

A Nation Divided

The War for America's Soul

By Rex Rammell

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(Fly leaf summary)

With Social Security and Medicare bankruptcy imminent, over eleven trillion in federal debt, forty-seven million Americans without health insurance, a siege of illegal immigrants ranging from twelve to twenty million, Islamic extremists threatening annihilation of Americans, Congress with historic low approval rating — is it the beginning of the end of America?

Dr. Rammell, a veterinarian and constitutionalist, puts his analytic skills to work and the diagnosis is “critical”. He dissects the facts, lays out the naked truth, and provides a plan to save America.

“America has a disease” he says, “spread throughout the nation. That disease is socialism with *unlimited* federal power and it will take the entire strength and will of the people to overpower it.”

How did America develop this disease and what is the cure? Dr. Rammell will lead you on a thorough analysis of where it all went wrong, the gigantic mess in which America finds herself, and what we must do to ultimately save her. While Congress is fighting over where to put the band aids, he proclaims, “It is time for major surgery: Time for a transplant of the ‘original heart and soul of America’ established by God.”

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Preface

“I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation under God, *indivisible*”... No; the Pledge of Allegiance should say one nation under God, *divisible*... with fading hopes of liberty and justice for all.

I, like many Americans, was in awe as we watched the drama unfold during the 2000 presidential election. Al Gore had won the popular vote in the states by over 500,000. However, the electoral vote in the State of Florida would decide the outcome and it was in the hands of the Supreme Court.

The vote was extremely close. The Secretary of State for Florida had given the race to George Bush, which in turn had given him the needed electoral votes to become the next President of the United States. However, Al Gore and democrats were crying foul. The controversy stormed around defective ballots in several of Florida's counties. The democrats called for a manual recount due to indiscernible ballot results. The republicans were claiming the election had been decided and a recount would be unjust. Therefore, it became the decision of the Supreme Court who would be our next president. The justices ruled with the republicans and the rest is history.

The most amazing thing to me about the race was not necessarily the fact that it was one of the closest presidential races in the history of the United States and the first decided by the Supreme Court; it was the fact that so many people were polar opposites on the ideologies of the candidates. At that time I remember thinking to myself “this country has lost its identity; we are a divided nation.”

Fast forward to the 2007 Congressional session, which marked a historic low approval rating for Congress. The bipartisan fighting over the War on Terror, along with zero progress on immigration reform, left America with one of the most unproductive sessions in history. Party politicians now seem to have replaced American statesmen with their seemingly single goal to gain absolute party power. Although there have always been strong differences in opinion on the best direction for America, it would seem that America has reached a new low. America is divided. You will recall the result the last time America was divided; civil war.

The question that continued to cross my mind was “How did this happen?” I have been taught since my youth that America is the greatest nation on earth. How could the greatest nation on earth reach such low levels with the possibility of social collapse? Wasn’t the Constitution inspired by God? How could a document written by the hands of inspired men lead a nation into such turmoil? These and many other questions have led me to a comprehensive study of the history of America, from our humble beginnings to becoming a super power to becoming a divided nation. Is it possible that America will fall like all other great civilizations, or is there still time to save the “soul” of America?

In this book I make my best attempt to analyze America’s current situation, where I believe she went wrong, and what I believe we must do to redirect our course to save her. You will find my arguments not based merely on pure supposition, but based on tireless hours of study and contemplation of American history, along with commentary of some of America’s greatest minds.

I believe in the end you will come to understand, as I do, that America is still the Promised Land, ordained by God for a righteous people to assemble out of the nations of the earth, that the hand of Providence overshadowed our forefathers against unbelievable odds to secure our independence from Great Britain, and that the Constitution was inspired by God. Although it is not a perfect document, it is, as Benjamin Franklin explained in his humble acceptance of the newly written Constitution, “...because I expect no better and because I am not sure that it is not the best.”

I. The Battle for the Constitution

In the beginning there were socialists and capitalists. The socialists said “let us force our neighbors to be charitable that all mankind may be equal.” The capitalists said “let us give our neighbors freedom that they may choose to be charitable for charity freely given is true charity.” But the socialists disagreed that man could ever rise to be charitable; he must be forced. The capitalists disagreed. And henceforth the war for freedom began.

And men made themselves kings and rulers. And despotism and tyranny abounded. And man lost his freedom. And the capitalists fought back as blood covered

the earth. And the great Father who sits on his throne in the heavens watched and wept as man fought for his freedom. But man was not worthy of freedom. And more blood covered the earth. Then a righteous people arose and the Father said it is time for man to be free. And the people fought against the King and the Father sent his angels. And the people won their freedom. And the people knew they must bind the ambitions of men. So they assembled their wisest and counseled together and asked the Father to help them create a Constitution. But men's thirst for power continued. And the Constitution was argued and its meaning distorted. And men began again to lose their freedom...

The Original Heart and Soul of America

*Americans used to roar like young lions for freedom;
Now we bleat like sheep for security.*

—*Norman Vincent Peale*

Can you image the shock on the founders' faces if they were alive today and could see what has become of the America they gave their lives for? Their vision of a free America would take on a whole different meaning. After all, all they wanted was to be free of the tyranny of an oppressive government. Free to live their lives without a King and his armies telling them how. They most resented the King's incessant demands for more taxes. No matter how much they gave, he always wanted more.

Does this story sound familiar? Why is it that men and women, whether they be anointed Kings and Queens or not, never have enough power or money. I agree with Joseph Smith, a 19th century American leader, who said, "It is the nature and disposition of almost all men, as soon as they get a little authority, as they suppose, they will immediately begin to exercise unrighteous dominion."¹ Thank God that the men and women who lived in the era of the birth of the United States had the courage to say, "No more."

The Boston Tea Party

¹ Smith, Doctrine and Covenants, 121: 39

December 16, 1773, America sent the King of England a message. Although not the only act of rebellion against the King and his policies, the Boston Tea Party is arguably the most famous.

The simple history is that the colonists were sick and tired of being taxed, and especially when they had no say in the matter. The taxes placed on the colonists by the Stamp Act of 1765 and the Townshend Act of 1767 were preludes. John Hancock, an outspoken and defiant American, was one of the leading protesters. He, along with others, felt the import taxes were too high, so they were forced to smuggle tea into the country.

The rebellious act soon resulted in Hancock's ship the Liberty being seized in 1768 and Hancock charged with smuggling. He was defended by John Adams and was ultimately acquitted, which only emboldened his protests more. Hancock subsequently organized a boycott of tea from China sold by the British East India Company, which dropped their sale of tea in America from 320,000 pounds to 520 pounds. This led to large debts and huge overstocks of tea by the East India Company. Meanwhile, Hancock and the patriots were smuggling tea into the country without paying import taxes.

Because the British couldn't sell their tea, they passed the Tea Act, which allowed the East India Company to sell her tea to America without paying any taxes back to Britain. This tax break helped the East India Company sell their tea for lower prices than the smugglers. You can imagine what Hancock and his followers thought of that!

