

Sec. 8—Powers of Congress

Cl. 1—Power To Tax and Spend

demanding value for dollars.”⁶³² Congress’ failure to require proof of a direct connection between the bribery and the federal funds was permissible, the Court concluded, because “corruption does not have to be that limited to affect the federal interest. Money is fungible, bribed officials are untrustworthy stewards of federal funds, and corrupt contractors do not deliver dollar-for-dollar value.”⁶³³

Curiously enough, the Necessary and Proper Clause has also been invoked to assist the United States to collect a debt due to it. In *United States v. Fisher*,⁶³⁴ the Supreme Court sustained a statute that gave the Federal Government priority in the distribution of the estates of its insolvent debtors. The debtor in that case was the endorser of a foreign bill of exchange that apparently had been purchased by the United States. Invoking the power to pay the public debt and the Necessary and Proper Clause, Chief Justice Marshall deduced the power to collect a debt from the power to pay its obligations by the following reasoning: “The government is to pay the debt of the Union, and must be authorized to use the means which appear to itself most eligible to effect that object. It has, consequently, a right to make remittances by bills or otherwise, and to take those precautions which will render the transaction safe.”⁶³⁵

Conditional Grants-in-Aid

Although the Court in *Butler* held that the spending power is not limited by the specific grants of power contained in Article I, § 8, the Court found, nevertheless, that the power was qualified by the Tenth Amendment.⁶³⁶ On this ground, the Court ruled that Congress could not use federal moneys to “purchase compliance” with regulations “of matters of state concern with respect to which Congress has no authority to interfere.”⁶³⁷ Within little more than a year this decision was narrowed by *Steward Machine Co. v. Davis*,⁶³⁸ which sustained a provision of the Social Security Act⁶³⁹ imposing a tax on employers to provide unemployment benefits, while also allowing a tax credit to be taken for similar taxes paid to a

⁶³² Sabri v. United States, 541 U.S. 600, 605 (2004).

⁶³³ 541 U.S. at 606.

⁶³⁴ 6 U.S. (2 Cr.) 358 (1805).

⁶³⁵ 6 U.S. at 396.

⁶³⁶ In *Butler*, the Court struck down the Agricultural Adjustment Act of May 12, 1933, 48 Stat. 31, a statute that utilized a combination of subsidies and taxes toward the end of stabilizing the agricultural commodities market.

⁶³⁷ *United States v. Butler*, 297 U.S. 1, 70 (1936). Justice Stone, speaking for himself and two other Justices, dissented on the ground that Congress was entitled when spending the national revenues for the general welfare to see to it that the country got its money’s worth, and that the challenged provisions served that end. *United States v. Butler*, 297 U.S. 1, 84–86 (1936).

⁶³⁸ 301 U.S. 548 (1937).

⁶³⁹ Pub. L. 74–271, 49 Stat. 620.