

WELFARE, General vs Specific

A national columnist noted this about the Preamble to the Constitution: “[It] notes that the federal government exists to “*provide* for the common defense” but to “*promote* the general welfare.” There's a huge difference between providing and promoting - the choice of those particular words was not accidental.

"Providing" means doing the job yourself. The government has an army - religious organizations, the Lions Club and labor unions do not have armies - because Washington's job is to provide for the common defense.

"Promoting" means developing a favorable environment within which others are likely to step up. The federal government was not involved in poverty-fighting during the 19th century, but American churches, synagogues, businesses, and civic and fraternal associations fought a war on poverty then that was far more effective than our capital-W War of the 1960s and 1970s.

“It is constitutionally right to grow a big government for defense when we have potent adversaries abroad. It is constitutionally wrong to grow a big government for welfare, especially since civil society can accomplish many of the tasks that government has taken upon itself. If a church, synagogue or Optimists club can provide after-school care or baseball leagues for kids, we don't need government to do it. If religious groups or atheists clubs can provide counseling in times of trouble, we don't need government grief counselors. “ (Marvin Olasky, <http://www.townhall.com/columnists/marvinolasky/mo20020109.shtml>)

W. Cleon Skousen has explained the “General Welfare” clause in the Constitution:

“This provision anticipates the right of Americans to have its government serve the welfare of the people in their collective needs, that is, their general welfare, and not use the resources of the people for the benefit of certain states or certain people, which would be special welfare.

“The term “general welfare” was used in the Articles of Confederation and elsewhere to refer to the well-being of the whole people. Under monarchs the most objectionable element of the autocracy was the discriminatory manner in which favors and privileges were extended to the king's pets. Often the most deserving were deliberately snubbed while the less worthy received the king's royal accolades. It was therefore fundamental to a republic that the national government administer its power without prejudice, discrimination, or favoritism. Furthermore, the Founders did not want the power and resources of the federal government to be used for the special benefit of any one region or any one state. Nor were the resources of the people to be expended for the benefit of any particular group or any special class of citizens.

“Of course, there were some, including Alexander Hamilton (when he became Secretary of the Treasury), who wanted to interpret the welfare clause as a general grant of power to the Congress to do anything which it felt was for the welfare of anyone or any part of the country. However, Jefferson and Madison were quick to point out that the federal government had been granted authority by the states to do only twenty things, and that each of these must be carried out for the general welfare of the

whole nation. They said this meant that the welfare clause was designed as a restriction of power, not a grant of power.” (Skousen, *THE MAKING OF AMERICA: THE SUBSTANCE AND MEANING OF THE CONSTITUTION* [National Center for Constitutional Studies, Washington, D.C., 1985], pg 244)

“This provision [Art 1.8.1] gave the Congress the right to expend funds for all of the purposes itemized in Article I, section 8, provided that it was done for the general welfare of all the people and not for individuals or preferred groups.

“From the days of the Founders a continuous storm of controversy has gravitated around the proper interpretation of this provision. In the Constitution this provision simply says: "The Congress shall have the power ... to pay the debts and provide for the common defense and general welfare of the United States." However, we have stated... the way Jefferson and others said it was supposed to be interpreted.

“Let us briefly trace the amazing history of this provision.

“The Founders' Original Intent

“Thomas Jefferson explained that this clause was not a grant of power to "spend" for the general welfare of the people, but was intended to "limit the power of taxation" to matters which provided for the welfare of "the Union" or the welfare of the whole nation. In other words, federal taxes could not be levied for states, counties, cities, or special interest groups.

“Madison supported Jefferson's view that this clause restricted the taxing power to matters which provided support for the national

government in carrying out its assigned responsibilities.

“Here are statements from other Founders, including Alexander Hamilton:

“Hamilton: "The welfare of the community [of states] is the only legitimate end for which money can be raised from the community. Congress can be considered as only under one restriction, which does not apply to other governments. They cannot rightfully apply the money they raise to any purpose merely or purely local.... The constitutional test of a right application must always be, whether it be for a purpose of general or local nature."