A series of protests culminated on December 16 at Boston's Old South Meeting House, where an estimated 8,000 protesters gathered. A group of men known as the "Sons of Liberty" slipped away from the meeting and disguised themselves as Native American Indians. They headed to Griffin's Wharf where the British ships, The Dartmouth, The Beaver, and The Eleanour were docked full of tea. The Sons of Liberty then proceeded to "savor the seas" with 90,000 pounds of British tea. Tea was said to have washed up on the shores of Boston for weeks.

The Boston Tea Party, as history would tell, was one of the many acts by America patriots that led to the American Revolution. One of the lessons taught to the British by

the Sons of Liberty, and a lesson that should be taught to modern politicians is this: excessive taxes and abusive laws lead to rebellion in one degree or another.

Valley Forge

*Naked and starving as they are
We cannot enough admire
The incomparable Patience and Fidelity
of the Soldiery*

—*George Washington*

Few events in human history show more character than the resolve shown by some of our forefathers to win the American Revolution against Great Britain. Despite all odds they persevered in a cause greater than themselves. No other single event typifies this more than “The Winter at Valley Forge”, which has more lessons for us.

The winter of 1777-1778 was a time of great suffering for America’s Continental Army, led by George Washington. Valley Forge, just 22 miles from Philadelphia, was the site of the winter camp that year. December 19, 1777, Washington’s fatigued and starving army marched into Valley Forge for what would be an ultimate test to win the war. However, this test would not be fought with weapons, but with will.

Wars are difficult enough with the support of the people. The trials become almost insurmountable when the soldiers are forsaken. And that was the case at Valley Forge. Congress had no power to force the states to fund the army. Consequently, many soldiers froze and starved to death. One historic account tells the gruesome story:

“Soldiers at Valley Forge went hungry because nearby farmers preferred to sell to the British in Philadelphia for hard cash, because New York’s grain surplus was diverted to New England civilians and the British in New York City, and because Connecticut farmers refused to sell beef cattle at ceiling prices imposed by the state. Soldiers went half-naked because merchants in Boston would not move government clothing off

their shelves for anything less than profits ranging from 1,000 to 1,800 percent. Everywhere in America there was a spirit of profiteering and a habit of graft that made Washington grind his teeth in helpless fury. In response to his appeals, Congress passed the buck by authorizing him to commandeer supplies. This he was reluctant to do among a people supposed to be trying to throw off the yoke of a tyrant. When he was forced to do it, the results confirmed his fears.”²

The conditions were so severe that Washington despaired “that unless some great and capital change suddenly takes place...this Army must inevitably...starve, dissolve, or disperse, in order to obtain subsistence in the best manner they can.”

Starving and poorly clothed, the army suffered immensely. By some accounts, around 2,000 men froze to death or died of starvation and disease. The soldier’s anguish is found in the following account:

“And so every night for too many weeks sticklike soldiers stuck their heads out of their smoky huts to cry, ‘No meat! No meat!’ Firecake and water was their food, bloody footprints in the snow their sign. Their clothes were so ragged and blankets were so scarce that they often sat up all night rather than fall asleep and freeze to death. Although they had little sustenance themselves, body lice managed to feed on them. Lafayette was horrified to see soldiers whose legs had frozen black and who had to be carted off to hospitals that were little better than death terminals to have their limbs amputated. One bitter Continental wrote: ‘Poor food – hard lodging – Cold Weather – fatigue – Nasty Cloaths – nasty Cookery – Vomit half my time – smoak’d out of my senses – the Devil’s in it – I can’t Endure it – Why are we sent here to starve and freeze...?’”³

² Leckie, *The Wars of America*, pp. 180-181 quoted from *The Making of America*, Skousen,

³ Leckie, *The Wars of America*, pp. 180-181 quoted from *The Making of America*, Skousen,

Despite the lack of support the army received from the people, they endured, and went on to win the war. It is interesting to note that only about one third of the people supported the Revolutionary War. Another third remained neutral and the last third were loyal to the British. I have always found this to be a most interesting fact. In many ways nothing has changed. About one third of modern Americans believe in capitalism, about one third believes in socialism, and one third are apathetic and indifferent.

The Preamble to the Constitution

“We the People of the United States, in Order to form a more perfect union, establish Justice, insure domestic Tranquility, provide for the common defence, 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.”

—*Benjamin Franklin*

“I have often, in course of the session, looked at the sun behind the president [engraving on the back of George Washington’s wood chair] without being able to tell whether it was rising or setting. But now at length I have the happiness to know that it is a rising and not a setting sun.”⁴

It is recorded that when Franklin signed the Constitution, “The old man wept.”⁵

The Miracle at Philadelphia

Fifty-five of America’s greatest men, representing the thirteen colonies, gathered in the scorching heat of Philadelphia in the summer of 1787. On September 17 of the

⁴ The Making of America, Skousen, Max Farrand, ed., The Records of the Federal Convention of 1787, 2:648

⁵ Bowen, *The Miracle at Philadelphia*, p. 263

same year, a document was signed by its founders that would shape the future of arguably the greatest nation to ever exist on the earth. America would become the inspiration for countless other nations to follow in her foot steps.

Never before had such a document as the United States Constitution been written; a theory of mixed government consisting of the three great branches, the executive, the legislative, and the judicial. Each branch was carefully designed to check the power of the others. The Constitution was a document that united the states while carefully preserving the individuality of their people as well as the autonomy of each state.

The Sons of Liberty showed the world at the Boston Tea Party the *American spirit* for freedom, the soldiers at Valley Forge showed the world the *American will* to sacrifice for a greater cause, and the Signers of the Constitution showed the world the *American wisdom* to check the powers of men.

The Danger of Government

“But what is government itself but the greatest of all reflections on human nature?”

If men were angels, no government would be necessary.”

—James Madison

The founders recognized that the only way a people could successfully self-govern was to constrain the ambitions of men with a Constitution. Thomas Jefferson said, “let no more be said about confidence in men, but bind them down from mischief with the chains of the Constitution.” This could only be done through checks and balances. No one person or body of people could have too much concentrated power. It was on this premise they agreed to create a *limited* central government.

Goudy warned,

“Its [government’s] intent is concession of power on the part of the people to their rulers. We know that private interest governs mankind generally. Power belongs originally to the people, but if rulers be not well guarded, that power may be usurped from them. People ought to be

cautious about giving away power.... If we give away more power than we ought, we put ourselves in the situation of a man who puts on an iron glove, which he can never take off till he breaks his arm. Let us beware of the iron glove of tyranny.”⁶

The three branches of government, the legislative, the executive, and the judicial, all have checks of power against one another. Although not a perfect system of checks and balances, the Constitution, as it was originally intended, would have checked the powers for the most part. However, like all laws, if a person or a group desires to get around them “where there is a will, there is a way.” A maxim I am sure of is “the paper is no better than the person or people behind it.” It doesn’t matter whether it is a contract between two men or a contract between the people of an entire nation. This truth was profoundly expressed by John Adams in 1798, who said,

“We have no government armed with power capable of contending with human passions unbridled by morality and religion...Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.”⁷

Federal Powers vs. State Powers

The signing of the Constitution on September 17, 1787, by those who drafted it was not enough to make it the supreme law of the land. It still had to be ratified by nine of the thirteen colonies, and three of the constructionists refused to sign it: Elbridge Gerry of Massachusetts, and Edmund Randolph and George Mason of Virginia. Their main objection was the lack of a Bill of Rights. They felt the Constitution was not sufficient to protect the states and individuals from encroachment by the federal government.

