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## Chapter 5

# GOVERNMENT FOR THE PEOPLE: THE GENERAL WELFARE

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### INTRODUCTION

*A state exists for the sake of a good life, and not for the sake of life only: if life only were the object, slaves and brute animals might form a state, but they cannot, for they have no share in happiness or in a life of free choice.*

ARISTOTLE

*The legitimate object of government is to do for a community of people whatever they need to have done, but cannot do at all, or cannot so well do, for themselves — in their separate and individual capacities.*

ABRAHAM LINCOLN

*Though the people cannot choose and guide the means administration employs, they can prescribe the ends: and so although government may not be by the people, it may be for the people. The people declare the end of government to be the welfare of the whole community and not of any specially favored section.*

JAMES BRYCE

THE PREAMBLE of the U.S. Constitution states, in language as remarkable for its economy as for its eloquence, the ends for which the Constitution was established. These objectives are six in number: a more perfect union, domestic tranquillity, justice, the common defense, the general welfare, and the blessings of liberty. Five are discussed elsewhere in these volumes: for example, domestic tranquillity in Ch. 6, the

common defense in Ch. 7, and a more perfect union in Ch. 10. Our subject here is the general welfare.

In discussing it, we cannot ignore another famous statement. "We hold these truths to be self-evident," wrote Thomas Jefferson in the Declaration of Independence, "that all men are created equal; that they are endowed by their Creator with certain unalienable rights, that among these are life

liberty, and the pursuit of happiness." Governments, he went on to say, are instituted among men to secure these rights.

What does this famous phrase — the general welfare — mean? What did it mean to the framers of the Constitution, and was that meaning different from our understanding of it today? When we call ours a welfare state or welfare society, with either approbation or dismay, are we describing a condition of things that the Founding Fathers could not have conceived? If they could have conceived it, would they have approved? Above all, what is happiness? And what are the conditions of its pursuit? These and other questions are treated in the following sections.

#### 1. THE COMMON GOOD, HAPPINESS, AND THE GENERAL WELFARE

THE QUOTATION from the Declaration (as well as the quotation from Aristotle's *Politics* that appears at the beginning of this essay) connects several ideas that are relevant to this discussion. Both Aristotle and Jefferson make reference to the ideas of the state, of the good life (as opposed to and distinguished from life only), of liberty, and of happiness.

A similar connection between these and other notions is implied, if not explicitly expressed, in the Preamble. There, happiness or the good life is not specifically mentioned. Instead, the statement of ends or objectives enumerates the constituents of happiness. The Preamble may be understood to mean that the general happiness of the people, or their common good, involves the attainment of union, domestic tranquillity, justice, national security, freedom, and welfare. This means, of course, that the last notion is not to be confused with happiness in general. The general welfare is a part or aspect of the happiness of the people; it is not all of it.

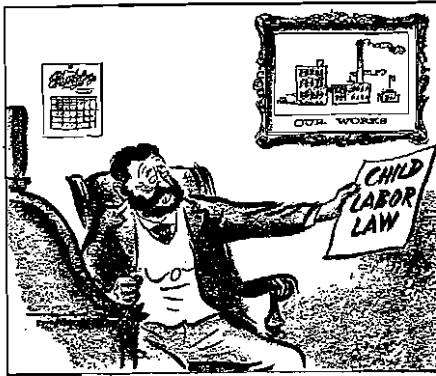


Courtesy, Herblock, "The Washington Post"

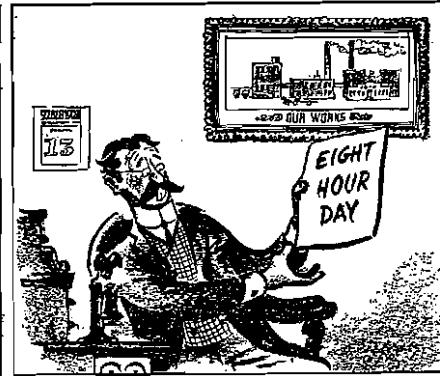
"I don't know why everything has to keep changing. When I was a young man —"; cartoon by Herblock, 1958

To be sure, the Preamble's objectives overlap and are interconnected. A more perfect union is needed both to ensure domestic tranquillity and to provide for the common defense — and thereby to preserve both internal and external peace. The establishment of justice is indispensable to preserving domestic peace and securing the blessings of liberty. And the general welfare not only rests on the establishment of justice — on just laws justly administered — but it also affects and is affected by the conditions conducive to political liberty and other individual freedoms.

Nevertheless, peace is one thing; justice, another; and liberty, still another. Unless the general welfare differs in meaning from all the rest, it does not properly belong in the enumeration as one of the specific objects of civil government, or as one of the distinct components or constituents of the common good. We are forced to conclude either that the writers of the Preamble were



'It'll Ruin Our Business!'

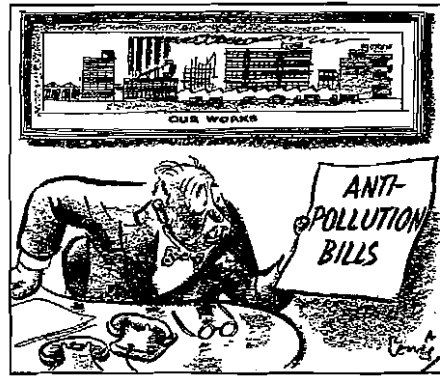


'It'll Ruin Our Business!'



'It'll Ruin Our Business!'

Courtesy, Ross A. Lewis, "The Milwaukee Journal"



'It'll Ruin Our Business!'

being inexact in their use of language or that they meant that "the general welfare" and "the common good" are two different, though connected, things. The first conclusion goes against everything that we know of these men, who were as eloquent as they were politically sagacious. The second conclusion is therefore the one we must adopt.

