The construction here urged is further supported by the fact that it is consistent with the administrative interpretation.[40]

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[40] No evidence was adduced as to this question upon the trial in the District Court. It may be noted, however, that reduction programs under Section 8 (1) were initiated (and as a consequence processing taxes became effective) with respect to each of the basic commodities named in the original Act, except milk and rice, by the beginning of the first marketing year after the passage of the Act. See Agricultural Adjustment, *A Report of the Administration of the Agricultural Adjustment Act, May 1933 to February 1934*, pp. 19, 28 (cotton); 43, 60 (wheat); 70, 72, 74, 77, 78, 84–85, 86, 88–89, 91–92, 93 (six types into which tobacco is divided); 97, 126, 139–142 (corn and hogs). Because a sufficient number of farmers have not agreed to any program for reduction of the production of milk (*Ibid.*, p. 159; Agricultural Adjustment, 1934, *A Report of the Administration of the Agricultural Adjustment Act, February 15, 1934, to December 31, 1934*, pp. 132–133), the initiation of a reduction program would not up to the present time have effectuated the declared policy of the Act. The 1933 rice crop was well toward maturity when the Act was passed and it appeared that there was not sufficient producer sentiment for a program involving the destruction of the growing crop, the acreage of which was abnormally low, to make a reduction program for that season practicable. During the 1934 production season it appeared that no reduction under Section 8 (a) was justified or practicable under the Act. A tax has been in effect with respect to rice since April 1, 1935. (See Act of March 18, 1935, Pub. No. 20, 74th Cong., 1st Sess.)

Reduction programs have been initiated and taxes imposed by the beginning of the first marketing year with respect to the crops which have been made basic commodities since the original Act (See c. 103, 48 Stat. 528; c. 263, 48 Stat. 670; and Act of August 24, 1935, Pub. No. 320, 74th Cong., 1st Sess., Sec. 61), except in instances in which the drought of 1934 raised prices to parity levels or in

Before passing to the next point, the contention that Congress has unlawfully delegated power to choose the commodities on which the tax is to operate should be noted.

Congress enumerated in Section 11 of the Act seven products which it termed basic agricultural commodities. As pointed out above, whenever the Secretary determines that rental or benefit payments are to be made with respect to any basic agricultural commodity, the processing tax automatically attaches with respect to that particular commodity. (Section 9 (a).) It is argued that by determining when to make rental or benefit payments with respect to the different basic commodities, the Secretary is selecting the taxable subject.

This argument is simply a restatement of respondents' contention, previously considered, that the Act authorizes the Secretary of Agriculture to impose a processing tax upon any of the basic commodities whenever he will.

We have shown (*supra,* pp. 77–89) that the determination to make rental or benefit payments was required whenever definitely ascertainable conditions occurred. The Secretary thus had no discretion as to when the tax should be imposed and, therefore, he had no choice as to the subject of the tax.

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instances in which the importation of foreign products or adverse producer sentiment would have made a reduction program ineffective.

c. Congressional imposition of processing taxes, contingent upon the exercise of an independent specified *executive* function, involves no delegation of legislative power

Aside from the definiteness of the legislative policy and standards, there is an additional ground upon which the validity of the imposition of the tax rests. Under Section 9 (a), as has been observed, the processing tax automatically becomes effective at the beginning of the marketing year next following the date of a proclamation by the Secretary of Agriculture that he has determined to make rental or benefit payments. This determination is simply one relating to the expenditure of Federal funds which have been appropriated and involves no element of lawmaking.

As is demonstrated hereafter, the expenditure of public moneys when authorized by Congress has at all times during our constitutional history been considered an executive, as distinguished from a legislative, function.

(1) The exercise of discretion by an administrative official in the performance of an executive function cannot involve any delegation of legislative power

This Court has recognized that, by its very terms, the doctrine that legislative powers may not be delegated does not apply to the discretion which Congress leaves to an official engaged in carrying out an executive function. It is lawmaking that is vested in Congress alone. In *Panama Refining Co.* v. *Ryan,* 293 U. S. 388, 432, the Court said "We are not dealing with action which, appropriately belonging to the executive province, is not the subject of judicial review, or with presumptions at-

taching to executive action. To repeat, we are concerned with the delegation of legislative power."

The statute involved in the *Panama* case was invalid because it gave "to the President an unlimited authority to determine the policy and to lay down the *prohibition,* or not to lay it down, as he may see fit" (p. 415, italics added). Disobedience of such prohibition was "made a crime punishable by fine and imprisonment." (Ibid.) Similarly, the statute considered in *Schechter Corp.* v. *United States,* 295 U. S. 495, was an invalid delegation to the President of power "to make whatever *laws* he thinks may be needed or advisable for the rehabilitation and expansion of trade or industry" (pp. 537–538, italics added). It involved "the *coercive* exercise of the *lawmaking power*" (p. 529, italics added).