At the New York ratifying convention the main complaint was that the Constitution gave Congress powers without limit to do its will throughout the land. They believed the states would eventually be consumed by the central government. Little did

⁶ Tocqueville, *Democracy in America*, 1:329-30

⁷ John Adams, *The Works of John Adams*, ed. C.F. Adam, Boston: Little, Brown Co., 1851, 4:31

they know their prediction was prophecy!

Among their greatest concerns was the ambiguity of the “general welfare clause” in Section 8 of Article 1. First, we will start with an examination of the Constitution itself, in particular Section 8 of Article 1, which enumerates the powers delegated to congress.

The words you will read have not changed since September 17, 1787, the day the Constitution was signed. However, its true interpretation is certainly one of the most important debates in American history past, present, and future. Following a reading of this critical section of the Constitution we will read what some of the original constructionists had to say. Then we will explore the decision of the Supreme Court in *United States vs. Butler*, 1936. Their interpretation of the powers delegated to Congress may or may not surprise you. Will you agree with Supreme Court justices or will you find grave error in their interpretation?

Constitutional Powers Delegated to Congress

Section 8 enumerates the specific powers delegated to Congress by the Constitution to make federal law. The first paragraph contains the infamous “general welfare clause.” The subsequent clauses are enumerated powers and the last is known as the “Necessary and Proper clause” needed to implement the powers defined. As you read through the powers ask yourself this question: Was Section 8 written to provide that the federal government be limited or unlimited in its powers?

The United States Constitution

Article 1, Section 8

Powers Delegated to Congress

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and *provide for the common Defence and general Welfare of the United States*; but all duties, imposts and excises

shall be uniform throughout the United States; [*italics added by author for emphasis*]

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;--And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Enumerated Powers

You will recognize the following powers defined above in section 8.

1. Collect taxes
2. Pay debt
3. Borrow money
4. Regulate international, interstate and Indian commerce

5. Establish rules for naturalization (citizenship)
6. Establish bankruptcy laws
7. Coin money and regulate the value
8. Fix a standard for weights and measures
9. Punish counterfeiting
10. Establish post offices and post roads
11. Pass copyright and patent laws
12. Establish federal courts
13. Punish crimes on the high seas and against the law nations
14. Declare war
15. Raise and finance armies and a navy
16. Establish rules for land and navy forces
17. Call up state militias
18. Organize, arm, and discipline state militias
19. Administer federal lands and buildings
20. Make laws to execute the powers

These powers are an exclusive list of the powers the Constitution gives to the Federal Congress to make laws “*to pay the Debts and provide for the common Defense and general Welfare of the United States.*” There are no other powers! The controversy over the “general welfare clause”, as you will discover, is whether it was an enumerated grant of power by itself or a preamble to the subsequent enumerated powers? In other words, does it stand alone as a grant of power or do the enumerated powers define it? This is the key question debated now for over 230 years.

What the Founders Had to Say

—*James Madison, 1787*

Madison wrote, concerning the “general welfare clause” as a specific grant of power unto itself and in a desperate attempt to persuade the states to ratify the document,

“No stronger proof could be given of the distress under which these writers labor for objections than their stooping to such a misconstruction. But what color can the objection have when the specification of the objects alluded to by these general terms immediately follows, and is not even separated by a longer pause than a semi-colon?”

Madison stated that *the national debt, the common defense, and the general welfare* were “general terms” with “specification” in the following enumerated powers that were separated only by a “semi-colon”.

Later, he argued before the Congress,

“If Congress can employ 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 appoint teachers in every State, county and parish and pay them out of their public treasury; they may take into their own hands the education of children, establishing in like manner schools throughout the Union; they may assume the provision of the poor. . . . Were the power of Congress to be established in the latitude contended for, it would subvert the very foundations, and transmute the very nature of the limited Government established by the people of America.”⁸

His prophetic vision of the unintentional consequences of the misinterpretation of the “general welfare clause” is simply astounding. Programs like “No Child Left Behind” and “Medicaid” are modern-day fulfillment of his words. He further clarified the founders’ intentions in this regard with the following phrase taken from the *Federalist* papers, a series of explanatory letters used to persuade the states to accept the Constitution.

“The powers delegated by the proposed Constitution to the federal government are few and defined . . . to be exercised principally on external objects, as war, peace,

⁸ Quoted in *Undermining The Constitution A HISTORY OF LAWLESS GOVERNMENT* By Thomas James Norton, chpt 12,

negotiation, and foreign commerce.”

In 1792, he explained the consequences if the Constitution was misinterpreted when he said, “If Congress can do whatever in their discretion can be done by money, and will promote the General Welfare, the Government is no longer a limited one, possessing enumerated powers, but an indefinite one, subject to particular exceptions.”

—*James Wilson, 1787*

James Wilson, a lawyer and also a signer of the Constitution, explained, “The National Government was intended to promote the ‘general Welfare’. For this reason Congress has power to regulate commerce . . . and to promote the progress of science and of useful arts by securing for a time to authors and inventors an exclusive right to their compositions and discoveries.”⁹

Wilson explained how the “general welfare clause” was intended to be implemented by providing a proper application for two of its enumerated powers.

—*Thomas Jefferson, 1817*

Writing in 1817 from Paris, Thomas Jefferson stated, regarding a recently defeated bill for the advancement of the “general welfare clause”,

“You will have learned that an act for internal improvement, after passing both Houses, was negatived by the President. The act was founded, avowedly, on the principle that the phrase in the Constitution which authorizes Congress ‘to lay taxes, to pay the debts and provide for the general welfare,’ was an extension of the powers specifically enumerated to whatever would promote the general welfare; and this, you know, was the Federal doctrine. Whereas our tenet ever was, and, indeed, it is almost the only landmark which now divides the Federalists and the Republicans, that Congress had not unlimited powers to provide for the general welfare,

⁹ Ibid.

but was restrained to those specifically enumerated; and that, as it was never meant that they should provide for that welfare but by the exercise of the enumerated powers, so it could not have meant that they should raise money for purposes which the enumeration did not place under their action; consequently, that the specification of powers is a limitation on the purposes for which they may raise money.

I think the passage and rejection of this bill a fortunate incident. Every State will certainly concede the power; and this will be a national confirmation of the grounds of appeal to them, and will settle forever the meaning of this phrase, which, by a mere grammatical quibble, has countenanced the General Government in a claim of universal power. For in the phrase ‘to lay taxes, to pay the debts and provide for the general welfare,’ it is a mere question of syntax, whether the two last infinitives are governed by the first, or are distinct and co-ordinate powers; a question unequivocally decided by the exact definition of powers immediately following.”¹⁰

It is obvious from his statement he was quite tired of the endless debate first proposed by Hamilton and espoused by the Federalist Party that the “general welfare clause” was an “extension” of the enumerated powers and should be used for anything that would benefit the nation generally. He hoped that the defeat of the bill would finally put the matter to rest. But it didn’t. Six years later he was defending the original intent of the founders again.