What, then, is happiness as distinct from the general welfare? Happiness, first of all — it requires no subtlety to see this — is what everyone wants. Conceived as the ultimate goal of human striving, it is defined by John Stuart Mill as the sum total of satisfactions of which an individual life is capable. This, of course, is only a formal definition. It does not tell us concretely or materially what happiness consists in; but it does tell us what it means to be happy. As Aristotle puts it, the mark of the happy man is that he is in possession of all the goods he

needs and, thus satisfied, wants for nothing. Both Mill and Aristotle appeal to the common sense notion that nothing can be the supreme object of desire that, when it is possessed, leaves the possessor with basic desires still unsatisfied; and furthermore that nothing can be the goal of all striving that is a means to ends beyond itself.

This way of thinking about happiness involves several points that can be briefly stated as follows:

Happiness cannot be one particular good among other goods, as, for example, health, wealth, knowledge, or friendship; for, possessing any one of these, a man might still desire the others, and therefore not yet be happy. In relation to all particular goods: then, happiness is *the good in general*; in other words, the sum total of these particular goods, in some order and proportion that makes them compatible. The particular

goods are to be regarded as parts, elements, or constituents of happiness.

Happiness cannot be synonymous with the momentary feeling of joy or satisfaction that accompanies the attainment or acquisition of some particular good. In this sense of the word — which is, however, not uncommon — happiness can hardly be regarded as the ultimate goal of human life. Happiness, in short, cannot be identified with any one of the momentary enjoyments that, from time to time, are said to characterize it.

It follows from this that happiness cannot be something that can be experienced, felt, or enjoyed in a passing moment. The final judgment of whether or not a man had a happy life must await the completion of his life. Happiness is not having a good time but, as it were, having a good life. The happy man is one whose life turns out well on the whole.

This way of thinking is perhaps the only one that makes good sense out of the phrase "the pursuit of happiness." The pursuit of happiness is a lifelong undertaking. It consists — but again this is not a concrete definition — in so managing one's desires and so managing one's affairs, from start to finish, that, given a certain measure of luck, one's life *turns out well*.

While happiness is thus relative to the individual nature, it is also relative to the common nature that all men share. Insofar as they differ, men pursue happiness in different ways; but insofar as they are all human beings, they all have certain natural needs or desires in common, in terms of which it can be said that what constitutes a happy life is, in its broad or general outlines, the same for all men.

Finally, given man's social nature, the pursuit of happiness cannot be merely an individual striving. If the pursuit of happiness is to be considered a natural right, secured by government to all men, then the

pursuit of happiness by each man must be such that it can be successful without *necessarily* frustrating anyone else's pursuit. For example, the notion that happiness involves the attainment of absolute power over other men is ruled out by this consideration. On this supposition, if some men are to be successful in their pursuit of happiness, others — those who are enslaved by them — will necessarily have to fail. This is another way of saying that happiness is a common good, that is, a good that men can pursue cooperatively in such a way that it is possible for each to achieve it to some degree without preventing others from achieving it also.

Assuming that these points are valid with regard to the meaning of happiness (and some such assumption is required if we are to make sense of the Preamble and the Declaration), we can now enumerate and classify the particular goods that men seek when they know — unlike the miser, for instance — what is really good for them, and also when — unlike the man who wants absolute power over others — they recognize the duty to pursue happiness in a way that does not prevent others from pursuing it, too.

There are six general classes of such goods:

1. Goods of the body, such as health, strength, the pleasures of sense.

2. Goods of the mind, such as knowledge, understanding, prudence, wisdom; together with such goods of the mind's activities as the skills of inquiry, of critical judgment, and of creative production.

3. Goods of character, whether described in terms of such "virtues" as temperance and fortitude, or in terms of an integrated, adjusted, and generally healthy personality or psyche.

4. Goods of human association, such as family relationships, friendship, and love.

5. Political goods, such as civil peace and political liberty, together with security of

life and limb and the protection of individual freedom by the prevention of violence, aggression, coercion, discrimination, or intimidation.

6. Economic goods, such as a decent supply of the means of subsistence, living and working conditions conducive to health, medical care, opportunities for access to the pleasures of sense, opportunities for access to the goods of the mind through education, and enough time free from toil for subsistence, both in youth and adult life, to take full advantage of these opportunities.

Looking back at this list, we see one very striking thing that is true of it. Of the six classes of goods, the first four are sharply distinguished from the last two. The first four belong to the inner or private life of the individual; whether or not he acquires them is dependent largely on himself. With regard to all the goods in the first four classes, the actions of government can abet the pursuit of happiness only indirectly, if at all.

The last two classes of goods are environmental or external in the sense that the individual's possession of them is mainly dependent on the outer or public conditions of his life. The possession of political liberty is not a private matter; it is dependent on the kind of government under which the individual lives. Similarly, unless his possession of property, or its equivalents, is protected by government, the individual does not have, through forms of wealth and the things that wealth can provide, the economic goods that he needs for the pursuit of happiness — needs not only because they maintain his life and health but also because they facilitate his acquirement of other goods, especially the goods of the body and of the mind.

Hence, civil government secures the individual's right to pursue happiness largely through measures that directly affect his possession of political and economic goods.

It can do little or nothing about the goods of the individual's private or inner life, except as environment or external goods minister to them. Thus, for example, a government may be able to provide a supply of pure water, but it cannot force an individual to drink it and abjure poison. A government may be able to provide educational facilities for everyone, but it cannot force an individual to use his mind. A government may be able to give every adult the suffrage, but it cannot force every adult to use this privilege well.

In the light of the foregoing, let us look once more at the enumeration of objectives in the Preamble to the Constitution and try to relate them to the rights mentioned in the Declaration. Security of life and limb, political liberty, and freedom from violence or aggression are themselves among the environmental goods that contribute to the individual's happiness; with respect to these essentially political goods, the individual's pursuit of happiness can be directly promoted by civil government. Another political good of the same sort is peace, both at home and abroad. These goods are covered by the clauses in the Preamble that mention domestic tranquillity, the common defense, and the blessings of liberty.