It is apparent that, in contrast to such action, the expenditure of moneys following proper appropriation of such moneys by Congress, being neither prohibitory nor coercive, is not "lawmaking" as the term was used in these cases. The distinction between lawmaking, which may not be delegated by Congress, and other governmental powers was the express basis of the decision in *Butte City Water Co.* v. *Baker,* 196 U. S. 119. There the title of the plaintiff in an action of ejectment, concerning a location upon mining land belonging to the United States, had been upheld by the Supreme Court of Montana solely on the ground that defendant had

not complied with Montana statutes requiring certain declarations in statements of claims. The relevant Federal statutes expressly conditioned the rights of locators upon compliance with applicable local regulations of miners and (by implication) State statutes. The sole objection to the decision below which was considered by this Court was the charge that Congress had unlawfully delegated its power to the States. This Court, after referring to the prior decisions which had upheld these provisions of the mining laws without express consideration of this question, said (p. 126):

> The Nation is an owner, and has made Congress the principal agent to dispose of its property. * * * While the disposition of these lands is provided for by Congressional legislation, such legislation savors somewhat of mere rules prescribed by an owner of property for its disposal. It is not of a legislative character in the highest sense of the term, and as an owner may delegate to his principal agent the right to employ subordinates, giving to them a limited discretion, so it would seem that Congress might rightfully entrust to the local legislature the determination of minor matters respecting the disposal of these lands.

In short, though the disposition of the public lands is by the Constitution vested in Congress, since it does not involve an inherently legislative function it

may be delegated.[41] *A fortiori,* the exercise of administrative discretion in carrying out the expenditure of funds appropriated by Congress, a governmental function traditionally executive in nature and not vested in Congress by the Constitution, is not

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[41] The doctrine of the *Butte City* case was restated with approval in *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 474, and appears to have been assumed as sound in the decision in *United States* v. *Wilbur*, 283 U. S. 414, in which it was determined that the Secretary of Interior could not, under the Act of February 25, 1920 (c. 85, 41 Stat. 437), be required by mandamus to issue prospecting permits for oil and gas owned by the United States, since no clear and indisputable duty to issue such permits was imposed by the Act. This Court said of the Secretary of Interior's defense to the suits (p. 419):

"The answers aver 'that under the Act [1920] the granting of a prospecting permit for oil and gas is discretionary with the Secretary of the Interior, and any application may be granted or denied, either in part or in its entirety, as the facts may be deemed to warrant.' Having examined the Act, we cannot say that by any clear and indisputable language it refutes his position. Certainly there is ground for a plausible, if not conclusive, argument that so far as it relates to the leasing of oil lands it goes no further than to *empower the Secretary to execute leases which, exercising a reasonable discretion, he may think would promote the public welfare.*" (Italics added.)

It must be remembered, however, that Congress may act both in a proprietary manner and in a legislative manner with respect to the public domain. See *United States* v. *Midwest Oil Co.*, *supra.* The doctrine of delegation of power may well be applicable to those statutes which exercise the lawmaking power with respect to public lands. See *United States* v. *Grimaud*, 220 U. S. 506.

forbidden by the Constitution. Indeed, since by definition expenditure after appropriation is not a legislative function in any sense, no issue of delegation of legislative power is raised.

(2) After an appropriation by Congress, the expenditure of public funds is an *executive* and not a legislative function and hence the determination to make rental or benefit payments could not constitute a delegation of legislative power

The significance of English governmental practice prior to the adoption of our Constitution, as an aid in determining the nature of the powers lodged in the executive by the Constitution has been recognized by this Court. *Myers* v. *United States,* 272 U. S. 52, 118; *Ex Parte Grossman,* 267 U. S. 87, 108–111; *Ex Parte William Wells,* 18 How. 307.[42]

In England at the time of the adoption of our Constitution the raising and spending of revenues were separate and distinct functions. The principle that taxation and the grant of the proceeds of taxation are legislative functions was settled in England by the Petition of Right in 1628 and the Bill of Rights in 1689. See Maitland, Constitutional History of England, pp. 307, 309. In contrast, the power of spending was never claimed

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[42] This but adopts the principle which has been followed in construing other parts of the Constitution. See *United States* v. *Wilson*, 7 Peters 150, 160; *Moore* v. *United States*, 91 U. S. 270, 274; *Smith* v. *Alabama*, 124 U. S. 465, 478; *United States* v. *Won Kim Ark*, 169 U. S. 649, 654; *Gompers* v. *United States*, 233 U. S. 604, 611; *Callan* v. *Wilson*, 127 U. S. 540, 549; *Schick* v. *United States*, 195 U. S. 65; *United States* v. *Sanges*, 144 U. S. 310.

by Parliament to be a legislative function. The representatives of the people sought only the power of refusing the King money which he asked.