“I have been blamed for saying that a prevalence of the doctrine of consolidation would one day call for reformation or revolution. I answer by asking *if a single State of the Union would have agreed to the Constitution had it given all powers to the General Government?* If the whole opposition to it did not proceed from the jealousy and fear of every State of being subjected to the other States in matters merely its own? And

¹⁰ Quoted in *Undermining The Constitution A HISTORY OF LAWLESS GOVERNMENT* By Thomas James Norton, chpt 12

if there is any reason to believe the States more disposed now than then to acquiesce in this general surrender of all their rights and powers to a consolidated government, one and undivided?”¹¹ [italics added by author for emphasis]

Thomas Jefferson’s “prevalence of the doctrine of consolidation” – unlimited federal authority – which would one day call for “reformation or revolution” would be realized in the events of the civil war and again, may become a reality in our time.

—*Alexander Hamilton, 1787*

Alexander Hamilton had a contrary view of the “general welfare clause”, “plenary, and indefinite, and the objects to which it may be appropriated are no less comprehensive.” Alexander Hamilton’s interpretation of the “general welfare clause” differed from that of Madison and Jefferson. Hamilton espoused the concept that the clause “and to provide for the general welfare” meant just that. The Federal government was charged with the responsibility to write laws to provide for the general welfare of the nation. He did not believe, however, that the government had unlimited authority to do so. As long as the welfare was for the *nation* and not the *local* it was a proper use of delegated authority. He argued in general terms,

“The plan of the Convention declares that the power of Congress, or, in other words, of the National Legislature, shall extend to certain enumerated cases. This specification of particulars evidently excluded all pretension to a general legislative authority, because an affirmative grant of special powers would be absurd, as well as useless, if a general authority was intended.”¹²

¹¹ Quoted in *Undermining The Constitution A HISTORY OF LAWLESS GOVERNMENT* By Thomas James Norton, chpt 12

¹² Alexander Hamilton, Federalist papers #83

His logic is interesting, but confusing; a problem experienced by many politicians today. Why would the Constitution enumerate Congress' powers if its intention was to make them unlimited? Said another way, why enumerate a few powers if it had them all?

It is also interesting to note that although Hamilton made a key argument against a "general legislative authority" his definition of general and that of Madison and Jefferson's were two different things. He supported the idea that "general welfare" was a specific grant of power provided it was done for the "general" welfare of all the people and not purely local or state issues, thus it was a limited power. This became known as the Hamiltonian doctrine. And as you will see was the beginning of the end for a limited federal government.

The Bill of Rights

In spite of the explanations by Madison, Wilson, Jefferson, and others, many of the states would not compromise. They insisted that a Bill of Rights be added to the Constitution to clarify the rights of individuals and of the states. On December 15, 1791, ten amendments known as the Bill of Rights were ratified by the thirteen states and became part of the Constitution. The Tenth Amendment specifically was added to protect the rights of the states and to satisfy those uneasy about the ambiguity of the "general welfare clause."

The Tenth Amendment

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved for the States respectively, or to the people."

The Tenth Amendment explicitly declares that the federal government is limited only to the powers it is granted in the Constitution. The majority opinion in *United States v. Darby*, 1941,¹³ confirmed this fact.

¹³ *United States v. Darby Lumber Co.*, 312 U.S. 100 (1941)

“The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers.”

It was a noble effort to reinforce Section 8 and the rest of the Constitution with the 10th Amendment. However, the devil in it all, was that the phrase “and general Welfare of the United States” was never clarified to mean that it was not an extension of the enumerated powers, even if it were used on items that affected the nation generally and not locally. It was, rather, left to the interpretation of the reader to understand that it was an introduction to the powers that would be subsequently and explicitly defined. If only Madison and Jefferson could have seen this, the addition of the clarification of the “general welfare clause” to the Tenth Amendment would have changed the future of America.

Delegated Powers Expanded Through the Elastic Clause

The landmark Supreme Court decision in *McCulloch v. Maryland*, 1819,¹⁴ officially expanded the “delegated” powers. The federal government established a banking system with a branch of the Second Bank of the United States located in Maryland. The state of Maryland imposed a tax on all notes of banks not chartered in the state. The Federal government challenged. The Supreme Court ruled the “Necessary and Proper Clause”, also known as the “elastic clause” found in Section 8, allowed the Federal government to pass laws, not expressly stated in the Constitution, in order for the powers which are expressly stated, to be operational. In other words, the ruling established that the Constitution grants to Congress *implied* powers for implementing the Constitution’s *expressed* powers, in order to create a functional government. This of course created a wide latitude of interpretation for Congress to determine what those

¹⁴ *McCulloch v. Maryland*, 17 U.S. 316 (1819)

implied powers are. The “elastic clause”, so named for its ability to extend widely in its interpretations of powers, has been abused repeatedly throughout the history of the United States. To what extent has the Marshall Court’s decision been abused? We need look no further than the size and scope of government today!

Justice Marshall knew the decision could open the door to abuse, so he attempted to clarify their decision when he wrote:

“Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.”

—*President James Monroe, 1822*

President Monroe opened a flood gate in his support of Alexander Hamilton’s interpretation of the “general welfare clause” when he vetoed a bill to preserve and repair the Cumberland Road in 1822. He stated that Congress’ power to spend was restricted “to purposes of common defence, and of general, national, not local, or state, benefits.”

He found the Cumberland Road project to be one of local, not general or national, therefore a violation of the spending clause. Although right in his veto, he was right for the wrong reason. It wasn’t because it was a *general verses local* issue; it was because it was not an enumerated power for the federal government to make internal improvements in the states. Jurisdiction over improvements in the infrastructure of the states belongs to the states, not the federal government.

Thus we see right from the beginning, following the ratification of the Constitution and despite the implementation of the Tenth Amendment, the battle over the extent of federal powers began. Following President Monroe’s misinterpretation, President John Quincy Adams authorized spending on several projects for internal improvement, which the Constitution did not allow. This misinterpretation of the spending clause caused an up roar by the people and became the focus of the next presidential election in which President Adams was soundly defeated by Andrew Jackson.

—*President Andrew Jackson, 1829*

President Jackson, unlike Monroe and Adams who preceded him, made no mistake about the correct interpretation when he vetoed a \$200 million appropriation for internal improvements, calling the broad interpretation of the “general welfare clause”, a “dangerous doctrine.” With few exceptions from 1787 until the presidency of Franklin Delano Roosevelt the interpretation of the spending clause held the line of reasoning by Madison and Jefferson. However, when FDR became the President the “general welfare clause” was authoritatively defined as a broad spending power and remains so today.

—*Governor Franklin Delano Roosevelt, 1930*

In what may have been the greatest flip-flop in history, FDR spoke about states’ rights as Governor of New York as he set his eyes on the presidency of the United States.

