

The General Welfare Clause by Janna Legg <janna.legg25@gmail.com>

The term “General Welfare” these days has come to mean anything Congress wants it to mean. The General Welfare Clause in the Constitution says that Congress may “provide for the common defense and the general welfare of the United States.” Strict Constructionists rightly believe that Congress can only legislate for the “general welfare” when it is tied to one of the eighteen enumerated powers. Yet collectivists (people who believe in Big Government) don’t seem to understand the concept.

The conflict as to how to interpret the phrase “general welfare” predates constitutional cases on this issue. Historical writings of the Founders, statesmen, and other politicians suggest a disparate approach that would later be distilled into three views on the meaning of the “General Welfare Clause.

The Hamiltonian interpretation claims an independent grant of power in the clause. This theory argues that Congress can **enact any law** in furtherance of the general welfare of persons in the United States. The Madisonian interpretation **limits** the congressional power to spend and to enact laws pursuant to enumerated powers.

The Justice Joseph Story interpretation grants Congress the power to spend in furtherance of the general welfare. This theory differs from Hamiltonian interpretation in that it does not authorize Congress to “enact any law”; rather it is limited to spending power.

To The Founders, the term “general welfare” was applied in connection with the regulation of trade. The colonists conceded that Parliament had the right to regulate trade because of the power to regulate relations among the colonies, England, and foreign countries “establishes the basis for British Power; and from such a firm connection between the mother country and her colonies, as well as produce all the advantages she ought to wish for.”

Hence the enactment of the Stamp Act in 1764. The colonists protested The Stamp Act because power to parliament was power to tax for revenue without the colonists consent. The colonists argued against it as a “matter of right” and distinguished it from the Parliaments power to regulate trade. The Stamp Act was repealed. **The Continental Congress consented to Parliament’s regulation of commerce, but resisted the imposition of taxes to raise revenue.**

The Founders’ understanding of the distinction between duties levied for revenue and those levied for regulation of trade persisted until the framing of the Constitution and, specifically, the General Welfare Clause.

The ability to levy taxes for the purpose of raising revenue is distinct from the ability to levy taxes for the purpose of regulating trade.

The General Welfare Clause limits rather than expands Congresses Power.

The word "welfare" appears twice in the Constitution.

Once in the preamble and again in Article 1, Section 8, as the introduction and purpose of the enumerated powers..

The preamble to the Constitution states:

"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 states:

"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."

<http://legal-dictionary.thefreedictionary.com/General+Welfare>

"Congress appropriates money for a seemingly endless number of national interests, ranging from federal courts, policing, imprisonment, and national security to social programs, environmental protection, and education. No federal court has struck down a spending program on the ground that it failed to promote the general welfare. However, federal spending programs have been struck down on other constitutional grounds.

James Madison And The Welfare Clause

<http://www.cato.org/pubs/journal/cj16n1-11.html>

Alexander Hamilton And The Welfare Clause

<http://politicalpistachio.blogspot.com/2009/10/alexander-hamilton-and-general-welfare.html>

Justice Story And The Welfare Clause

http://www.intellectualtakeout.org/library/books/familiar-exposition-constitution-united-states?library_node=71291

A Libertarian Opinion Of The General Welfare Clause

http://www.reasontofreedom.com/general_welfare_clause.html

Christian Opinion Of The General Welfare Clause

<http://www.christianworldviewofhistoryandculture.com/generalwelfareabuse>

Jewish Opinion Of The General Welfare Clause

<http://www.jewishworldreview.com/cols/elder110200.asp>