But security of life and limb does not exhaust the meaning of the "right to life," for that involves economic as well as political conditions. Nor does political liberty and freedom from violence or aggression exhaust the meaning of the "right to liberty." That also involves economic factors; for example, conditions that provide free time to pursue the goods of the mind and spirit and some degree of independence from the will of others. These economic aspects of the right to life and liberty, together with all the other economic goods that are elements of happiness and are involved in its pursuit, *are not covered in the Preamble unless they are covered by the general welfare clause.*

The question remains, however, of how that clause has been interpreted throughout our history. This can be broken down into two separate but connected issues: What concrete and practical actions of government are implied by the promotion of the general welfare as a basic objective of government? And, assuming that we know what these actions are, what part or branch of government should perform them? We shall note the intertwined and pervasive connection of these two issues as we discuss, first, changing authoritative interpretations of the general welfare clause; then the relationship between the general welfare and the states' rights controversy; then some changes that have taken place in our conception of the general welfare clause, drawing a contrast between eighteenth- and twentieth-century views; and finally the issue that most agitates us today, turning on the pros and cons of the welfare state, considered as an institutionalizing of the general welfare clause. [For further discussion of some of the matters treated in the above section, see Chs. 9: EQUALITY and 18: STANDARD OF LIVING.]

## 2. CHANGING INTERPRETATIONS OF THE GENERAL WELFARE CLAUSE

STRICTLY SPEAKING, the general welfare clause in the Constitution appears in the first paragraph of Article I, Section 8. "The Congress shall have power," the Constitution declares, "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."

This paragraph grants to Congress the power of the purse, without which its other powers would of course be largely ineffective. The paragraph does *not* seem to grant to Congress a power to *legislate* for the general welfare. The *general welfare* clause is

tied to the power to tax and to spend. The question is, whether the Constitution establishes limits on the power of Congress to tax and spend *for the general welfare*.

In his Report on Manufactures, submitted on December 5, 1791, Alexander Hamilton, then secretary of the treasury, proposed a very broad interpretation of the general welfare clause. It belongs to the "discretion of the national legislature," Hamilton wrote, "to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper." There was no room for doubt, he declared, "that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce is within the sphere of national councils as far as regards an application of money."

According to Hamilton, then, the clause in question ought to be interpreted to mean that Congress has the power to tax and to spend for any purpose that it may decide is for the general welfare. In effect, this comes very close to giving Congress the power to *legislate* for the general welfare — or for what it considers to be such.

That sounds like a very modern idea, and indeed it is, but Hamilton was not alone in holding it in his time. In fact, it was very widely held; it was not just an interpretation of a clause in a document but was also a broad legislative program based on and rooted in Puritan and mercantilist traditions. Nor did the idea die with Hamilton. His broad interpretation of the general welfare clause was perpetuated first by the Federalist Party and then by the Whigs, and even by the early Republicans. The Reconstruction Program of the Radical Republicans after the Civil War was based on it, and it may have been the ultimate source of Theodore Roosevelt's New Nationalism.

There is a curious historical paradox here. In modern times, it is by and large the

Democratic Party that advocates such a latitudinarian interpretation of the general welfare clause and the Republican Party that opposes it. In the nineteenth century, however, it was the Democrats who opposed the interpretation and the Republicans who supported it.

It must be conceded that the modern Democratic and the nineteenth-century Federalist-Whig-Republican positions are not wholly the same. Hamilton and his spiritual descendants wanted government to aid and encourage business enterprise on the grounds that in the long run this would promote the general welfare by increasing the total wealth of the nation. They wanted a good deal of government intervention in the economy, but they wanted the government to intervene on behalf of business rather than on behalf of individuals — as it were, against business. Hence, their interpretation, though broad, may be called in some sense a negative one. The modern Democratic interpretation, although also broad, may in this sense be termed positive. It calls for government intervention on the behalf of all citizens, not just businessmen. It calls for an actual *redistribution* of the nation's wealth, not merely for an *increase* in the nation's wealth — an increase that, according to the older view, would “trickle down” by natural and immutable laws to all the people.

The important point to note is that both views are opposed to the *laissez faire* position of the Southern Democrats (who hated Reconstruction) and the Northern Republicans (who wanted business to be left strictly alone) during the latter part of the nineteenth century. [The *laissez faire* position, and the retreat from it in modern times, are discussed at greater length in Ch. 15: *FREEDOM OF ENTERPRISE*.]

Hamilton's latitudinarian interpretation of the general welfare clause seemed insupportable to one of his leading contempo-

rararies, James Madison. Madison, with Thomas Jefferson a founder of the Democratic Party (often called at the time, paradoxically, the Republican Party) that arose in opposition to the Federalists, joined Hamilton in the *Federalist* papers in arguing for the adoption of the Constitution, but he understood the document in a different way.

With reference to Article I, Section 8, Madison quoted Hamilton's remarks in the Report on Manufactures, and then went on to say of the critical passage that “whether the phrases in question be construed to authorize every measure relating to the common defense and general welfare, as contended by some, or every measure only in which they may be an application of money, as suggested by the caution of others — the effect must substantially be the same, in destroying the import and force of the particular enumeration of powers which follows these general phrases in the Constitution; for it is evident that there is not a single power whatever which may not have some reference to the common defense or the general welfare; nor a power of any magnitude which, in its exercise, does not involve, or admit, an application of money.”

Madison concluded, instead, that Congress could tax and spend only to carry out one of its other specifically stated powers — as enumerated in the remainder of Article I, Section 8 — such as the establishment and maintenance of post offices and post roads, the regulation of foreign commerce, the establishment of a Patent Office, and so forth.