“As a matter of fact and law, the governing rights of the States are all of those which have not been surrendered to the National Government by the Constitution or its amendments. Wisely or unwisely, people know that under the Eighteenth Amendment [prohibition of liquor] Congress has been given the right to legislate on this particular subject, but this is not the case in the matter of a great number of other vital problems of government, such as the conduct of public utilities, of banks, of insurance, of business, of agriculture, of education, of social welfare and of a dozen other important features. In these, Washington must not be encouraged to interfere.” [Brackets added for clarification by author]

Then after he was elected, President Roosevelt did nothing but “interfere” in states’ rights issues. Never before in America’s history had the federal government usurped more power over states’ rights than during FDR’s presidency. He obviously justified exceptions for his broader interpretation of the general welfare powers due to the extreme circumstances of the Great Depression.

FDR's New Deal for America

FDR's run for the presidency occurred on the heels of the opening of the Great Depression. Unemployment was near 16% on its way to 25%, agricultural prices had fallen by 60%, industrial production had fallen by more the 50%, as two million Americans were found homeless. This would rise to 16 million at the peak of the depression. The country was in desperate need of someone to give it hope. Roosevelt campaigned, "I pledge you, I pledge myself, to a new deal for the American people."

President Roosevelt was inaugurated on March 4, 1933. In his speech he made immortal the words, "The only thing we have to fear is fear itself."

What followed would be the most fearful act of a United States President in United States history to expand the powers of the federal government. Within 100 days most of the following acts had been passed into law.

Notable New Deal Acts

- Reconstruction Finance Corporation – an agency that made large loans to businesses, ended in 1954.
- Federal Emergency Relief Administration – a program to create unskilled jobs for relief; replaced by WPA in 1935.
- United States Bank Holiday – closed all banks until they became certified by federal reviewers.
- Abandonment of the Gold Standard, 1933: gold reserves no longer backed currency; still exists.
- Civilian Conservation Corps (CCC), 1933: employed young men to perform unskilled work in rural areas; under United States Army supervision.
- Tennessee Valley Authority (TVA), 1933: effort to modernize very poor region, centered on dams that generated electricity on the Tennessee River; still exists.
- Agricultural Adjustment Act (AAA), 1933: raised farm prices by cutting total farm output of major crops and livestock.
- National Recovery Act (NRA), 1933: industries set up codes to reduce unfair competition, raise wages and prices.

- Public Works Administration (PWA), 1933: built large public works projects.
- Federal Deposit Insurance Corporation (FDIC), insures deposits in banks in order to restore public confidence in banks; still exists.
- Securities Act of 1933, created the SEC, 1933: codified standards for sale and purchase of stock, required risk of investments to be accurately disclosed; still exists.
- Civil Works Administration (CWA), 1933-34: provided temporary jobs to millions of unemployed.
- Indian Reorganization Act, 1934: moved away from assimilation.
- Social Security Act (SSA), 1935: provided financial assistance to: elderly, handicapped, paid for by employee and employer payroll contributions; required years contributions, so first payouts were in 1942; still exists.
- Work Progress Administration (WPA), 1935: a national labor program for more than 2 million unemployed; created useful construction work for unskilled men; also sewing projects for women and arts projects for unemployed artists, musicians and writers.
- National Labor Relations Act (NLRA) / Wagner Act, 1935: set up National Labor Relations Board to supervise labor-management relations; In the 1930s, it strongly favored labor unions. Modified by the Taft-Hartley Act (1947); still exists.
- Judicial Reorganization Bill, 1937: gave the President power to appoint a new Supreme Court judge for every judge 70 years or older; failed to pass Congress.
- Fair Labor Standards Act, 1938: established a maximum normal work week of 40 hours and a minimum of 40 cents/hour; still exists.
- Federal Surplus Relief Corporation later changed to the Federal Surplus Commodities Corporation.¹⁵

The list of Acts initiated and signed into law by FDR were ambitious and historic. In light of the desperate circumstances the country found itself in, the people could only hope they would work. However, the Constitution's system of checks and balances

¹⁵ New Deal Wikipedia

proved valiant in limiting federal power to a certain degree, when an originalist Supreme Court in several 5-4 decisions ruled key New Deal Acts unconstitutional.

The Four Horsemen

The “Four Horsemen” were four conservative supreme court justices who held off FDR during the beginning of the New Deal era . Justices McReynolds, Sutherland, Van Devanter, and Butler, joined by Justice Roberts, ruled in 1935 unconstitutional, The Railroad Retirement Act, The National Industrial Recovery Act, and The Bituminous Coal Conservation Act. In 1936 the Agricultural Adjustment Act, and a New York minimum wage law, were also ruled unconstitutional. The National Industrial Recovery Act majority ruling was joined by all the justices, infuriating FDR. The president’s next move to advance his New Deal caused much controversy.

Court Packing Scandal

Frustrated with the decisions of the Supreme Court, led by the four horsemen, FDR took measures into his own hands. He decided if he couldn’t persuade them to support his New Deal, he would out power them by making them the minority on the court. In an unprecedented move, he called for a bill to reorganize the court, the Judiciary Reorganization Bill of 1937 (Court Packing Bill).

The Constitution is silent on the number of justices needed to constitute the Supreme Court and since 1869 the justices have numbered nine by statute. FDR, in the attitude of a dictator, saw this as an opportunity to add more justices who were more aligned with his way of thinking. The bill would have allowed one additional justice to be appointed to the Court for every justice over the age of 70 ½ years old. At the time there were six. Therefore, if the bill passed, the Court would be made of 15 justices with the majority, he expected, to be supporters of his New Deal. Little did he realize that some of the most intense opposition to the bill would come from members of his own party, namely Vice President Garner, who recognized the bill as a violation of the separation of powers.

In the end the bill was defeated, but serious damage had been done to the Court.

The swing votes of Justice Roberts began to side with the liberal justices finding the Labor Relations and Social Security Acts constitutional. However, the greatest damage was done in the historic case of *United States v. Butler* just a little over a year earlier.

The Day that Changed the Course of America

January 6, 1936, a 150 year old debate was decided by the United States Supreme Court and the course of America was changed. Following the constitutional convention of 1787 in Philadelphia, Alexander Hamilton led the debate on his side, while James Madison and Thomas Jefferson argued the other. The ultimate question being asked was: Does the “general welfare clause” of the United States Constitution give limited or unlimited power to the Federal Government to tax and spend to “provide for the general Welfare of the United States?” The answer will in the end, ultimately, decide the fate of America.

United States vs. Butler

In 1933, the first year of Franklin Delano Roosevelt’s presidency, the United States Congress passed the Agricultural Adjustment Act. The new law gave power to the federal government to implement a tax on the processing of agricultural commodities. The taxes were then redistributed to farmers who agreed to decrease their production. The Act was intended to stabilize agricultural commodities prices during the Great Depression. The Act was similar to our current day Conservation Reserve Program, where land is held out of production to decrease the supply of commodities.

The question before the Supreme Court in *United States v. Butler*, 1936,¹⁶ was whether the United States Congress had exceeded its power to tax and spend to provide for the “general welfare” and whether the Act violated the state’s Tenth Amendment exclusive right to tax within its state boundaries. The Tenth Amendment states that all powers not specifically delegated to the United States are reserved to the states. In other words, did the Constitution give the Congress power to tax on a purely state issue?