“MacLaine: "Congress will not lay a single tax when it is not to the advantage of the people at large."

“Randolph: "The rhetoric of the gentleman has highly colored the dangers of giving the general government an indefinite power of providing for the general welfare. I contend that no such power is given."

“Here is Hamilton once again emphasizing the same point:

“Hamilton: "The United States, in their united or collective capacity, are the objects to which all general provisions in the Constitution must necessarily be construed to refer."

“The New Hamiltonian Doctrine

“However, after Hamilton became Secretary of the Treasury, he began to argue that the welfare clause was a general grant of power, and that Congress could spend tax money or even borrow money for a good cause even though it was not included among the enumerated powers, and even though it was for local or special welfare rather than general welfare. Although never formally acknowledged, it has been that view which has

prevailed from time to time almost from the beginning. As Edward S. Corwin points out: "From an early date Congress has acted upon the interpretation espoused by Hamilton. Appropriations for subsidies and for an ever increasing variety of 'internal improvements' constructed by the Federal Government, had their beginnings in the administrations of Washington and Jefferson."

"Until 1936 the Supreme Court dodged the issue of interpreting the "general welfare" clause by following the Hamiltonian theory but using other provisions in the Constitution to justify its decisions. For example:

"1. The power of Congress to appropriate money for the construction of internal improvements such as railroads was upheld on the basis of the commerce clause and the authority to maintain "post roads."

"2. The authority to charter and purchase stock in federal land banks was justified on the basis of necessary governmental fiscal operations and war powers.

"3. In certain cases the Supreme Court has skirted the whole problem by arrogantly denying the right of either a state or a private citizen to use the courts to challenge the unconstitutional appropriation of national funds.

"4. An equally serious aberration of the Constitution appears to have occurred in 1896 when "common defense" and "general welfare" were used to support a holding that the federal government had a right to acquire land within a state for use as a national park. And this in spite of the declaration in clause 17 specifying what territory and for what purposes Congress would have authority to occupy state land: "places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

"The Butler Case

"Finally, in 1936 the Supreme Court gave its unqualified endorsement to Hamilton's views on the taxing power. Justice Roberts wrote the opinion to settle once and for all whether the Jefferson-Madison interpretation or the Hamilton theory should prevail. He stated: "Madison asserted it [the welfare clause] amounted to no more than a reference to the other powers enumerated in the subsequent clauses of the same section; that, as the United States is a government of limited and enumerated powers, the grant of power to tax and spend for the general national welfare must be confined to the enumerated legislative fields committed to Congress.... Hamilton, on the other hand, maintained the clause confers a power separate and distinct from those later enumerated, is not restricted in meaning by the grant of them, and Congress consequently has a substantive power to tax and to appropriate, limited only by the requirement that it shall be exercised to provide for the general welfare of the United States.... While, therefore, the power to tax is not unlimited, its confines are set in the clause which confers it, and not in those of Section 8 which bestow and define the legislative powers of Congress."

"The obvious contradiction in the concluding sentence defies a rational explanation. The court admitted that this section defines the enumerated powers to which the Congress is restricted and then turns around and uses the words "general welfare" to justify legislating in any field even though it is not enumerated.

"This decision alone was sufficient to literally destroy the whole concept of limited government, exactly as Jefferson and Madison

had predicted. Justice Roberts wanted to be sure that there would be no further ground for argument in favor of the Jefferson-Madison view and therefore stated as a positive judicial mandate that the "general welfare" clause allows Congress "to authorize expenditure of public moneys for public purposes [and] is not limited by the direct grants of legislative power found in the Constitution." The only concession the court would make was the fact that the Tenth Amendment would prevent the Congress from invading areas reserved to the states. This modest reservation lasted barely a year when the court overruled itself in the Social Security Act cases.