This view did not on the whole prevail so long as the Federalists were influential in the government. President John Quincy Adams, for one, opposed the Madisonian interpretation. He conceded that the Constitution was “a charter of limited powers.” He conceded further that Congress need not, indeed should not, consider favorably

any legislation, no matter how desirable, merely on the grounds that it was desirable. It was not the business of Congress, he insisted, to make such decisions and directly to promote the general welfare. But, Adams argued, *if* any of the specific powers enumerated in Article I, Section 8, and elsewhere in the Constitution, might be "effectually brought into action" by laws promoting the general welfare, then they ought to be passed. *If*, for example, it became evident that "the improvement of agriculture, commerce, and manufactures, the cultivation of the mechanic and of the elegant arts, the advancement of literature, and the progress of the sciences, ornamental and profound" would have the effect of bringing into action the specifically enumerated powers, then to refrain from supporting such activities for the benefit of the people themselves, on the grounds of a limited interpretation of Constitutional powers, "would be to hide in the earth the talent committed to our charge — would be treachery to the most sacred of trusts."

Chief Justice Roger Taney, although he too conceded that the powers of the national government should not be construed as embracing everything, was also sometimes found in opposition to the Madisonian interpretation: "The object and end of all government," he wrote in his opinion in *Charles River Bridge v. Warren Bridge* (1837), "is to promote the happiness and prosperity of the community by which it is established; and it can never be assumed that the government intended to diminish its power of accomplishing the end for which it was created."

Although the broad or Hamiltonian interpretation of the general welfare clause won out in the end, it suffered sharp reverses during the last half of the nineteenth century and the first three decades of the twentieth. The Supreme Court, interpreting the due process clause of the Fourteenth

Amendment as applicable to corporations as well as individual citizens, struck down a number of state "welfare" laws that had been prompted by the zeal of the Granger Movement in the post-Civil War period, and it seemed to be placing insuperable obstacles in the path of the "welfare" legislation of the early New Deal — until President Franklin D. Roosevelt's threat to change the structure of the Court produced a change of heart after his first term.

The position of the Court prior to its remarkable change of attitude was summed up in no uncertain terms by a conservative justice, George Sutherland, in 1936. "The proposition, often advanced and as often discredited," he wrote, "that the power of the federal government inherently extends to purposes affecting the nation as a whole with which the states severally cannot deal or cannot adequately deal, and the related notion that Congress, entirely apart from those powers delegated by the Constitution, may enact laws to promote the general welfare, have never been accepted but always definitely rejected by this [*i.e.*, the Supreme] Court."

Even after the change, liberal Justice Benjamin N. Cardozo, conceding that "the conception of the spending power advocated by Hamilton and strongly reinforced by Story has prevailed over that of Madison," nevertheless felt constrained to make a distinction. For "difficulties are left," Cardozo declared, "when the power is conceded. The line must still be drawn between one welfare and another, between particular and general. Where this shall be placed cannot be known through a formula in advance of the event. There is a middle ground or certainly a penumbra in which discretion is at large." And as late as 1957 Justice Felix Frankfurter pointed out some of the problems in too wide an interpretation of governmental power. In the first major censorship case to reach the Supreme Court,



Frankfurter, writing the court's opinion, declared that certain kinds of censorship could not be introduced on the grounds that the censored item was opposed to the general welfare. "The state [of Michigan] insists," Frankfurter said, "that, by thus quarantining the general reading public against books not too rugged for grown men and women in order to shield juvenile innocence, it is exercising its power to promote the general welfare. Surely," he added, "this is to burn the house to roast the pig."

We may sum up the discussion of this question with the help of Justice Owen J. Roberts, who in an opinion in 1936 himself summed up the varying interpretations of the general welfare clause throughout American history. "Since the foundation of the nation, sharp differences of opinion have persisted as to the true interpretation of the phrase," Roberts wrote. "Madison asserted it amounted to no more than a reference to the other powers enumerated in the subsequent clauses of the same section. . . . 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 confers a power separate and distinct from those later enumerated. . . . Each contention has had the support of those whose views are entitled to weight. . . ."

"Mr. Justice Story . . . espouses the Hamiltonian position. . . . [We are led] 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 moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution.

"But," Roberts went on, "the adoption of the broader construction leaves the power to spend subject to limitations." Of especial importance is the fact — as "all advocates of broad construction admit" — that the purpose must be "general and not local"; at the same time that the word "welfare" is interpreted broadly, as well as Congress' power to promote it, emphasis is also to be placed on the word "general." Congress has broad powers to promote the well-being of the people, especially by supporting and providing for those economic goods that are requisite to the pursuit of happiness. But these goods must be for all citizens, rather than for the few. [For further consideration of some of the points touched on in this section, see Ch. 3: CONSTITUTIONALISM.]

### 3. THE GENERAL WELFARE AND THE STATES' RIGHTS CONTROVERSY

THE QUESTION of who should provide for the general welfare of the people has produced, throughout much of our history, as much controversy as the question of whether the national government is authorized by the Constitution to provide for it. The controversies are obviously connected, for those who have emphasized the limited power of Congress have on the whole emphasized the responsibilities of state and local governments, while those who have argued for a broad interpretation of the general welfare clause have tended to feel that state and local governments, whatever their responsibilities might be ideally, are incapable of providing those economic goods for all the people that are necessary to the pursuit of happiness.

The debate goes back to the early nineteenth century. Madison, who, as we have seen, argued strongly for a narrow interpretation of the powers conferred on Congress

by the Constitution, argued as well for a policy that would keep the powers of the state and national governments separate. A broad interpretation, he declared in 1817, "would have the effect of subjecting both the Constitution and laws of the several states in all cases not specifically exempted to be superseded by laws of Congress." Such a view of the Constitution, he said, "would have the effect of excluding the judicial authority of the United States from its participation in guarding the boundary between the legislative powers of the general and the state governments, inasmuch as questions relating to the general welfare, being questions of policy and expediency, are unsusceptible of judicial cognizance and decision."

General concurrence with this view was expressed by President Andrew Jackson in his First Annual Message to Congress (1829). Jackson looked forward to a more or less permanent surplus of federal funds, deriving from the tariff, and he considered the question of what ought to be done with the money. Should it be spent by the *national* government to promote the general welfare of all the people? Jackson did not believe so; he hoped, rather, for a solution of the problem of the surplus that would "reconcile the diversified interests of the states and strengthen the bonds that unite them."