As the power of Parliament increased, the uses to be made by the King of the proceeds of taxes granted to him became more and more explicit in the terms of the grant. But even as late as 1688, the financial action of the House of Commons was substantially confined to making a life grant of certain customary taxes on the accession of the King and to granting special subsidies from time to time upon the request of the Crown. See Maitland, p. 310; Holdsworth, History of English Law, Vol. IV, p. 252; 1 Blackstone, Commentaries, p. 335.

The expansion in the power of Parliament over finances consisted in specifying more frequently in the grant of funds the uses to which the funds were to be put. By the end of the reign of William of Orange a certain annual sum was assigned to the King for his own use, out of which he was to defray the expenses of the "Civil List", or the "Civil Service", and the residue was voted for stated purposes, e. g., for the army and for the navy. See Maitland, p. 310. This gradually increasing practice of appropriating for stated purposes soon became normal. Ibid., pp. 435–436; Holdsworth, pp. 253–254; Blackstone, pp. 331–337.

The legislative power to impose, as a condition to the grant, some specification of the uses to

which the grants are to be put, may be used or not, as Parliament deems wise, as a check on the executive power of expenditure. Appropriations for general purposes, the executive to determine how the money should be applied to achieve those purposes, were and still are usual in England (Maitland, pp. 444, 445). Blackstone, while doubting the wisdom of Parliament in following this practice, recognized the power of the King to expend the money appropriated. He explains that money received from Parliament stands "in the same place as the hereditary income did formerly" and that "the entire collection and management of so vast a revenue" is placed by the long-established system "in the hands of the Crown" (pp. 332, 335).

When the words "executive power", as used in Article II, Section 1, of the Constitution, are considered in light of the law of England at the time of the adoption of our Constitution, it appears that they were meant to include power to spend the public money, after legislative appropriations thereof, according to the executive's discretion, except as limited by the restrictions, if any, imposed in particular instances by the legislative body.

This conclusion raises the question of whether there is anything in the nature or development of our government that constitutes a rejection of the English practice. First let us look at the finances of the Colonies before the Revolution. Eight of the thirteen Colonies had governors appointed by

the King of England, and in three others executive authority was vested in the proprietor or his appointee. Because of their suspicion of and hostility to these governors, the colonists placed their reliance on the legislatures, which, through control over money, succeeded in making the governors amenable. See 1 Carmen & McKee, History of the United States (1931), pp. 109–111; McGuire, The New Deal and the Public Money, 23 Georgetown Law Journal, 155, 158. In so doing, the legislatures often found it necessary to appoint their own executive officers to handle the expenditure of public funds. See Pownall, Administration of the Colonies (1765), pp. 50–53. But, as is pointed out in *Myers* v. *United States, supra,* p. 118, the exercise by the legislatures during this period of functions regarded as executive in England was not a denial of their executive nature, but rather was a vesting of part of the executive power in their own appointees who were themselves, when acting in this capacity, executive and not legislative officials. These appointees, not the legislatures, made the expenditures and exercised their own discretion in so doing.

With the Declaration of Independence, the States generally provided strong executives by their own constitutions. These constitutions clearly indicated that expenditure of money was the function of the executive and generally subjected such power

to the same checks as had been adopted in England by Parliament.[43]

The governmental practice of the Colonies and of the States prior to the adoption of the Constitution of the United States, therefore, shows that the English conception of the determination of the method of spending as an executive function was originally adopted in the Colonies and was continued when they established their own sovereignty. In the convention which framed the United States Constitution, there was considerable discussion over the origin of money bills, but nothing was said as to the power of the executive to determine the manner of *expenditure,* once taxation had been devised and the proceeds appropriated. As finally adopted our Constitution copied English fiscal procedure in three respects:

1. Money bills were to originate in the lower house (Art. I, Sec. 7, Clause 1);

2. No money was to be withdrawn from the

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[43] For example, the Delaware Constitution of 1776 provided that the President or chief magistrate "may draw for such sums of money as shall be appropriated by the general assembly and be accountable to them for the same." Poore, Federal and State Constitutions and Charters (Government Printing Office, 1887), Senate Miscellaneous Documents, 44th Cong., 2nd Sess., p. 274. See also the following Constitutions set forth in the same work: Massachusetts, 1780, pp. 956, 960; New Hampshire, 1784, pp. 1280, 1283; New Jersey, 1776, pp. 1310, 1312; North Carolina, 1776, p. 1409; Pennsylvania, 1776, pp. 1540, 1541; Virginia, 1776, pp. 1908, 1909; Georgia, 1789, p. 385; Vermont, 1786, pp. 1866, 1870, 1871.

The fundamental Constitutions of 1669 for the Carolinas had provided that the executive should have full power to dispose of all public treasure, excepting money granted by the Parliament and by them directed to some particular use. Poore, p. 1401, Sec. 33.

