

## Sec. 8—Powers of Congress

## Cl. 1—Power To Tax and Spend

authors as to the meaning of “general Welfare.” Alexander Hamilton’s essays adopted a literal, broad meaning of the clause,<sup>611</sup> and he suggested elsewhere that “[t]he phrase is as comprehensive as any that could have been used . . . .”<sup>612</sup> James Madison, on the other hand, contended that the powers of taxation and appropriation of the proposed government should be regarded as merely instrumental to its enumerated powers; in other words, the phrase represented little more than a power of self-support to government functions.<sup>613</sup>

From early times, however, Congress has acted upon Hamilton’s interpretation. Beginning in the Administrations of Washington and Jefferson,<sup>614</sup> Congress provided appropriations for subsidies to industry<sup>615</sup> and for an ever-increasing variety of “internal improvements”<sup>616</sup> constructed by the Federal Government. And, since 1914, federal grants-in-aid, which are sums of money apportioned among the states for particular uses, have become commonplace. The grants are often conditioned upon compliance with stipulated restrictions, such as the state making like contributions to the program or project.

The second half of the question, as to how Congress may “provide” for the general welfare, was addressed by Thomas Jefferson in his opinion to George Washington on the constitutionality of the National Bank. “[T]he laying of taxes is the power, and the general welfare the purpose for which the power is to be exercised. They [Congress] are not to lay taxes *ad libitum* for any purpose they please; but only to pay the debts or provide for the welfare of the Union. In like manner, they are not to do anything they please to provide for the general welfare, but only to lay taxes for that purpose.”<sup>617</sup> The general welfare clause, in short, is not an independent grant of legislative power, but is instead a qualification of the power to tax and, impliedly, to spend. Although a broader view has been oc-

<sup>611</sup> THE FEDERALIST, Nos. 30 and 34, 187–193, 209–215 (J. Cooke ed. 1961).

<sup>612</sup> Alexander Hamilton, Report on Manufactures *reprinted in* 10 THE PAPERS OF ALEXANDER HAMILTON 302 (H. Syrett ed., 1962).

<sup>613</sup> *Id.* at No. 41, 268–78.

<sup>614</sup> In an advisory opinion, which it rendered for President Monroe at his request on the power of Congress to appropriate funds for public improvements, the Court answered that such appropriations might be properly made under the war and postal powers. See Albertsworth, *Advisory Functions in the Supreme Court*, 23 GEO. L. J. 643, 644–647 (1935). Monroe himself ultimately adopted the broadest view of the spending power, from which, however, he carefully excluded any element of regulatory or police power. See his *Views of the President of the United States on the Subject of Internal Improvements*, of May 4, 1822, 2 MESSAGES AND PAPERS OF THE PRESIDENTS 713–752 (Richardson ed., 1906).

<sup>615</sup> 1 Stat. 229 (1792) (fishing industry).

<sup>616</sup> 2 Stat. 357 (1806) (building a road from Cumberland, Maryland to Ohio).

<sup>617</sup> 3 WRITINGS OF THOMAS JEFFERSON 147–149 (Library Edition, 1904).