¹⁶ *United States v Butler*, 297 U.S. 1 (1936)

The Supreme Court in a 6-3 decision ruled the Act unconstitutional because it violated the Tenth Amendment. Ironically, however, in the Court's written opinion, unlimited authority to tax and spend for the "general welfare" of the nation was given unprecedented validation and America's course was changed, maybe forever.

The Supreme Court's Majority Opinion

Justice Roberts, giving the opinion for the Court stated,

"The government concedes that the phrase 'to provide for the general welfare' qualifies the power 'to lay and collect taxes.' The view that the clause grants power to provide for the general welfare, independently of the taxing power, has never been authoritatively accepted."

He acknowledged right from the beginning that for 150 years the idea that the "general welfare clause" as a specific grant of power, in addition to the enumerated powers that immediately followed, had been argued.

He continued,

"Mr. Justice Story points out that, if it were adopted, 'it is obvious that under color of the generality of the words, to 'provide for the common defense and general welfare', the government of the United States is, in reality, a government of general and unlimited powers, notwithstanding the subsequent enumeration of specific powers."

Can you feel the significance of his words? He was about to give unlimited powers to the federal government through the "general welfare clause" and he knew it. The question is how could the justices rationalize the phrase "notwithstanding the subsequent enumeration of specific powers"?

Remember, this was a time of serious national fiscal and social problems associated with the Great Depression. FDR had just become the president and was making promises to the people he had no authority to make. Don't think for a moment the justices did not have intense political pressure to institute FDR's New Deal promises.

Justice Roberts continued as his words became clearer and clearer that the court was going to adopt the concept that “general welfare” was an extension of the enumerated powers by saying,

“The true construction undoubtedly is that the only thing granted is the power to tax for the purpose of providing funds for payment of the nation's debts *and* making provision for the general welfare.”

Shouldn't he have said, “The true construction undoubtedly is that the only thing granted is the power to tax for the purpose of providing funds for payment of the nation's debts and *provide for the common Defense* and making provision for the general welfare” as stated in the opening clause in Section 8? He left out “provide for the common defense.” This is a significant omission because the “common defense” is as significant as the “nation's debt” and “general welfare” to the clause and all three are explicitly defined in the enumerated powers that follow. If the war powers had not been defined in the enumerated powers which followed, it would have been logical to assume that it was an “extension of the enumerated powers” along with the “general welfare clause” in the first clause. However, since the “common Defense” was defined in the subsequent enumerated powers, so too is it logical that “the general welfare” was also defined, proving that neither was intended as a grant of power undefined in the opening clause. Therefore, it is logical that “the general welfare” phrase was limited to the enumerated powers subsequently defined as argued by both Madison and Jefferson.

Justice Roberts and the Supreme Court then prepared the people for the atomic bomb they were about to drop on the Constitution, as he continued,

“The argument is that Congress may appropriate and authorize the spending of moneys for the ‘general welfare’; that the phrase should be liberally construed to cover anything conducive to national welfare.”

The rest of his opinion reads like a sad obituary. It was the end of any hope of maintaining a limited federal government. As you read it you will notice that Hamilton's

idea and Madison's and Jefferson's idea of a limited federal government were vastly different as I have already pointed out.

Justice Roberts continues,

“The Congress is expressly empowered to lay taxes to provide for the general welfare. They can never accomplish the objects for which they were collected, unless the power to appropriate is as broad as the power to tax...”

I would like to have asked the Justice where in the Constitution it says the powers to tax are broad?

He continues,

“Since the foundation of the nation, sharp differences of opinion have persisted as to the true interpretation of the phrase. Madison asserted it 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 the Congress. In this view the phrase is mere tautology, for taxation and appropriation are or may be necessary incidents of the exercise of any of the enumerated legislative powers.

Hamilton, on the other hand, maintained the clause conferred 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.

Mr. Justice Story, in his Commentaries, espouses the Hamiltonian position. Study of all these leads us to conclude that the reading advocated by Mr. Justice Story is the correct one.

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 the Congress. It results that the power of Congress to authorize expenditure of public monies for public purposes is not limited by the direct grants of legislative power found in the Constitution.

But the adoption of the broader construction leaves the power to spend subject to limitations.”

As you read his closing remarks, notice that they confined the “general welfare clause” to national government issues verses local state issues as Hamilton had argued, staying within what they felt was the true interpretation of a limited government. The obvious problem with their position is, and we can see it in the application of our time, the phrase “general welfare” can be and is construed to mean nearly everything that is not specifically local. The term “general welfare” is so ambiguous, it basically includes everything. Today “general welfare” for the nation includes Social Security, Medicare, Medicaid (welfare for the poor), public education, infrastructure projects, museums, all kinds of pork projects (appropriations for pet projects added in by individual legislators) and charitable projects, along with a host of other expenditures that are rightfully the jurisdiction of the states. All these areas were opened up to control by the federal government with this validation and interpretation of the “general welfare clause” by the Supreme Court in 1936.

Thomas Jefferson in a Draft Declaration and Protest of the Commonwealth of Virginia in 1825 gave clear warning that Hamilton's interpretation of the “general welfare clause” would render meaningless the Constitution, the primary purpose of which was to restrain the government from mischief.

He wrote:

“This assembly does further disavow and declare to be most false and unfounded, the doctrine that the compact, in authorizing its federal branch to lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defence and general welfare of the United States, has given them thereby a power to do whatever they may think, or pretend, would promote the general welfare, which construction would make that, of itself, a complete government, without limitation of powers; but that the plain sense and obvious meaning were, that they might levy the taxes necessary to provide for the general welfare, by the various acts of power therein specified and delegated to them, and by no others.”

Justice Roberts rationalized,

“As [Justice] Story says: ‘The Constitution was, from its very origin, contemplated to be the frame of a national government, of special and enumerated powers, and not of general and unlimited powers.’ A power to lay taxes for the common defense and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them. That the qualifying phrase must be given effect all advocates of broad construction admit. Hamilton, in his well known Report on Manufactures, states that the purpose must be ‘general, and not local.’ Monroe, an advocate of Hamilton's doctrine, wrote: ‘Have Congress a right to raise and appropriate the money to any and to every purpose according to their will and pleasure? They certainly have not.’ Story says that if the tax be not proposed for the common defense or general welfare, but for other objects wholly extraneous, it would be wholly indefensible upon constitutional principles. And he makes it clear that the powers of taxation and appropriation extend only to matters of national, as distinguished from local, welfare. How great is the extent of that range, when the subject is the promotion of the general welfare of the United States, we need hardly remark.”¹

The bomb had been dropped, the limits on federal government for 150 years were finally gone, and the floodgates of socialism were opened. Was it the beginning of the end for America?

A New Deal for Social Welfare

Prior to FDR's New Deal era, it was generally understood that individual charity by the federal government was unconstitutional. Nowhere in the enumerated powers could charity be found to be a legitimate function of the national government nor reasonably could it be implied through the "necessary and proper" or "elastic clause." However, following the broad interpretation of the meaning of the "general welfare clause" by the Court in *United States v. Butler*, the door to social welfare had been opened. In fact, the door to just about any type of spending had been opened as long as it could be justified to be a national issue, which few things cannot. The founders and the Courts, until FDR's presidency, had correctly interpreted the Constitution and found no authority for charity.