Treasury but in consequence of appropriations made by law (Art. I, Sec. 9, Clause 7); and

3. A regular statement of receipts and expenditures was to be published from time to time. (*Ibid.*)

It is only reasonable to conclude, therefore, that appropriations were intended to be under our Constitution, as they were in England, conditional grants restricting in particular instances the executive power over the manner of expenditure.[44] Indeed, this thought is implicit in the very language—"No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Article I, Section 9, Clause 7. The provision is plainly restrictive in character and can only be restrictive of the executive powers. It grants no power of expenditure to Congress, but rather requires Congressional approval prior to executive expenditures. This has been the construction applied in practice. "That provision is exclusively a direction to the officers of the Treasury, who are intrusted with the safe-keeping and payment out of the public money." *Collins* v. *United States,* 15 C. Cls. 22, 35. "An appropriation is *per se* nothing more than the legislative authorization prescribed by the Constitution that money may be paid out at the Treasury." *Campagna* v. *United States,* 26 C. Cls. 316, 317. Under the Constitution,

[44] See for a full discussion of the English and American governmental practice in this regard prior to the adoption of the Constitution and of the circumstances surrounding the inclusion in the Constitution of the clauses referred to in the text, O. R. McGuire, "Constitutional Control over Public Moneys", Federal Bar Journal (November 1935), Vol. 2, p. 187.

Congressional participation in the expenditure of public money is limited to the initial authorization. This serves as a valuable check upon an otherwise unbridled power of executive expenditure. But it does not transform the expenditure of public money into a legislative function, any more than the presidential veto power is sufficient to make law-making an executive function.

The practical construction given to the Constitution confirms this conclusion. By far the great majority of appropriations leave something to the discretion of the executive. Congress, from its very first appropriation, has frequently granted money to be expended by the executive in the exercise of the broadest authority.[45] The early experts

[45] Early American practice followed the English manner of making large lump-sum appropriations for general purposes. Thus, the first appropriation by Congress provided "that all expenses which shall accrue * * * in the necessary support, maintenance and repairs of all lighthouses, beacons, buoys and public piers erected, placed, or sunk before the passage of this Act, at the entrance of, or within any bay, inlet, harbor, or port of the United States, for rendering the navigation thereof easy and safe, shall be defrayed out of the treasury of the United States." Act of August 7, 1789, c. 10, 1 Stat. 54. It will be noticed that this appropriation is also indefinite in amount. See the supplement to this appropriation in 1 Stat. 251. The first general appropriation act of September 29, 1789, c. 23, 1 Stat. 95, appropriates "a sum not exceeding two hundred and sixteen thousand dollars for defraying the expenses of the civil list, under the late and present government; a sum not exceeding one hundred and thirty-seven thousand dollars for defraying the expenses of the department of war; a sum not exceeding one hundred and ninety thousand dollars for discharging the warrants issued by the late board of treasury, and re-

on governmental finance recognized the necessity and validity of this practice.[46]

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maining unsatisfied; and a sum of not exceeding ninety-six thousand dollars for paying the pensions to invalids." See the following similar early appropriations: Act of March 26, 1790, c. 4, 1 Stat. 104; Act of July 1, 1790, c. 21, 1 Stat. 128; Act of July 22, 1790, c. 28, 1 Stat. 130; Act of February 11, 1791, c. 6, 1 Stat. 190; Act of March 3, 1791, c. 16, 1 Stat. 214; c. 28, 1 Stat. 222, 224; Act of December 23, 1791, c. 3, 1 Stat. 226; Act of May 8, 1792, c. 41, 1 Stat. 284; Act of February 28, 1793, c. 18, 1 Stat. 325; Act of March 14, 1794, c. 6, 1 Stat. 342; Act of March 20, 1794, c. 9, 1 Stat. 345; Act of March 21, 1794, c. 10, 1 Stat. 346; Act of June 5, 1794, c. 47, 1 Stat. 376; Act of March 3, 1795, c. 46, 1 Stat. 438.

Following Jefferson's administration the appropriation Acts became more and more detailed. Even so, there was a large number of appropriations of an indefinite and general character, leaving broad discretion in the executive. See Act of January 15, 1811, 3 Stat. 471; Act of March 3, 1839, c. 89, 5 Stat. 355; Act of July 31, 1861, c. 28, 12 Stat. 283; Act of July 31, 1861, c. 29, 12 Stat. 283; Joint Resolution of October 12, 1888, 25 Stat. 631; Act of June 28, 1902, c. 1302, 32 Stat. 481; Public Resolutions Nos. 41 and 42, 38 Stat. 776; Deficiency Act of March 9, 1898, c. 56, 30 Stat. 273, 274; Deficiency Act of April 17, 1917, c. 3, 40 Stat. 2, 28. Many of these are set forth in President Taft's report to Congress in 1912 on the "Need for a National Budget." House Document No. 854, 62d Cong., 2d Sess. In this report President Taft stated in regard to the Department of Agriculture (p. 101): "In fact, it may be said that there are no appropriations in the Department of Agriculture entirely without discretion."