He conceded the necessity of internal improvements — for example, "the improvement of inland navigation and the construction of highways in the several states." There was no doubt about the desirability of such improvements; the difficulty lay in the means chosen to effect them. The support of internal improvements by the national government, Jackson said, had hitherto caused much trouble: It "has by many of our fellow citizens been deprecated as an inraction of the Constitution, while by others it has been viewed as inexpedient. All feel

that it has been [effected] at the expense of harmony in the legislative councils."

The solution, according to Jackson, was to distribute the surplus among the states, to spend as they required. "To avoid these evils it appears to me that the most safe, just, and federal disposition which could be made of the surplus revenue," he declared, "would be its apportionment among the several states according to their ratio of representation; and should this measure not be found warranted by the Constitution that it would be expedient to propose to the states an amendment authorizing it." He added that "the great mass of legislation relating to our internal affairs was intended to be left where the Federal Convention found it — in the state governments. Nothing is clearer, in my view, than that we are chiefly indebted for the success of the Constitution under which we are now acting to the watchful and auxiliary operation of the state authorities. . . . Sustained by its healthful and invigorating influence the federal system can never fall."

In fact, as is so often the case, events rather than words had the decisive effect in answering the question. On the one hand, the surplus did not persist, as Jackson expected. It was swallowed up in the Civil War, and although high tariff policies in the post-Civil War era revived it for awhile, it disappeared again during World War I. On the other hand, the need for heavy capital expenditures along the advancing Western frontiers of the nation made it clear to most Americans that the states alone could not support these costs. There were no states at all in much of the territory of the West, and where there were states, they were sparsely populated, and their fair share of disbursements would not have been sufficient to pay for such things as a postal system.

Furthermore, it became more and more evident that the individual states were



Courtesy, Ross A. Lewis, "The Milwaukee Journal"

"In our hearts we know we're right — aren't we?"; 1964 cartoon by Lewis

sometimes not willing, even if they were able, to support programs and policies deemed to be for the general welfare by the national government. The conservation of natural resources, both useful and beautiful, was one such realm, and the National Park Service (of which more below) was established to fill this gap. The control of the great rivers that passed through and along the boundaries of several states was another case in point, and the Tennessee and Missouri Valley Authorities, established and administered by the federal government, were two solutions of the problem.

A third and most important example was education. This was traditionally a local, at most a state, responsibility. There has been little question, at least since the last decades of the nineteenth century, about the basic duty of government to provide educational opportunities for all our young people. The question, again, concerned the ability of local and state governments to provide them adequately, and in late years, equally, for

everyone. The unanimous Supreme Court decision on desegregation of public schools, in 1954, determined that the ultimate responsibility must be national. The grounds of the decision lay, the Court declared, in the Fourteenth Amendment to the Constitution, which states in effect that no person shall be treated as if he were *only* a citizen of a state, and not at the same time a citizen of the United States and deserving of all the privileges, immunities, and rights enjoyed by citizens of the country at large. Gradual desegregation in public schools was called for by the decision. In 1968 liberals were still complaining that not much had been done to bring this about, but the principle, at least, was clear. When a local or state government either could not, or would not, promote the general welfare, the Court was saying, then the national government would have to step in and help the people attain their rights.

This judgment probably represented a majority of the country's feelings on the

question, but of course the Court's decision has been opposed by many. Attacks on the principle on which the decision was based go back several decades. Ex-President Herbert Hoover attacked New Deal policies and "national planning" in general in 1935 on the grounds that such policies have "the habit of carefree scattering of public money. They are haunted by no old ghosts of a balanced budget." And a resolution of the 85th General Assembly of the State of Indiana (1947) expressed an attitude — although not always the dominant one — of many state legislatures, that federal encroachments on state welfare programs are at the best paternalistic and at the worst tyrannical. "We propose henceforward to tax ourselves and take care of ourselves," the Indiana resolution declared. "We are fed up with subsidies, doles, and paternalism. We are no one's stepchild. We have grown up. We serve notice that we will resist Washington, D.C., adopting us." [For further consideration of the political problems discussed in this section see Ch. 10: PLURALISM.]

#### 4. THE EIGHTEENTH- AND TWENTIETH-CENTURY VIEWS OF THE GENERAL WELFARE

THE CONTROVERSIES described in the two preceding sections have by no means ended in the United States. The national election in 1964, for example, was the occasion of heated arguments and expressions of views on the questions of a broad or narrow interpretation of the general welfare clause in the Constitution, and of the relation of either interpretation to the perennial issue about states' rights. Despite this, the controversies may seem to the reader to be tinged with antiquarianism. The reason, of course, is that our idea of the meaning of the general welfare has undergone vast changes in recent times. Let us examine these changes,

first, from the point of view of the difference between eighteenth- and twentieth-century views of the matter, and, second, in the light of some of the facts concerning the recent expansion and extension of government welfare policies.

To identify the general welfare with the public good or the happiness of the people, as pointed out earlier, would require us to remove the term "general welfare" from the Preamble; for, as identical with the common good, it is not coordinate with other things there enumerated as elements or constituents of the common good, such things as peace, justice, liberty, etc. To retain it significantly in the Preamble, the term must be given a meaning that defines an objective that is distinct from other specific objectives.

The meaning of the term that we have proposed involves a relationship between the general welfare and the happiness of the people as their ultimate common good, but the two notions are nonetheless distinct. Far from identifying the general welfare with the happiness of the people, we have conceived the general welfare as *that set of economic conditions that the people need in order to engage effectively in the pursuit of happiness, taken as their natural right.*

Even if men are secure in their life and liberty, they may still lack things that are needed for the pursuit of happiness. These things, as we have seen, are certain external conditions of life, such as a decent standard of living, adequate housing, medical care and the protection of health, educational opportunities, time free from toil, and so forth. In a broad sense of the term, they are all *economic*; they are all forms of wealth, or *things that wealth is able to provide.*

In this sense of "economic," it is possible to imagine a twentieth-century rewriting of the Preamble that would make reference to the general economic welfare as one of the principal objectives of government.

