

## Lesson 26 Article 1, Section 8

### The powers given to congress – Part II

Last time we discussed the power to tax. Different kinds of taxes were explained: imposts (taxes on imported goods), duties (a tax on exported goods), and excise taxes (on the manufacture, sale, or consumption of goods). How these three are called “indirect taxes” since they, for the most part, are included in the final price of consumer goods. Direct taxes are imposed on people, not goods.

Although terrifying to those Framers, the power to levy and collect taxes is essential to the existence and continuance of a national government. A federal government must be able to support itself, for there is no higher body to petition for assistance.

Now that we know how the government collects money, let's explore what the government may spend this money on.

#### **Provision 77**

The people empower the Congress to use the money collected through taxes to pay its debts. (Question 1)

The crushing Revolutionary War debt was forcing the government to take out loans just to pay the interest, this was one of the main reasons the constitutional convention was called in the first place. So it seems obvious that the obligations incurred before the Constitution would have to be honored after its ratification.

In addition to the national debt, the constitution provided for the federal government to assume the obligations of the states as well (according to the book, but I find no mention of this in the Constitution). This was done to strengthen the central government by making the states that much more beholding to it. This would also quash any perceived inequities in collecting war debts from the states (especially since several of the states did not meet required quotas during the war and would be unlikely to now).

#### **Provision 78**

The people empower the congress to spend tax money for the common defense.

Nearly all of the men at the convention were war veterans. They knew first-hand the horrors of war. They also knew that the best way to avoid war in a world full of belligerent nations was to always be prepared to fend off any attempt on our sovereignty.

Defense and taxation are nearly as intertwined as taxation and representation. You cannot field an adequate national defense without adequate funding.

The looming question at the convention was: should this government fund a standing army, or simply stock up supplies to be prepared for possible invasion? The founders were leery, very leery of having a standing, peacetime army; they feared that the government, like the British, could use the army to tyrannize and terrorize the citizens.

In the end, they finally agreed that waiting until AFTER a crisis began was the worst time to assemble a defending force. But as you'll see later in this course, while they created a standing army and navy, the state controlled militias were left in place (available, but essentially out of reach of the

federal government).

Okay, so they agreed that a standing peacetime army and navy were essential to provide for the common defense. So now, how much money would be needed?

Since none of the founders could accurately predict the future to any great extent, they admitted that they could not predict just how big an army or navy might one day be necessary. So no limitations were included in the constitution. As Alexander Hamilton put it: “The Union ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy... There can be no limitation of that authority...” (Question 2)

Although they feared a standing army as much as they feared giving the government the power to tax; they knew both were essential to the survival of the nation.

### **Provision 79**

The people of the states empower the Congress to expend money (for the enumerated purposes listed in Article I section 8), provided it is done in a way that benefits the general welfare of the whole people.

The constitution doesn't word it exactly this way. Dr. Skousen took a bit of artistic license. It actually only says, “The congress shall have the power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; ...”

So, what is meant by General Welfare? (Or, as Representative John Conyers (D – Mich) recently called it, “the good and plenty clause.”) Does it limit the central government to ONLY actions for the benefit of **all** citizens? Or does it mean that the government can take any action it deems good?

I find it interesting that the book uses Thomas Jefferson as the most prominent voice of the founder's intent; Mr. Jefferson wasn't at the convention. It was not debated in his presence.

James Madison, who *was* present, stated that the terms “common defense” and “general welfare” HAD to be limitations on the federal government – otherwise none of the states would have ratified the constitution! Why would anybody go to the trouble of creating a document defining and limiting federal power then sneak in a clause to give it unlimited power? He found it hard to believe that anyone could misconstrue the meaning of General Welfare. As further proof, he noted all of the proposed amendments submitted by the states during the ratification process: not one tried to define or further expound the phrase General Welfare.

Furthermore, Madison even argued that the semicolon at the end of the clause linked it to the specific powers that followed. (This argument came about because after Washington's death, it was discovered that **his** copy of the constitution did not contain the semi-colon. But the official copy, held by the State Department, did.)

Alexander Hamilton, also present during the constitutional convention, agreed with Madison. He wrote, “congress can be considered as only under one restriction. . . They cannot rightfully apply the money they raise to any purpose merely or purely local...”