In more recent legislation Congress has evidenced an intention to return to the early English and American practice of leaving broader discretion in the administrative departments. See Act of May 22, 1928, c. 659, 45 Stat. 645, 678; Act of May 15, 1928, c. 572, 45 Stat. 539, 569; Act of May 23, 1928, c. 682, 45 Stat. 706.

[46]As early as 1796, Gallatin, who thereafter became Jefferson's Secretary of the Treasury, wrote: "* * * it is im-

We submit, then, that the words "Executive Power" as used in Article II, Section 1 of the Constitution include the power of spending the public

possible for the legislature to foresee, in all its detail, the necessary application of moneys, and a reasonable discretion should be allowed to the proper executive department. The most proper way would perhaps be * * * to divide the general appropriations under a few general heads only, allowing thereby a sufficient latitude to the executive officers of government." 3 Gallatin Writings (Adams Edition) 117. See also Ibid., Vol. 3, pp. 68, 73; 1 American State Papers (Finance), 7th Congress, 1st Sess., 756–757. Hamilton was of the same view, saying that nothing more can safely or reasonably be attempted than to distribute the public expense into a certain number of large subdivisions, leaving reasonable discretion to the executive as to the expenditure under each. VII Hamilton's Works (Hamilton ed.), 786, 788.

Jefferson recognized that discretion over expenditures of necessity had been, and properly should be, lodged with the executive, but thought appropriations should be more specific "by reducing the undefined field of contingencies and thereby circumscribing discretionary powers over money." 1 Richardson, Messages and Papers of the Presidents, pp. 326, 329. A committee appointed by the House of Representatives during his administration to inquire into expenditures of the first two administrations, would not say "that there are no cases in which a public officer would be justified in applying moneys appropriated to one object, to expenditures on another, yet they are of the opinion that in every deviation the necessity for the application ought to be for some obvious benefit of the United States, and in every such case, a disclosure thereof to Congress ought to be made." As to appropriations for the contingencies of the War and Navy Department, the committee recognized "the impracticability of specifying by law the precise objects to which such sums are applicable", and recommended that "giving publicity to the accounts of the expenditures of moneys appropriated for contingencies would have the most direct tendency to correct the latitude of construction formerly

money according to the discretion of the executive, subject only to those checks which the legislature sees fit to prescribe as an incident to its duty of appropriation. If this is so, no power is transferred from Congress to the executive by an appropriation for general purposes, and no question of *delegation* of *legislative* power can arise from the exercise by the executive of discretion in the manner of making expenditures.

Decisions of state courts and of lower Federal courts have recognized the true character of expenditures. Thus, in *People* v. *Tremaine,* 252 N. Y. 27, the legislature attempted to confer on certain of its members, power to approve the segregation of lump sum appropriations. The court held that power to segregate such appropriations was an executive power, and that the attempt to confer such power on members of the legislature violated the constitutional provision forbidding members of the legislature from holding civil office. The court said (p. 44):

> *The head of the department does not legislate when he segregates a lump sum appropriation. The legislation is complete when the appropriation is made.* The Legislature might make the segregation itself but it may not confer administrative powers upon its members without giving them, un-

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exercised in that respect by the heads of those departments." 1 American State Papers (Finance), 7th Cong., 1st Sess., pp. 752–754.

> constitutionally, civil appointments to administrative offices. It might by general law confer the power of segregation or approval of segregation upon any one but its own members, * * *.
>
> * * * *The legislative power appropriates money and,* except as to legislative and judicial appropriations, *the administrative power spends the money appropriated.* (Italics supplied.)

Likewise in *United States* v. *Hanson,* 167 Fed. 881 (C. C. A. 9th), it was held that an Act authorizing the Secretary of the Interior to determine what irrigation systems should be built and maintained, and what amount should be expended thereon, constituted no delegation of legislative authority. It was held in addition (p. 885) that the fact that the appropriation was indefinite in amount did not vitiate the appropriation, for "it is no more indefinite than other appropriations which have been made by Congress from the beginning of the government, the constitutionality of which has never been questioned."

There are a number of other decisions to the same effect. See *State ex rel. Board of Regents* v. *Zimmerman,* 183 Wis. 132; *Moers* v. *City of Reading,* 21 Pa. St. 188, 202; *Edwards* v. *Childers,* 102 Okla. 158, 228 Pac. 472, 474; *Peters* v. *State,* 34 Pac. (2d) 286 (Okla.); *Abbott* v. *Commissioners of Fulton County,* 160 Ga. 657; *Chicago & N. W. R. Co.* v. *State,* 128 Wis. 553, 108 N. W. 557, 577–578; *Holmes* v. *Olcott,* 96 Ore. 33, 189 Pac. 202,

206–207; *State ex rel. Peel* v. *Clausen,* 94 Wash. 166, 162 Pac. 1, 3–4; *State* v. *Allen,* 83 Fla. 214, 91 So. 104, 108.