Was the economic welfare of the people regarded as one of the principal objectives

of government in the eighteenth century? Did the framers of the Constitution have these specific economic goods in view when they wrote the Preamble?

Probably not. This is not to say that they *should not* have done so; for, if the pursuit of happiness is one of the basic natural rights, and if certain economic conditions are indispensable to it, then government, to secure these rights, has the duty to promote the general economic welfare of the people.

However, what should be done as a matter of right is not always practicable. The promotion of the general economic welfare, as the twentieth century understands it, was not practicable nor, perhaps, even thinkable within the framework of the eighteenth-century economy.

The fact that today we can and do think of the general economic welfare as a major objective of government reflects the revolutionary changes that have occurred in the economy of the country since 1789, and not only in the economy but in our political institutions as well. If the Constitution were being drafted today, the word "economic" might be inserted into the Preamble to make that objective of government quite specific; and in the enumeration of the powers granted to Congress to enable it to promote the general welfare as thus understood, such things as the regulation of wages, hours, and the conditions of work; the establishment of unemployment insurance, social security, medical care funding, and old-age pensions; the creation of departments of labor, of health, education, and welfare, and of urban affairs and housing, might be expressly detailed in the formulation of Article I, Section 8.

Whether or not the promotion of the general economic welfare can be accomplished in ways that also secure the blessings of liberty and conform to the principles of justice is of course the chief problem to be faced if liberty and justice still remain, in the twentieth century as in the eighteenth,

among the primary objectives of government. But a sober sense of the current realities requires us to recognize that a twentieth-century constitutional convention, confronted by these realities, might be forced to regard the promotion of the general economic welfare as the paramount obligation of government, and to subordinate all other considerations thereto, even at some sacrifice of liberty and justice.

Those questions aside, there is no doubt of the recent expansion of welfare programs, supported both by the federal government and by state and local governments. Such programs have been extended to persons heretofore not reached and into areas hitherto untouched. Moreover, their cost has increased at a rate that is alarming to many. Welfare has become a major affair — some would say a "big business" — in modern American life.

For example, the city of New York alone allocated over 70 percent of its 1965-1966 expense budget to purposes falling under the general heading of economic welfare — the sum being more than \$2 billion. (About 16 percent of the total budget, or \$640 million, was scheduled for "welfare" in the narrow sense of the term — that is, direct aid to the poor and indigent. Twenty-five percent, or nearly a billion dollars, went for education, \$390 million for health, \$385 million for pensions, and \$51 million for parks and museums; the rest was divided among other programs.) Close to a billion dollars of this total was provided by the state government at Albany; some federal funds were included in the overall budget, but the bulk of the money was raised by taxation in the city itself.

It was estimated in 1965 that the country as a whole was spending somewhere around \$30 billion a year for the education of its citizens. Total federal spending for general welfare purposes was second only to spending for the common defense — a fact that is interesting in the light of their coupling

in the critical section of the First Article of the Constitution; and if total government spending is considered (including that of state and local governments), we probably have to conclude that promotion of the general welfare is the single most expensive item undertaken by civil government in the United States.

The range of government policies and programs is immense; we cannot attempt to list the important ones here. A few are deserving of special comment, however, either because they throw light on the subject of welfare in general or because they raise special problems about it.

One especially troublesome area is the promotion by the government of cultural activities. As early as 1787 Jefferson was supporting a bill in the Virginia legislature "to begin a public library and gallery by laying out a certain sum annually in books, paintings, and statues." Efforts along these lines continued, although usually they were undertaken by local governments. But in 1935 a celebrated departure from that trend occurred under the auspices of the New Deal's Works Progress Administration. Grace Overmyer described one of the programs under this federal establishment: "From the standpoints both of expenditure and scope, the temporary Four Arts Projects, inaugurated by the United States in August 1935 as a measure of unemployment relief, constitute what is probably the most extensive program for artists' rehabilitation ever undertaken by a government." She was able to conclude that the program — "handicapped by temporariness, stigmatized as 'relief,' and dogged within by labor troubles and a thousand little human dissonances — [had] created throughout the country the beginnings of a broad cultural awakening."

Whether or not the program was as successful as Miss Overmyer claimed, government continued to feel the obligation to support the work of U.S. artists and writ-

ers. The Kennedy administration gave impetus to the movement, which was also supported by President Johnson. The act establishing the National Foundation on the Arts and Humanities, passed in 1965, declared "that the encouragement and support of national progress and scholarship in the humanities and the arts, while primarily a matter for private and local initiative, is also an appropriate matter of concern to the federal government; that a high civilization must not limit its efforts to science and technology alone but must give full value and support to the other great branches of man's scholarly and cultural activity; [and] that the world leadership which has come to the United States cannot rest solely upon superior power, wealth, and technology, but must be solidly founded upon worldwide respect and admiration for the nation's high qualities as a leader in the realm of ideas and of the spirit."

However, despite these high declarations, some artists and scholars objected — as they had to earlier New Deal policies in this domain — to the intrusion (as they termed it) of the government into matters of an essentially private nature. It was argued that government-supported art would necessarily be bad art; and if that were not true, that the artist would be subject to "pressures" and would lose his "freedom to create."

The objections may have had a basis. The funds allocated to the National Foundation on the Humanities were comparatively modest — much less than the funds made available to the National Science Foundation. The establishment of the former body was thought by many artists and writers to be no more than a token gesture, to appease the nonscientific intellectuals in the country; and if this were true, then even a small loss of freedom as a result of it would hardly be worthwhile.

A similar reaction, though not so marked, was observed among educators, who might



Courtesy, Vaughn Shoemaker, "Chicago's American"

"Something's got to give!"; cartoon by Shoemaker, 1965

advocate federal spending for other welfare activities, and who were often enthusiastic about government aid for buildings and other features of educational plant, but who vigorously protested federal "incursions" into more abstract educational matters. Despite these protests, however, it became more and more clear during the 1960s that the independent liberal arts college was headed for serious economic trouble if it did not develop new sources of income, and appeals for government aid of all kinds became more frequent.

