

On the General Welfare Clause

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Mr. Wallace of Fox News interviewed Representative Ron Paul of Texas on 15 May 2011. In the course of the interview, the topic of the meaning of the "general welfare" clause of the U. S. Constitution came up. Mr. Paul's view was that the Constitution did not grant the government to do anything it wanted under a justification of "general welfare". Mr. Wallace cited the 1937 Supreme Court case "Hilvering v. David", which ruled that Social Security was permitted under the powers of Congress called out in Article 1 Section 8 of the U. S. Constitution. By extension, therefore, in Mr. Wallace's view, the Supreme Court has ruled that Congress may pass laws it claims to further the "general welfare". Mr. Wallace did not explain how payments to individuals, that is, laws that promote "individual welfare", can actually be the same as "general welfare".

What is the true meaning of the "general welfare" clause? It appears in two places in the Constitution: a) the Preamble, and b) Article 1, Section 8. The Preamble reads:

"We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Article 1, Section 8 reads: "The Congress shall have 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; but all duties, imposts and excises shall be uniform throughout the United States"; whereupon follows 17 clauses calling out a list of specific enumerated powers granted to Congress.

To see the intent of the founding fathers, it is necessary only to review three passages of the Federalist Papers. The first is *Federalist Papers* #23, in which Hamilton refers back to the Articles of Confederation, where the phrase "general welfare" was first used. He is discussing the principle that powers must be granted to governments commensurate with the ends desired, as follows:

Defective as the present Confederation has been proved to be, this principle appears to have been fully recognized by the framers of it; though they have not made proper or adequate provision for its exercise. Congress have an unlimited discretion to make requisitions of men and money; to govern the army and navy; to direct their operations. As their requisitions are made constitutionally binding upon the States, who are in fact under the most solemn obligations to furnish the supplies required of them, the intention evidently was that the United States should command whatever resources were by them judged requisite to the "common defense and general welfare." It was presumed that a sense of their true interests, and a regard to the dictates of good faith, would be found sufficient pledges for the punctual performance of the duty of the members to the federal head.

It is important to recall that the purpose of the Articles of Confederation was to manage the war effort against Great Britain. Therefore, in the *Federalist Papers*#23, Hamilton asserts that the general welfare consisted of maintaining that war effort. His complaint here is that Congress under the Articles was too weak to force the states to uphold their end of the financial obligation.

The Constitution was formed as a union of the states into a system that is partly national and partly federal. The powers granted to the government were greater than were granted by the Articles, in order to meet the needs of a compact union; i.e., to ensure that the union of the states functioned as a true nation,

not as simply a federation. In other words, the government under Constitution would have greater powers to promote the general welfare than the Articles which it replaced. James Madison explained what these powers of "general welfare" are in the *Federalist Papers* #41, as follows:

Some, who have not denied the necessity of the power of taxation, have grounded a very fierce attack against the Constitution, on the language in which it is defined. 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. No stronger proof could be given of the distress under which these writers labor for objections, than their stooping to such a misconstruction.

Had no other enumeration or definition of the powers of the Congress been found in the Constitution, than the general expressions just cited, the authors of the objection might have had some color for it; though it would have been difficult to find a reason for so awkward a form of describing an authority to legislate in all possible cases. A power to destroy the freedom of the press, the trial by jury, or even to regulate the course of descents, or the forms of conveyances, must be very singularly expressed by the terms "to raise money for the 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? If the different parts of the same instrument ought to be so expounded, as to give meaning to every part which will bear it, shall one part of the same sentence be excluded altogether from a share in the meaning; and shall the more doubtful and indefinite terms be retained in their full extent, and the clear and precise expressions be denied any signification whatsoever? For what purpose could the enumeration of particular 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, which, as we are reduced to the dilemma of charging either on the authors of the objection or on the authors of the Constitution, we must take the liberty of supposing, had not its origin with the latter.

It is obvious therefore, that the powers conveyed to Congress for the purposes of common defense and general welfare are the enumerated powers listed in the 17 clauses immediately following the main heading of Article 1, Section 8. If you look them up, no where will you find anything resembling the "social programs" currently in force at the federal level.

Last, Madison alludes to this principle briefly in the *Federalist Papers* #62, as follows:

A good government implies two things: first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained. Some governments are deficient in both these qualities; most governments are deficient in the first. I scruple not to assert, that in American governments too little attention has been paid to the last. The federal Constitution avoids this error; and what merits particular notice, it provides for the last in a mode which increases the security for the first.

Here we see from his last sentence that the U. S. Constitution provides the means, that is, the legitimate powers, by which the happiness of the people is to be secured, which is the object of government. Since all legislative power is vested in the Congress per Article 1, Section 1, it seems that Madison is referring to the same list of powers as contained in Article 1, Section 8. He also mentions "knowledge of the

means by which that object can be best obtained". He was discussing the Senate in the *Federalist Papers* #62; but here is a case where all of us would do well to examine the powers granted in Article 1, Section 8 so we can see for ourselves the legitimate powers of government conducive to liberty, security, and the general welfare.