Finally, it is to be noted that the appropriation of money for the general welfare does not differ from an appropriation designed to carry out one of the other enumerated powers. In either case, the legislative function is completed with the appropriation. It may be that the appropriation must specify a purpose. For example, if a grant of funds were made, not specifying any purpose whatsoever, it might not be a sufficient exercise of the duty placed upon Congress by Article I, Section 9, Clause 7 of the Constitution. But where, as here, Congress specifies a purpose which it determines will benefit the general welfare, there can be no question but that the legislative function is completed. The Executive acting thereunder does not exercise the legislative power of appropriating, but rather exercises the executive power of spending.

(3) The Secretary of Agriculture is given discretion only with respect to rental or benefit payments, a wholly independent executive function, and Congress itself has imposed the tax; hence no delegation of legislative power is involved

It has been pointed out that Section 9 (a) provides for the processing tax automatically becoming effective, when the Secretary of Agriculture determines to make rental or benefit payments with respect to any basic agricultural commodity and proclaims that determination, as he is required to do upon such a determination. This imposition is de-

termined by Congress, not by the Secretary. He can do nothing to prevent it; he is given no authority to determine its advisability or its inadvisability. Indeed, under the terms of the statute, had the tax failed to become effective due to some technical imperfection or otherwise, the Secretary's contractual program would nonetheless have been carried out. Section 12 (b) provides that:

> The Secretary of Agriculture and the Secretary of the Treasury shall jointly estimate from time to time the amounts, in addition to any money available under subsection (a) [which appropriated the sum of $100,000,000 for the general purposes of the Act] currently required for such purposes [i. e., the general purposes of the Act, including rental and benefit payments]; and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated.

Thus funds were appropriated for the purposes of the contractual program initiated by the Secretary, regardless of whether the tax would actually become effective.

This Court has recognized the propriety of legislative action being conditioned upon the results of administrative discretion exercised in respect to purely executive matters. *Michigan Central Railroad* v. *Powers,* 201 U. S. 245, upheld a tax enacted by the legislature of Michigan which provided that taxes upon the property of railroads and other cor-

porations should be at the average rate of taxation upon other property subject to *ad valorem* taxes and that such average rate should be ascertained by dividing the total tax levy on all such other property by the value of the property. It was contended that since the fixing of the rate of taxation was a legislative function, and since under the statute the rate of the tax was conditioned upon the valuation to be fixed for other property subject to *ad valorem* taxes, the various local assessing and taxing boards were, in effect, authorized to fix the rate of tax. This Court said at pages 294–295:

> * * * in the case at bar there is no abandonment by the legislature of its functions in respect to taxation. The statute prescribes as the rate of taxation upon railroad property the average rate of taxation on all other property subject to ad valorem taxes. It provides the most direct way for ascertaining such average rate, deducing it from a consideration of all the other rates. *No authority is given to the local assessors to apply their judgment to the question of the railroad rate.* Their authority in respect to the matter of taxation is precisely the same as it was before and independently of this statute. *Their duty is to act according to their judgments in respect to local taxes committed to their charge.* When they have finished their action, taken, as it must be assumed to have been, in conscientious discharge of the duties assigned, from it by a simple mathematical calculation the average

> rate of taxation is determined. If the legislature should be convened after they have finished their action and then prescribed the average rate thus mathematically deduced as the rate of railroad taxation, no question could be made of its validity. It would be obviously a legislative determination of the rate of taxation. *Is it any the less a legislative determination that it assumes that the various local officials will discharge their duties honestly and fairly, with reference to local necessities, and, independently of the effect upon the railroad rate,* and directs that the mathematical computation be made by a board of ministerial officers, and thus made shall become the railroad rate of taxation? * * * (Italics added.)

We submit that this principle fully disposes of any question as to the validity of the manner in which Congress provided for the initiation of these taxes. However broad may have been the discretion vested in the Secretary of Agriculture to determine when to make rental and benefit payments such discretion was validly conferred upon him (see pp. 90–101) and, furthermore, the Act did not authorize him to apply his judgment to the question of when the taxes should become effective. (*Supra,* pp. 64–85.) The imposition of the tax, conditioned as it was upon the happening of events which would occur without reference to the matter of that imposition, was "a direct legislative determination" of the initiation of the tax. *Michigan Central Railroad* v. *Powers, supra,* at p. 297.

3. The taxes are not invalid by reason of the provisions respecting the termination thereof

Section 9 (a) provides that the processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that rental or benefit payments are to be discontinued with respect to the commodity. Respondents' contention that this provision delegates legislative power to the Secretary in that it permits him arbitrarily to choose when to terminate a tax is met by the fact that the tax here in dispute was still in effect at the time of the hearings below and, indeed, is still in effect. No issue can be raised at this time as to the propriety of the Secretary's actions with respect to any determination he may make in the future to discontinue rental or benefit payments with respect to cotton. "This Court does not sit to pass upon moot questions." See *Louis. & Nash. R. R. Co.* v. *Finn,* 235 U. S. 601, 610. A consideration at this time whether the termination of the tax has been improperly provided for would be, we submit, to pass upon a moot question. See *Hicklin* v. *Coney,* 290 U. S. 169, 172–173.