However, when Mr. Hamilton became the first Secretary of the Treasury under President Washington, he insisted the General Welfare clause gave the government permission to tax or borrow and spend for ANY worthwhile purpose. (Question 4) His 1791 Report on Manufacturing laid out his proposal to place a “moderate” tariff on imported manufactured goods and give that money to

manufacturers to spur the industry. He reasoned that helping American industries helps everyone.

Associate Justice Joseph Story in his 1833 Commentaries on the Constitution of the United States concluded that the General Welfare Clause is not a grant of general legislative power, but a qualification on the taxing power which includes within it a federal power to spend federal revenues on matters of general interest to the federal government.

Notice it is now the interest of the government, not the people, driving spending.

The Butler case, heard by the Supreme Court in 1936, opened the flood gates to government spending. In the case, a tax was laid on food processors; that money was used to pay farmers to not grow certain crops. Justice Owen Roberts wrote the opinion. He wrote that Madison's interpretation was merely a reference to the other powers enumerated in that same section of the constitution and carried no real restrictions. Thus the federal government has NO limits on what it can spend money on. (Question 5) The redistribution of wealth was now legal. Money can be taken from you to be given to whoever the government deems deserves it more than you. Our tax dollars provide for us such necessities as Cowboy poetry festivals, government cheese, and shrimp treadmill dance marathons. Makes you proud to be an American, doesn't it?

A year later, the Supreme court heard the Social Security case. Some states were taxing employers to provide unemployment insurance for their workers. The federal government started doing the same thing – telling the employers that the money paid for the federal tax could be deducted from what was owed to the state! Effectively rewriting state tax laws.

A decade after that, *Oklahoma vs. Civil Service Commission* allowed the federal government to meddle in state and local politics by way of federal funding. Now the federal government could coerce any action it wanted in the states by way of bribery; withholding federal funds from states that didn't or wouldn't comply with some federal statute.

Now any “general interest of the federal government” is fair game.

Madison warned that allowing the government to decide what General Welfare means would allow meddling into all aspects of life: religion, education of our children, regulation of all roads and highways; in short, everything from state legislatures down to the most minute detail of life. (Question 6)

### **Provision 80**

The people of the states stipulate that all duties, imposts and excises shall be uniform throughout the United States. (Question 7)

It makes sense that the federal government shouldn't, for example, charge a 3% tax in states that have seaports and 5% for landlocked states. Likewise, can the government tax left-handed people more than right-handed people?

The first example illustrates a violation of “geographic” uniformity. The second, “assessment” uniformity. Personally, I think both should be honored, but only the first one is actually adhered to.

The worst violation of this clause is probably the graduated income tax. Because, even though the tax is administered across the geographic entirety of the country, people and their income are not treated equally or fairly. Make a certain amount of income and you find yourself in a higher tax bracket. The first \$9,076 of income is taxed at a different rate than the next dollar. That next dollar is taxed five percent more than the previous ones.

Is it fair that some people are taxed at a 39.6% rate and others at 15%?

As long as the rates don't vary from state to state, the supreme court has no problem with only

geographic uniformity. (Question 8)

### **Provision 81**

The people hereby empower the Congress to borrow on the credit of the United States.

Of course the government needs the power to borrow in an emergency. The government should NOT borrow for day-to-day expenses. Just as you take out a loan for a car or a home – major expenses – you shouldn't take out a loan for lunch. As my Pappy often told me, “If you can't afford to pay cash, you can't afford it.”

The framers understood the destructiveness of debt; why else would repayment of the war debt have come FIRST in the list of things congress may spend money on?

Washington, Jefferson, and Franklin all wrote extensively on the evil of indebtedness. Our book covers Mr. Jefferson's opinions on the topic.

Jefferson wished he could have expunged the clause in the Constitution granting the right of Congress to borrow money. (Question 9) He also stated that no generation had the right to borrow more than could be paid off within that generation. It was impractical and immoral to leave debts behind for following generations.

His plan to finance the government in an emergency was to issue currency, payable – after a certain date – in gold or silver. At the same time, a new tax (he was not specific about the type of tax, direct or indirect) that would cover the cost of the gold or silver would be instituted. Like our US Savings Bonds, but an actual currency. Whoever owned it on the maturity date, could cash it in; in the meantime, it could pass through countless hands. (Question 10)

---

Next month: Commerce, Naturalization and Bankruptcy. The “Commerce Clause” has become just about as twisted as the General Welfare clause.