"The Social Security Cases

"The Social Security Act cases arose out of the following circumstances:

"Some of the states were taxing employers a certain amount to provide unemployment insurance for their workers. The federal government imposed a similar tax and provided that any employer who had paid the federal unemployment tax could deduct it from whatever amount might be due the state. This glaring violation of its own ruling the year before in the Butler case became the law, and the states soon found the federal government preempting significant areas of state tax jurisdiction on the grounds that the "relief of unemployment was a legitimate object of federal expenditure under the 'general welfare' clause." The same reasoning was used to justify the government's collection of funds for old-age retirement and formed the basis for a multitude of other "social service" agencies which soon followed.

"Withholding Funds to Force Compliance

"The next landmark case came in 1947 when the Supreme Court sustained the right to make conditional grants-in-aid to states and then withhold federal funds as a means of enforcing its will on a protesting state. In the case of *Oklahoma v. Civil Service Commission*, the state objected to the enforcement of a provision of the Hatch Act whereby its right to receive its share of federal highway funds would be diminished in consequence of its failure to remove from office a member of the State Highway Commission found to have taken an active part in party politics while in office. The court said: "While the United States is not concerned with, and has no power to regulate local political activities as such of State officials, it does have power to fix the terms upon which its money allotments to States shall be disbursed." In other words, what the Constitution forbade the federal government to do directly, the government would achieve indirectly by making the allocations of funds to the state dependent upon compliance to the federal will. It was precisely this kind of legal coercion which Madison had warned against in case the general welfare clause was considered a grant of power instead of a limitation on the power to tax.

"Madison's Warning

"Because the Hamiltonian theory completely wiped out the whole foundation of "limited government" and the concept of "enumerated powers," it is important to turn to the words of James Madison, who captured perhaps better than anyone else the original intent of the "general welfare" clause. Madison delivered a speech on this subject to the first United States Congress:

"If Congress can apply money indefinitely to the general welfare, and are the sole and supreme judges of the general welfare, they may take the care of religion into their own hands; they may take into their own hands the education of children, establishing in like manner schools throughout the Union; they may undertake the regulation of all roads, other than post roads. In short, everything from the highest object of State legislation, down to the most minute object of policy, would be thrown under the power of Congress; for every object I have mentioned would admit the application of money, and might be called, if Congress pleased, provisions for the general welfare."

"If the entire concept of a limited government with its delegation of "enumerated powers" is to have meaning as a substantive part of the Constitution, it may require a constitutional amendment to specifically limit the general welfare clause to the enumerated powers of the government. At this late date, there may be no other way to permanently bridle the usurpation of power by the Supreme Court and Congress. Both have encouraged social-welfare legislation to the point where it had much to do with a leap in the federal budget from six billion in 1936 to six hundred billion in 1980.

"It should also be pointed out that the Founders were strong believers in promoting the social welfare of the needy, but they insisted that this be supervised on the local or state level. Experience has demonstrated the correctness of their view that, if assigned to the federal level, welfare would become impossible to administer fairly, effectively, or economically.

"It should be recognized that the bloating of the general welfare clause to its present proportions of almost limitless usurpation of governmental authority was not achieved

without a fight. Constitutionalists in the tradition of the Founders have fought it for nearly two centuries.

"Efforts to Hold the Line

"President Monroe vetoed a bill for the improvement of the Cumberland Road because he did not believe it could be justified as part of the "general" welfare.

"President Jackson took the same position and vetoed every bill for public improvement which was for the benefit of a community or a state rather than the national welfare. He said, "We are in no danger from violations of the Constitution from which encroachments are made upon the personal rights of the citizen.... But against the dangers of unconstitutional acts which, instead of menacing the vengeance of offended authority, proffer local advantages and bring in their train the patronage of government, we are, I fear, not so safe."

"River and harbor bills were vetoed by Presidents Tyler, Polk, Pierce, Grant, Arthur, and Cleveland. This demonstrates the anxiety of each Congress almost from generation to generation to expand the powers of Congress beyond the limits which traditional constitutionalists knew were originally intended.

"A bill appropriating \$19 million was passed over President Arthur's veto in 1882, and a bill which President Cleveland vetoed in 1895 appropriating \$80 million was repassed by Congress. President Arthur, fearing that Congress was opening Pandora's box, stated that when the citizens of one state found that the money of all the people was being appropriated for local improvements in another state, they would naturally "seek to indemnify themselves ... by securing appropriations for similar improvement." He concluded that "as the

bill becomes more objectionable, it secures more support."