A different but equally difficult problem has been raised periodically by federal efforts to conserve our natural resources. Complaints that seem modern go back a century and a half and more. In an address to the Agricultural Society of Albemarle, James Madison could say in 1818 that "of all the errors in our rural economy none is perhaps so much to be regretted, because none is so difficult to be repaired, as the injudicious and excessive destruction of timber and firewood. It seems never to have

occurred that the fund was not inexhaustible, and that a crop of trees could not be raised as quickly as one of wheat or corn." The point was made even more strongly by Carl Schurz in 1889. In an address to the Forestry Associations, he declared that "the more study and thought I have given the matter, the firmer has become my conviction that the destruction of the forests of this country will be the murder of its future prosperity and progress. This is no mere figure of speech, no rhetorical exaggeration. It is simply the teaching of the world's history, which no fair-minded man can study without reaching the same conclusion."

Fifty years later the situation, in the view of Stuart Chase, was, if anything, worse than it had seemed to Schurz. Chase's emphasis was on the conflict between beauty and "progress," where that of Madison and Schurz had been economic, but his attitude nevertheless paralleled theirs. "How does the continent look today after 300 years of occupation?" he asked. "Primeval forest, virgin soil, and the waving prairie grasses have given way to open fields, harnessed rivers spanned by steel bridges, tunneled mountains, irrigated arid lands, culm banks, oil fields, canals, drained marshes, and roaring, smoky cities. Beauty has been lost, we cry, but progress gained. Wild landscape has been replaced by cultured. . . . If this be progress, it is bitter tonic."

In spite of technological rapine and carelessness on the part of the people, as well as of conflicting government policies regarding conservation, efforts to conserve and protect the nation's heritage of natural splendor have continued. They resulted in the successful passage of the Wilderness Bill in 1965, which, though criticized by some as highly inadequate, nevertheless constituted an important step toward the accomplishment of conservationist ideals.

The problem here differs somewhat from the problem raised by government support of cultural activities. There, the artists ob-

jected on the grounds that their true allegiance was to high artistic ideals and not to bureaucratic and administrative decisions. Opponents of the Wilderness Bill and other conservationist measures objected on the grounds that such policies conflicted with their economic and political right to use — if not to exploit — the resources of the country, as their forefathers had done before them and, as they hoped, their descendants would be able to do after them.

In both cases, however, the objections were really grounded on a notion of individual freedom to act as one sees fit. Even if it is conceded, as it often is, that the government only wants to help, and not to hinder, the opponents of many welfare measures seem willing to abjure the help if they can be left alone. Indeed, such opposing attitudes are expressed with regard to almost all of the domains into which government promotion of the general welfare has reached during the twentieth century — with regard to Social Security and Medicare, to government protection of the consumer, to veterans' and old-age pensions, to measures in behalf of mental health, and so forth.

Despite this opposition, the trend seems to be toward more and more extensive promotion of the general welfare, coupled with broader and broader interpretation of government's — especially the federal government's — responsibilities in this regard. [For further consideration of the matters discussed in this section, see Chs. 13: PRIVATE PROPERTY and 14: TAXATION.]

##### 5. THE GENERAL WELFARE AND THE WELFARE STATE

THE EXPANSION OR GROWTH of the idea of the general welfare — the interpretation of the phrase to mean the general economic welfare of all the people — has led in recent years to the coinage, "the welfare state," a term that has the capacity to excite

strong feelings in Americans. Examination of the complex implications of the term, and of the various reactions to its use, will help us understand the meaning of the general welfare in our time.

It is probable that for most Americans the term "welfare state" carries a pejorative connotation. There seem to be two reasons for this. First, there is the note, in the word "welfare" itself, of public charity or assistance, of being on the dole. To "be on welfare," as the saying goes, is not really what anyone wants; there are few human beings, at least few Americans, with our tradition of freedom and independence, who would not rather take care of themselves than be taken care of by others. Insofar, then, as this narrow or limited meaning of welfare is carried over into the meaning of the term "welfare state," the latter implies that in some sense we are all on the dole or on welfare. When this note or implication is dominant we are all likely to react in a way that is well expressed by the resolution of the Indiana legislators, quoted above. We all want to be treated as adults, not as children: we are all opposed to the government's "adopting" us. Or perhaps it is only that we are against the government's adopting *other* people — the unemployed, the unemployable, those (above all) who seem not to want to work — and making us pay the cost, through what appear to be confiscatory taxes, for their support.

It is true, of course, that economic conditions have an effect on our feelings in this regard. In good times, in times of economic expansion and a plentiful supply of both consumer goods and jobs, we are perhaps more likely to oppose welfare measures (in this narrow sense of that term) than we are when times are bad, when many people are out of work, and when abundance and plenty are not realities for most. In such times we are forced to accept public assistance whether we like it or not.

If, however, a long period of economic



distress were to follow the period of economic expansion and plenty that has characterized our history since World War II — if, for example, there were to be another Great Depression, similar in effect and perhaps even more terrible and widespread than that of the 1930s — it seems likely that Americans would still react to the term “welfare state” with a certain measure of distrust and dislike. The reason is that the term contains within it another note or implication besides the one to which we have already referred. The term conjures images not only of the dole, of charity, of public aid and assistance, and of our implied incapacity to “make it,” as one might say, on our own. To most Americans — perhaps indeed to all, for it is hard to assess the precise emotional penumbra of words — the term “welfare state” also means socialism. And socialism is an idea that makes most Americans fighting mad.

Anger and indignation usually do not help comprehension. Let us try to analyze the notion of the welfare state without using the word “socialism.” When we have done so, we may find that it is possible to use the word without the distress that often accompanies it. In any event, the analysis will be of value in our attempt to understand the meaning of the general welfare in the twentieth century.