Furthermore, the termination of the tax could in no way injure respondents. It is incumbent upon one who seeks an adjudication that an Act of Congress is repugnant to the Federal Constitution to show "that the alleged unconstitutional feature injures him." Ibid.[47]

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[47] See cases cited, *supra,* note p. 70.

However, were this issue properly before this Court the respondents' contentions must fall for the following reasons:

(1) The termination is dependent upon a determination to cease the expenditure of governmental funds. This, as we have shown (*supra,* pp. 90–101), is an executive function and raises no issue of delegation of legislative power. We have further demonstrated (*supra,* pp. 101–104) that a legislative enactment may properly be made contingent upon the exercise of executive discretion properly directed not toward the execution of the legislative enactment but to the carrying out of a purely executive function.

(2) Since the Secretary of Agriculture is required to make rental or benefit payments whenever certain definitely ascertainable conditions are present (*supra,* pp. 64–85), the determination to cease making such payments can be made only when those conditions are no longer present. There can be no greater exercise of discretion required in making the latter determination than in making the former, which, we have argued, involved no discretion that could not properly be vested in an administrative official charged with the execution of an Act passed by Congress in the exercise of its law-making powers.

VI

IF IN THE ORIGINAL ACT CONGRESS EXCEEDED ITS POWER TO DELEGATE, THAT IS NOW IMMATERIAL BECAUSE CONGRESS HAS EXPRESSLY RATIFIED THE ASSESSMENT AND COLLECTION OF THE TAXES

Even if it were to be found that in the original Act Congress exceeded its power to delegate, such is now immaterial because by subsequent legislation Congress has expressly ratified and adopted the assessment and collection of the taxes here involved. After the decision of the court below, but before the granting of the writ of certiorari herein, Congress passed certain amendments to the Agricultural Adjustment Act. Section 30 of this amendatory legislation (Act of August 24, 1935) added a new subsection 21 (b), which provides in part:

> The taxes imposed under this title, as determined, prescribed, proclaimed, and made effective * * * prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes * * * are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress.

That such a ratifying Act is applicable and is to be given effect even though passed after the decision below is settled. *Rafferty* v. *Smith, Bell &*

Co., 257 U. S. 226; *The Peggy,* 1 Cranch 103, 110; *Dinsmore* v. *Southern Express Co.,* 183 U. S. 115; *Dorchy* v. *Kansas,* 264 U. S. 286; *Steamship Co.* v. *Joliffe,* 2 Wall. 450. In *Rafferty* v. *Smith, Bell & Co., supra,* the doctrine was applied to a case much like the present one, this Court reversing judgments requiring refunds of certain taxes on the sole ground that the taxes were validated by a ratifying Act, passed after those judgments but, as here, prior to the granting of a writ of certiorari.

This Court has recognized that Congress may ratify taxes, illegal when assessed but assessed under claim and color of authority, if it could have imposed such taxes in the first instance and if its power to do so remained unimpaired to the date of ratification. *United States* v. *Heinszen & Co.,* 206 U. S. 370; *Rafferty* v. *Smith, Bell & Co., supra.* See also *Mascot Oil Co.* v. *United States,* 282 U. S. 434; *Charlotte Harbor Ry.* v. *Welles,* 260 U. S. 8, 10, 11; *Seattle* v. *Kelleher,* 195 U. S. 351, 359–360; *Hamilton* v. *Dillin,* 21 Wall. 73; *Hodges* v. *Snyder,* 261 U. S. 600, 602–603; *Stockdale* v. *Insurance Companies,* 20 Wall. 323, 332; *Wagner* v. *Baltimore,* 239 U. S. 207, 216, 217; *Mattingly* v. *District of Columbia,* 97 U. S. 687; *Kansas City Ry.* v. *Road District,* 266 U. S. 379; *Tiaco* v. *Forbes,* 228 U. S. 549.

Under claim and color of authority, the Commissioner of Internal Revenue here assessed against respondents and the Collector of Internal Revenue

is attempting to collect from them a tax at the rate of 4.2 cents per pound upon the processing of cotton and an equivalent tax upon floor stocks of articles made from cotton. In other portions of this brief we have devoted ourselves to showing that such a tax was within the power of Congress. The ratification by the amendatory Act is express and unambiguous. There is no room for doubt that it applies to the taxes here involved.