—*James Madison, 1794*

"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."

—*Congressman Davy Crockett*

Congressman Davy Crockett, famous for his defense of Texas in the Alamo, served for nine years in Congress. While serving in Congress a fire broke out in Georgetown and many of the Congressmen helped fight the blaze. The next morning the Congress voted \$20,000 to assist those whose homes were destroyed. Crockett voted for it. Horatio Bunce, a constituent of Crockett, learned of the bill and scolded Crockett for using other people's money as charity. He challenged Crockett to find in the Constitution where it allowed Congress to spend one penny of other people's money as charity. Crockett couldn't find any provision. Bunce told him he had the right to help with his

own money, but not other people's money.

Later Crockett found himself in a similar situation when Congress was considering a measure to grant a sum from the public money to a widow of a recently deceased veteran. The measure was expected to pass unanimously until Congressman Crockett rose to the floor and said,

“Mr. Speaker, I have as much respect for the memory of the deceased, and as much sympathy for the sufferings of the living, as any man in this House. But we must not permit our respect for the dead or our sympathy for a part of the living to lead us into an act of injustice to the balance of the living. I will not go into an argument to prove that 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 to so appropriate a dollar of the public money. Some eloquent appeals have been made to us upon the ground that it is a debt due the deceased. Mr. Speaker, the deceased lived long after the close of the war; he was in office to the day of his death, and I have never heard that the government was in arrears to him. Every man in this House knows it is not a debt. We cannot, without the grossest corruption, appropriate this money as the payment of a debt. We have not the semblance of authority to appropriate it as a charity. 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 bills asks.”¹⁷

—*President Franklin Pierce, 1854*

¹⁷ *The Life Of Colonel David Crockett*, by Edward S. Ellis, published by Porter & Coates in 1884.

“[I must question] the constitutionality and propriety of the Federal Government assuming to enter into a novel and vast field of legislation, namely, that of providing for the care and support of all those ... who by any form of calamity become fit objects of public philanthropy ... I cannot find any authority in the Constitution for making the Federal Government the great almoner of public charity throughout the United States. To do so would, in my judgment, be contrary to the letter and spirit of the Constitution and subversive of the whole theory upon which the Union of these States is founded.”

—*President Grover Cleveland, 1887*

“I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the General Government ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit.”

—*President Franklin Delano Roosevelt, 1933*

President Roosevelt, however, used the dire situation of the nation to forward his plan for social welfare when he made his case to the American people to support his plan as “the need to meet the unanswered challenge of one-third of a Nation ill-nourished, ill-clad, ill-housed.”

Many of FDR’s programs were discontinued during or after the war, but one program – Social Security – remained to become the liberal hallmark of the New Deal and part of FDR’s legacy. When President Roosevelt signed “A Bill to Alleviate the Hazards of Old Age, Unemployment, Illness, and Dependency, to Establish a Social Insurance Board in the Department of Labor, to Raise Revenue, and for Other Purposes,” he made this comment:

“If the Senate and House of Representatives in this long and arduous session had done nothing more than pass this bill, the session would be regarded as historic for all time.”

Social Security Act, 1936

January 6, 1936, the Supreme Court opened the door for permanent social welfare reform with the historic misinterpretation of the “general welfare clause” in *United States v. Butler*. In 1937, following the Court Packing Scandal by FDR, the Social Security Act of 1935 received its first challenge in *Steward Machine Company v. Davis*, 1937.¹⁸ The case involved the constitutionality of forcing the states to adopt laws for unemployment insurance, a part of the Social Security Act.

The “Four Horsemen” opposed the bill on the grounds that it went beyond the powers granted to the federal government by the Constitution and that it forced the states to adopt or accept laws in violation of their sovereign rights provided by the Tenth Amendment.

Justice Cardozo, writing the majority opinion stated,

“The fact developed quickly that the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve. It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the Nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the General Welfare.”

Justice McReynolds, writing his own dissenting opinion stated,

“That portion of the Social Security legislation here under consideration, I think, exceeds the power granted to Congress. It unduly interferes with the orderly government of the state by her own people and otherwise offends the Federal Constitution. [Article 1, Section 8] is not a substantive

¹⁸ *Steward Machine Company v. Davis*, 301 U.S. 548 (1937)

general power to provide for the welfare of the United States, but is a limitation on the grant of power to raise money by taxes, duties, and imposts. If it were otherwise, all the rest of the Constitution, consisting of carefully enumerated and cautiously guarded grants of specific powers, would have been useless, if not delusive.”

Steward Machine Company v. Davis and *Helvering v. Davis*, 1937,¹⁹ decided the same day, both greatly expanded federal authority to regulate state activity. Shortly after the *Steward* loss, Justice Van Devanter retired in June 1937. He was replaced by Hugo Black, which ended the valiant attempt by the Four Horsemen to hold back FDR, the federal government, and the advance of social welfare in the name of the general welfare clause.

The Court had established the precedent for what we experience today: that the federal government, under the auspices of the “general welfare clause”, can regulate state laws. This practice is widely used today.

—*Justice Sandra Day O’Conner, 1987*

South Dakota v. Dole, 1987,²⁰ Justice O’Conner dissented, saying,

“When Congress appropriates money to build a highway, it is entitled to insist that the highway be a safe one. But it is not entitled to insist as a condition of the use of highway funds that the State impose or change regulations in other areas of the State’s social and economic life Indeed, if the rule were otherwise, the Congress could effectively regulate almost any area of a State’s social, political, or economic life.”

She continued,

“If the spending power is to be limited only by Congress’ notion of the general welfare, the reality, given the vast financial resources of the

¹⁹ *Helvering v. Davis*, 301 U.S. 619 (1937)

²⁰ *South Dakota v. Dole* 483 U.S. 203 (1987)

Federal Government, is that the Spending Clause gives “power to the Congress to tear down the barriers, to invade the states’ jurisdiction, and to become a parliament of the whole people, subject to no restrictions save such as are self-imposed.” ... This, of course, as Butler held, was not the Framers’ plan and it is not the meaning of the Spending Clause.”

New Deal Legacy

FDR boasted to Congress in January of 1934 that he had effected “a permanent re-adjustment of many of our social and economic arrangements.” In 1935 before Congress one year later he boasted of “a new order of things.”

After Franklin Delano Roosevelt’s 12 years in office there was a “new order of things.” The federal government’s powers were greatly expanded and America would never be the same. It now became expected by the people that when times were hard, the government would step in and save them. The “New Deal” liberalism born during the era of suffering and great despair of the Great Depression would change the American ideology for decades to come and led the way to the next great advance of liberalism, the Great Society of the 1960’s.