For the last sixty or seventy years there has been, as we have already indicated, a quite consistent movement, both in our general attitudes and in the practical actions of government, in the direction of more, and more widely based, welfare measures. This movement, which no one denies, has been marked by a series of political slogans, which in turn have given impetus and meaning to a series of concrete political and economic programs. Around the turn of the century there was first the “Square Deal” of Theodore Roosevelt, a program that contained, in essential respects, all of the seeds of later ones. It was followed by the “New

Freedom” of Woodrow Wilson, a program of less theoretical interest than the Square Deal, but of greater practical effect. One notable event of the Wilson administration was the ratification of the Sixteenth, or Income Tax, Amendment; but despite the great importance of the Wilson federal program, the principal growth of welfare policies in that era was in the states and especially in the cities. The movement was temporarily halted, but by no means stopped, during the 1920s, a period of national prosperity (for many Americans — but not, notably, for farmers), when the needs of the people seemed to be met by private enterprise alone, or at least primarily, and when the general economic welfare of all the people was a subject not much discussed. The Great Depression brought these needs once more to the fore, and the “New Deal” program of Franklin D. Roosevelt attempted to satisfy them. Economic distress was largely overcome by World War II, if not by the New Deal, but the movement did not cease. Instead it seemed to gather momentum — in the “Fair Deal” of Harry S. Truman, even in the Eisenhower era (when there was, significantly, no slogan for it), in the “New Frontier” of John F. Kennedy, and in the “Great Society” of Lyndon Johnson. The last program actually put into effect many of the measures originally suggested by Theodore Roosevelt’s Square Deal, an indication of the coherent character of the movement as a whole.

What do all these programs have in common? While they differ in detail, it is fair to state that they all emphasize a relatively small number of basic economic rights, among them the right to a job and to a fair wage, in other words, of access to the basic necessities of life, and the right to education and other goods of the mind and the spirit, along with the right to enough free time in which to seek these goods. Latterly, the right to a guaranteed income has been added to the list on the grounds that the

other economic rights, although they may be proclaimed, are actually not implemented unless the individual is assured of a certain amount of income — whether he is employed or not. Obviously, this suggestion in one sense implies no more than the transfer of government welfare obligations from one department to another; for a person who is unemployed must (we now feel) be taken care of in some way. But from another point of view this new suggestion is significant, for it emphasizes that the economic rights that underlie our notion of the general welfare are basic *natural* rights — that is, rights inhering in every person simply by virtue of his being human, and not by virtue of his being a contributor to the production of wealth in the society of which he is a member.

During the period in question, in which there has been a clearly defined movement toward the proclamation of more and more economic rights as *natural* rights, and toward their implementation as social facts, there has also been — and the movement could not have occurred if this had not been so — a wider and wider acceptance of the idea that governments are instituted among men, not only to protect the individual's rights to life and liberty but also his right to pursue happiness in the sense of that pursuit that we discussed earlier. At the present time, it may fairly be said that there is a very general consensus among Americans on the point. Almost all of us agree that the objectives of the Square Deal, of the New Deal, of the Great Society are our own objectives. Almost all of us agree that every American ought to be able to share in the abundance that is so characteristic of our country and our way of life.

But that is not to say that we agree on the means for achieving these objectives. Indeed, just the opposite is the case. We differ sharply on a series of questions that are always raised whenever the welfare state, and the idea of the general welfare, are dis-



Courtesy, Herblock, "The Washington Post"

"They act as if they've been doped"; Herblock, 1957

cussed. We disagree, for example, on the question of whether the federal or the state governments should undertake the main effort of promoting the general welfare. Some hold that local government can do this more effectively than the national government; others, even if they concede that the national government may be more efficient in bringing about the general economic welfare of all the people, nevertheless remind us that efficiency is not always the highest good. What is gained in efficiency may be lost in other respects, for instance, in the loss of freedom and independence, and also in the loss of the satisfaction gained from local communal efforts.

These issues are general ones; more specific issues also arise. One of the most important concerns the question of who shall own and control the basic productive capacity of the nation. Should the government run the railroads, for example? Even if it could be proved that the government could do this more effectively — if it could be

shown, as Mussolini claimed, that the government could "make the railroads run on time" — would it be desirable to have it do so? Or should provision for the basic transport needs of the people be left in the hands of private corporations (whose actions might nevertheless be "policed" by government regulatory agencies) even if private corporations could not serve those needs so effectively?

Government ownership and control of the means of production is socialism, as most Americans understand it, and on the whole we tend to renounce it. From time to time a genuine, professed socialist arises in our midst — Norman Thomas is a good example; and socialist parties of this or that persuasion have entered candidates in local as well as national elections (Norman Thomas ran for the presidency no less than six times). These candidates, together with their programs, have often been attacked, and usually ignored, by the voters. And very few working New Dealers, Fair Dealers, New Frontiersmen, or advocates of the Great Society have ever held this doctrine of government ownership of the means of production, and none has ever publicly argued for it.

We agree, then, on the ends; we agree that governments, and particularly our own governments, both local and national, are instituted among men to protect not only the rights to life and liberty — those objectives enumerated by the other phrases in the Preamble to the Constitution — but

also the right to pursue happiness. And, understanding economic well-being to be involved in that pursuit, we agree too that governments should act in such a way as to see to it — within the limits of practical politics — that all people have access to the economic goods that only a few Americans enjoyed 200 years ago. But we disagree profoundly on how those ends are to be achieved. And it is probably safe to predict that this will continue to be true.

At the same time, it seems clear that the term "welfare state" will continue to carry the pejorative connotation that it carries today. From one point of view the United States is a welfare state and has been one for close to a half century. But it is unlikely that many Americans will admit this, at least in the foreseeable future; and it is very improbable that they will boast of the fact. This will be true as long as the term implies indigence, on the one hand, and socialism, on the other hand. We will not cease to promote the general welfare, and will probably do so more and more effectively as the present century nears its end. But we will also continue to see a fundamental conflict between the promotion of the general welfare and the protection of individual freedom — a conflict that underlies almost all of the modern disputes about the subject. [For a discussion from an opposing point of view of many of the points made in this section and indeed throughout the chapter, see Ch. 15: FREEDOM OF ENTERPRISE.]