"President Cleveland said he deplored "the unhappy decadence among our people of genuine love and affection for our Government as the embodiment of the highest and best aspirations of humanity, and not as the giver of gifts."

"Even as late as 1921, President Harding stated: "Just government is merely the guarantee to the people of the right and opportunity to support themselves. The one outstanding danger of today is the tendency to turn to Washington for the things which are the tasks or the duties of the forty-eight commonwealths."

"It will be recalled that the power to spend included the power to pay federal debts. This power was extrapolated into a justification for payments to private citizens as some kind of moral claim on the government. Congress soon allowed itself to become deeply involved in appropriating money for the benefit of individuals where it felt a "moral" debt existed.

"This brings us to the famous story of Congressman Davy Crockett.

"Congressman Davy Crockett

"Davy Crockett was killed at the Alamo in 1836 fighting for the independence of Texas. Earlier, however, he had served nine years in Congress. During one of these years a fire broke out in Georgetown, a suburb of Washington, and many of the Congressmen, including Crockett, helped fight the blaze. The next morning the Congress voted \$20,000 to assist those whose homes were destroyed. Crockett voted for it. However, when he went home he found himself in deep trouble with one of his constituents named Horatio Bunce. Bunce

commended him for the anxiety to help the victims of the fire but scolded him for using other people's money as "charity." He challenged Crockett to find where the Constitution allowed Congress to spend one penny of other people's money for charity. Crockett couldn't think of any such provision. Bunce told him he had a right to help with his own money, but not other people's money.

"Crockett returned to Congress and ran into a similar situation. Congress wanted to give a substantial sum to the widow of a distinguished naval officer who had just died. Crockett took the floor and said:

"Mr. Speaker, I have as much ... sympathy as ... any man in the House, but ... Congress has no power to appropriate this money as an act of charity. Every member upon this floor knows it. We have the right, as individuals, to give away as much of our own money as we please in charity; but as members of Congress we have no right so to appropriate a dollar of the public money.... Mr. Speaker, I have said we have the right to give as much money of our own as we please. I am the poorest man on this floor. I cannot vote for this bill, but I will give one week's pay to the object, and if every member of Congress will do the same, it will amount to more than the bill asks."

"Crockett took his seat. The bill was defeated, but even though some of the Congressmen were very wealthy, not one of them came forward to take up Crockett's offer to donate a week's salary to the widow as a gesture of private charity." (Skousen, THE MAKING OF AMERICA: THE SUBSTANCE AND MEANING OF THE CONSTITUTION [National Center for Constitutional Studies, Washington, D.C., 1985], pgs 387-392)

VARIOUS QUOTES

"But with the adoption of the income-tax amendment in 1913, the amount of money people retained as their own became totally subject to the will of the government. Congress might set the percentage high or low, but that wasn't really the point. The point was that by granting public officials the unfettered power to determine the percentage of income tax, government became the determiner of how much of their income people would be permitted to keep. The Sixteenth Amendment effectively nationalized people's income and placed them on a government allowance." Jacob G. Hornberger

"Despite the tragic (and costly) exception of slavery, our ancestors believed that (1) the essence of economic liberty is the right to do whatever a person wants with his own money, including to refuse to donate it to charity; (2) charity is not a legitimate function of government; (3) it is morally wrong to force anyone, either through private coercion or government coercion, to donate his money; (4) it is morally wrong to take money, either through private or government coercion, from a person to whom it belongs in order to give it to someone to whom it does not belong; and (5) charity means nothing in terms of compassion and religion when it is accomplished through the coercive apparatus of the state. Rather than engaging in the perennial discussions over IRS abuses, tax-code simplification, deductions and tax shelters, Americans would be better served reflecting on their heritage of liberty, the meaning of freedom and the moral framework for a free society." Jacob G. Hornberger

"I cannot undertake to lay my finger on that article of the Constitution which granted a right to Congress of expending, on objects of benevolence, the money of their constituents...."
James Madison