casionally asserted,[618] Congress has not acted upon it and the Court has had no occasion to adjudicate the point.

The scope of the national spending power came before the Supreme Court at least five times prior to 1936, but the Court disposed of four of those suits without construing the "general welfare" clause. In the *Pacific Railway Cases*[619] and *Smith v. Kansas City Title & Trust Co.*,[620] the Court affirmed the power of Congress to construct internal improvements and to charter and purchase the capital stock of federal land banks, but it did so by reference to its powers over commerce, post roads, and fiscal operations and to its war powers. Decisions on the merits were withheld in two other cases, *Massachusetts v. Mellon* and *Frothingham v. Mellon*,[621] on the ground that neither a state nor an individual citizen is entitled to a remedy in the courts against an alleged unconstitutional appropriation of national funds. In *United States v. Gettysburg Electric Ry.*,[622] on the other hand, the Court did invoke "the great power of taxation to be exercised for the common defence and general welfare"[623] to sustain the right of the Federal Government to acquire land within a state for use as a national park.

Finally, in *United States v. Butler*,[624] the Court gave its unqualified endorsement to Hamilton's views on the taxing power. Justice Owen Roberts wrote for the Court:

> 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 confers 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. Each contention has had the support of those whose views are entitled to weight. This court has noticed the question, but has never found it necessary to decide which is the true construction. Mr. Justice Story, in his Commentaries, es-

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[618] *See* W. Crosskey, Politics and the Constitution in the History of the United States (1953).

[619] California v. Pacific R.R., 127 U.S. 1 (1888).

[620] 255 U.S. 180 (1921).

[621] 262 U.S. 447 (1923). *See also* Alabama Power Co. v. Ickes, 302 U.S. 464 (1938). These cases were limited by Flast v. Cohen, 392 U.S. 83 (1968).

[622] 160 U.S. 668 (1896).

[623] 160 U.S. at 681.

[624] 297 U.S. 1 (1936). *See also* Cleveland v. United States, 323 U.S. 329 (1945).