The Great Society

The New Deal era, riding the wave of emotion from the Great Depression, led to an unprecedented expansion of the federal government’s power. The Great Society of President Lyndon B. Johnson, having the road paved by the successful tax cuts of President John F. Kennedy, continued the landslide of liberalism. LBJ as President Johnson was called, a teacher from Texas who had witnessed extreme conditions of the poor declared an “unconditional war on poverty” and, may I add, an unconditional war on the original intent of the Constitution.

In 1964, following the enactment of the Economic Opportunity Act, \$1 billion dollars was appropriated for the beginning of dozens of programs, which followed over the next two years with another \$2 billion dollars. The Food Stamps program, the

Community Action Program, and Head Start were just a few of his programs directed towards helping the poor.

The Elementary and Secondary Education Act of 1965 appropriated \$1 billion in federal aid to public education for schools with low-income children. The Higher Education Act of 1965 made available low-interest loans to poor students. The Bilingual Education Act of 1968 appropriated federal funding for children with limited English speaking ability.

The Social Security Act of 1965 authorized Medicare for the health of senior citizens. Medicaid was introduced in 1966 to welfare recipients of all ages.

The Immigration and Nationality Services Act of 1965 removed the national origin quotas on immigration that had stood since 1921, opening the door for a greatly expanded multicultural America and creating many of the budget problems for social welfare we face today.

President Johnson's environmental policies were mind-boggling. He stated in regards to the environment, "the air we breathe, our water, our soil and wildlife, are being blighted by poisons and chemicals which are the by-products of technology and industry. The society that receives the rewards of technology, must, as a cooperating whole, take responsibility for [their] control. To deal with these new problems will require a new conservation. We must not only protect the countryside and save it from destruction, we must restore what has been destroyed and salvage the beauty and charm of our cities. Our conservation must be not just the classic conservation of protection and development, but a creative conservation of restoration and innovation."

The following acts are from his environmental policies:

- Wilderness Act of 1964,
- Endangered Species Preservation Act of 1966,
- National Trails System Act of 1968,
- Wild and Scenic Rivers Act of 1968,
- Land and Water Conservation Act of 1965,
- Solid Waste Disposal Act of 1965,
- Motor Vehicle Air Pollution Control Act of 1965,

National Historic Preservation Act of 1966,
Aircraft Noise Abatement Act of 1968, and
National Environmental Policy Act of 1969.²¹

An Unlimited Federal Government

A universal retirement and disability plan in Social Security, universal health care for seniors and the poor through Medicare and Medicaid, universal education from preschool thru high school, food stamps for all welfare recipients, the Endanger Species Act, and on and on and on... None of these areas can be found among the enumerated powers or even implied through the “Necessary and Proper clause” in the Constitution. How did the federal government usurp these powers from the states? It was from a broad interpretation of the “general welfare clause” by the Supreme Court in 1936.

“If Congress can employ 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 appoint teachers in every State, county and parish and pay them out of their public treasury; they may take into their own hands the education of children, establishing in like manner schools throughout the Union; they may assume the provision of the poor. . . . Were the power of Congress to be established in the latitude contended for, it would subvert the very foundations, and transmute the very nature of the limited Government established by the people of America.” —*James Madison*

The Commerce Clause

What the federal government can't justify through the “general welfare clause” they justify through the “commerce clause” of the Constitution, Article 1, Section 8, clause 3.

²¹ The Great Society, Wikipedia

“To regulate commerce with foreign nations, and among the several states, and with the Indian tribes; ...”

The clause was written as an enumerated power to regulate commerce between the states and with foreign nations, and Indian tribes, which are sovereign nations within the states. This power explicitly written in to the Constitution was an appropriate power to keep the states from fighting over unfair trade that moved from one state to another or from a foreign or Indian nation that moved commerce through the United States.

However, the original intent of the “commerce clause” has been abused nearly as much as the “general welfare clause”. In fact, prior to the broad interpretation of the “general welfare clause” most laws that went beyond the enumerated powers were justified by the “commerce clause”. In 1942, during the New Deal era, the precedent was set once and for all in *Wickard v. Filburn*, 1942.²²

The infamous Agricultural Adjustment Act of 1938 limited the area that farmers could devote to wheat production. As found in *United States v. Butler*, the intention of the act was to stabilize national prices by controlling the amount of commodity produced. If you will recall, the Supreme Court found the Agricultural Adjustment Act in 1936 unconstitutional because it violated the Tenth Amendment’s states’ rights. So, in 1938 they used the “commerce clause” to justify the act. Another prime example of how the federal government gets what it wants.

Roscoe Filburn was a wheat farmer. In 1940 his wheat allotment was 11.1 acres with an expected yield of 20.1 bushel per acre. However, he planted 23 acres with the intent to use the excess above and beyond his allotment for personal use. The government found him in violation of the act.

Filburn argued that because the excess wheat never entered commerce at all, let alone interstate commerce, the federal government had no jurisdiction through the “commerce clause”.

The Federal District Court ruled in favor of Filburn. The Federal Government appealed. The Supreme Court ruled against Filburn. They reasoned that if Mr. Filburn had not used his excess wheat for private use, he would have had to buy the wheat from

²² *Wickard v. Filburn*, 317 U.S. 111 (1942)

the market. And if all farmers used the same reasoning, the effect on the market would be substantial.

The ruling gave Congress the power to regulate not only interstate commerce as was appropriately accepted, but intrastate, non-commercial activity if they felt it would effect interstate commerce. The ruling was seen as the end to any limits on Congress' "commerce clause" powers to regulate all private economic activity.

America Falters

As of this writing the United States is now over \$11 trillion in debt, or over 85% of our Gross Domestic Product (GDP), which is the highest amount of debt as a percentage of the GDP since WW II. We are paying a staggering amount (approximately \$500 billion per year) in interest alone on that debt. We are spending over 3% of the GDP on anti-poverty programs, the highest percentage in our history. The Social Security Trust Fund and Medicare will begin to take in less money than they spend within 10 years. From that point on, the funds will be in the red until bankruptcy. Costs of living have also sky rocketed, while 47 million Americans are without health insurance. Mortgage foreclosures are at record highs as America begins to buckle from years of poor fiscal policies. Meanwhile, our Federal Government continues to spend money like a bunch of drunken sailors on everything imaginable, all in the name of the "general welfare" of the nation.

Can We Return to the Original Intent of the Constitution ?

Thus we see the battle for the Constitution started shortly after it was written. And for 150 years the Constitution held strong. However, the pressure put on the nation during the Great Depression was all that was needed to finally get the Supreme Court to misinterpret the meaning of the "general welfare clause". The only question that remains is: Can we stop the advance of this gigantic power-eating machine called the Federal Government? And if so, how?

II. The Battle for States' Rights

The Tenth Amendment

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved for the States respectively, or to the people.”

What are the “powers *not* delegated to the United States [the federal government] by the Constitution?” If you read the Constitution, you won't find them listed. What you will find listed are the only powers the federal government was given. All others were reserved for the states or the people. In other words, if you can't find a power written in the United States Constitution, the Federal Government does not have it. This is further proof that the founders intended to limit the centralization of power.

*Thirteen Colonies Become the United States of America;
Who gets the unsettled land?*

If you would to read the rest of the book, please go to www.voteRammell.com to place an order.