR THE "GENERAL WELFARE" OF

AMERICANS?

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Another of the phrases by which the Constitution's limitations on the federal government have been circumvented is the so-called general welfare clause. Article I, Section 8 of the Constitution speaks of the power of Congress to lay taxes "to provide for the common defence and general welfare of the United States." All too often the clause is said to authorize the federal government to appropriate funds for a wide array of purposes—well beyond the powers specifically granted to the federal government in the rest of Article I, Section 8—that have the "general welfare" of the American population as their aim.

Does this popular rendition accurately portray the meaning of the general welfare clause?

Certainly there was disagreement over the meaning of the clause in early American history. In his 1791 *Report on Manufactures* Treasury Secretary Alexander Hamilton adopted an expansive reading of the clause. According to Hamilton, the general welfare clause granted a broad spending power to Congress that was not limited by or confined

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to the enumerated powers of Congress that followed it in Article I, Section 8. Supreme Court justice Joseph Story adopted Hamilton's position in his *Commentaries on the Constitution* (1833). Story's argument was historically weak, however, and rested by and large on debatable inferences from the text of the Constitution.<sup>1</sup> (In formulating his opinion, Story also lacked James Madison's all-important notes of the proceedings of the Constitutional Convention.)

Hamilton was bold enough to advance his broad interpretation even though he had rejected that position himself in 1787–88. Prior to ratification Hamilton had written in *Federalist* No. 17 that "supervision of agriculture and of other concerns of a similar nature . . . can never be desirable cares of a general jurisdiction," and in *Federalist* No. 34 that "encouragement of agriculture and manufactures" were "objects of state expenditure." Then in 1791 he suddenly announced that "there seems to be no room for a doubt that whatever concerns the general Interests of *learning, of Agriculture, of Manufactures, and of Commerce* are within the sphere of the national Councils *as far as regards an application of Money*."<sup>2</sup> Law professor Robert Natelson writes, "This sort of contradiction is one reason I have often wondered why some take Hamilton's Report on Manufactures seriously as a source of 'original understanding.' As a *post eventum* statement, it is inherently less reliable as evidence of agreement than statements (including Hamilton's) issued to induce ratification."<sup>3</sup>

As he himself admitted, Hamilton was very far from the mainstream of the Constitutional Convention. In an unpublished paper two weeks after the close of the convention, he spoke of his desire to see the central government "triumph altogether over the state governments and reduce them into an entire subordination." This put him completely at odds with the stated views of practically everyone, not to mention the positions advanced in the *Federalist*. If anything, Hamilton's postconvention statements are a good indication of the *opposite* of the common understanding of the Constitution.<sup>4</sup>

Hamilton's broad interpretation of the clause flew in the face of assurances given to the Constitution's Anti-Federalist opponents, who had been persuaded to ratify that document on the basis of a far narrower interpretation of the term "general welfare." Skeptics like Patrick

Henry, who feared the clause would one day transform the new government into one of unlimited powers, were assured that the clause could never be interpreted that way since the federal government would have only those powers “expressly delegated” to it.<sup>5</sup> The general welfare clause, Anti-Federalists were told, did not constitute an additional grant of power to the federal government, which was limited to its enumerated powers.

That the Framers took the trouble to enumerate the federal government’s powers testifies against a broad interpretation of the general welfare clause. What point would there be in specifically listing the federal government’s powers if the general welfare clause had already provided that government with an essentially boundless authority to enact whatever it thought would contribute to the people’s well-being? If the clause really did bestow plenary spending power upon the new government, what was the purpose of including specific grants of power to “establish Post Offices and Post Roads,” “constitute Tribunals inferior to the supreme Court,” or purchase “dock-Yards, and other needful Buildings”?<sup>6</sup> The Framers were astute enough to realize that just about anything, however oppressive, that a government might choose to do could be justified on the basis of a contrived appeal to the general welfare. (Interestingly, the Confederate Constitution of 1861 dropped the general welfare clause entirely, fearful of its potential interpretations by ambitious politicians.)<sup>7</sup>

These were the very arguments that the likes of James Madison and Thomas Jefferson raised against the expansive interpretation of the clause. In *Federalist* No. 41, for example, Madison wrote:

It has been urged and echoed that the power “to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States,” amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare. . . . But what color can the objection have, when a specification of the objects alluded to by these general terms immediately follows, and is not even separated by a longer pause than a semicolon? . . . For what purpose could the enumeration of par-

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*ticular powers be inserted, if these and all others were meant to be included in the preceding general power? Nothing is more natural nor common than first to use a general phrase, and then to explain and qualify it by a recital of particulars. But the idea of an enumeration of particulars which neither explain nor qualify the general meaning, and can have no other effect than to confound and mislead, is an absurdity.<sup>8</sup>*

Years later Madison explained, “With respect to the words general welfare, I have always regarded them as qualified by the detail of powers [enumerated in the Constitution] connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character which there is a host of proofs was not contemplated by its creators.”<sup>9</sup> In 1792 Madison stated that the Constitution had created “not an indefinite Government, deriving its powers from the general terms prefixed to the specified powers, but a limited Government, tied down to the specified powers which explain and define the general terms.” “It would be absurd,” he went on,

to say, first, that Congress may do what they please, and then that they may do this or that particular thing. . . . In fact, the meaning of the general terms in question must either be sought in the subsequent enumeration which limits and details them, or they convert the Government from one limited, as hitherto supposed, to the enumerated powers, into a Government without any limits at all.<sup>10</sup>

Toward the end of his presidency Madison vetoed a bill that would have appropriated federal funds for the construction of roads, canals, and other “internal improvements.” Although he favored such expenditures, he could not find them authorized in the Constitution. More to the point, he rejected the claim that the general welfare clause was all the authorization they needed. So expansive an interpretation of that clause would render “the special and careful enumeration of powers which follow the clause nugatory and improper,” he said. “Such a view of the Constitution would have the effect of giving to Congress a general power of legislation instead of the defined and limited one hitherto understood to belong to them.”<sup>11</sup>

Thomas Jefferson likewise stood firmly against an expansive reading of the general welfare clause. In his 1791 commentary on the controversial issue of a federally chartered national bank, he explained that the power to lay taxes to provide for the general welfare did not authorize Congress “to do anything they please to provide for the general welfare, but only to lay taxes for that purpose. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please, which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless.” Moreover, such a reading “would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.”<sup>12</sup>

THE MYTH ...

*The Constitution's general welfare clause authorizes the federal government to appropriate funds for a wide array of purposes as long as the aim is to help the American people.*

Jefferson argued that if the general welfare clause had really been intended to have the broad meaning that people like Hamilton claimed for it, the clause would have deprived the other parts of the Constitution of meaning. “It is an established rule of construction,” Jefferson explained, “where a phrase will bear either of two meanings, to give it that which will allow some meaning to the other parts of the instrument, and not that which would render all the others useless.”<sup>13</sup> Therefore the broad interpretation could not be the correct one.

The testimony of history is also strongly in favor of the limited interpretation. Jefferson's victory in the presidential election of 1800 was in part a repudiation of Hamilton's broad interpretation of the Constitution in general and especially its general welfare clause. (And the election of 1800, writes law professor John Eastman, “was not a revolution in thought about the expanse of the spending power, but a return to what had been the common understanding of the phrase

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employed and the underlying principle it codified.”<sup>14</sup> In addition, just about every president from Thomas Jefferson to James Buchanan adopted a Madisonian interpretation of the clause; Buchanan held that the power of the federal government to spend money was “confined to the execution of the enumerated powers delegated to Congress.”<sup>15</sup> If anything, the general welfare clause, far from being a grant of power to the federal government, was often understood to be a *limitation* on government power, in that the word “general” restricted federal spending only to those purposes whose benefits were national in scope rather than purely local or confined to a single interest group.<sup>16</sup>

... THE TRUTH

*A broad reading of the general welfare clause makes no logical sense and contradicts the stated intentions of the Framers.*

In case the dangers of a broad interpretation of the general welfare clause are not obvious, consider this: in the 1990s Supreme Court justice Antonin Scalia asked Bill Clinton's solicitor general if he could name a single activity on which the Congress might choose to legislate that in his view would go beyond its legitimate powers under the Constitution.<sup>17</sup> He could not.

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