The argument has been advanced, however, that if Congress could not in the first instance delegate the power to determine upon and to levy these taxes, it cannot now ratify that which it could not have originally authorized. This argument is based on a confusion as to what is in fact ratified. Ratification involves the adoption of the act of someone else. One cannot ratify one's own act. The delegation, if it was unlawful, was the act of Congress. Congress has not attempted to cure that delegation by ratification—it has not sought to ratify its own act. It has not attempted to do again that which it was unable to do before. It has done something entirely different, namely, it has ratified and adopted the assessment and collection of taxes at certain rates on the processing of certain commodities.

Many decisions have said generally that a legislature may ratify only an act which it could have authorized. We have in this case no quarrel with that principle. Congress could have originally au-

thorized the assessment and collection of the taxes here in issue, if the authorization had been accomplished in the right manner. In fact, Congress intended to authorize and believed that it had properly authorized the assessment of these taxes, but if it be held that there was an unlawful delegation of legislative authority, then Congress was unsuccessful. Nevertheless, the Treasury officials proceeded to assess and collect the taxes. It may be that their determination to do so resulted from their belief that they were properly authorized, and it may be that their determination that the tax should be assessed at the rate it was and on the products it was resulted from the exercise by the Secretary of Agriculture of improperly delegated legislative authority. But whatever the reasons for their act, the essential fact is that the Treasury officials did assess a tax at a certain rate on certain products. Congress need not validate and has not validated their reasons for the step they took, nor has Congress sought to make unobjectionable its former method of authorization. Under the decisions it is necessary only that Congress approve and adopt the *act* which took place, and this was done when Congress ratified and adopted the assessments and collections which had been made, the making of which Congress could have authorized in the first place. *United States* v. *Heinszen & Co., supra; Rafferty* v. *Smith, Bell & Co., supra.*

This rule has been held to apply in instances of improper delegation of legislative power. *In Mat-*

ter of People (*Tit. & Mtge. Guar. Co.*), 264 N. Y. 69, objection was made in that case to Chapter 40 of the 1933 Session Laws of New York on the ground that legislative powers were delegated to the Superintendent of Insurance. After the case had been decided below but before it was heard by the Court of Appeals, the New York Legislature, by Section 6 of Chapter 10 of the 1934 Session Laws, expressly approved and confirmed all actions taken under the rules and regulations promulgated by the Superintendent of Insurance pursuant to the original Act. In dealing with the question of delegation of legislative power under the original act, the court said (p. 97):

> Moreover, the provisions of Chapter 40 of the laws of 1933 have been amended since so as to remove possible attack on such ground.

See also *Fisk* v. *The City of Kenosha,* 26 Wis. 23, and *Miller* v. *Dunn,* 72 Cal. 462, 14 Pac. 27. The latter case upheld an appropriation made to pay obligations incurred by an invalid drainage district (the invalidity being by reason of an unconstitutional delegation of legislative power), despite a constitutional prohibition against payment of claims arising under an agreement made without express authority of law.

A holding that the collection of taxes may not be ratified where they have resulted from an improper delegation of legislative authority would render

almost useless in tax cases the corrective power so necessary to government. Morever, it is submitted that such a holding would ignore the basis for the limitation upon Congressional delegation of legislative power. This Court has recently reexamined that basis.

Congress is not denied, by the Constitution, the necessary practicality which enables it to leave to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which its policy is to apply. Otherwise, in many instances the legislative power would be futile. *Panama Refining Co.* v. *Ryan,* 293 U. S. 388, 421; *Schechter Corp.* v. *United States,* 295 U. S. 495, 529.

The limitation—simply stated—is that the Congress "is not permitted to abdicate or to transfer to others the essential legislative functions with which it is * * * vested." *Ibid.* Such abdication consists in an attempt by Congress to permit others to determine matters of policy which it should itself determine. *Panama Refining Co.* v. *Ryan, supra.* Congress cannot delegate power to an administrative officer "to exercise an unfettered discretion to make whatever laws he thinks may be needed." *Schechter Corp.* v. *United States, supra,* pp. 537–538.

If the imposition of the taxes here challenged was invalid under this doctrine, it was because Congress permitted the Secretary of Agriculture

to determine matters of policy—to exercise an insufficiently limited discretion—with respect to those taxes. Any such evil was cured, any such abdication ceased, when Congress by the amendatory legislation clearly exercised its own discretion and itself determined that as a matter of policy these taxes were proper. This is recognized by the decision in ~~the only case brought to our attention in which the question has been presented~~, *Fisk* v. *The City of Kenosha, supra.* In this decision, Chief Justice Dixon, in elucidating the opinion of Justice Paine after his decease, stated (p. 33):

> I do not understand Justice Paine to hold that subsequent legislative ratification is in all cases impossible. I understand him as holding that it was no valid or sufficient ratification here, because it appears that the legislative discretion to restrict the power of taxation, of contracting debts, and of loaning the credit of the city, has never been exercised.

Certainly the policy on which the limitation of congressional delegation of legislative power is based would not be violated by giving effect to the ratification here. If Congress may ratify that which it did not attempt to authorize in the first place, as in the *Heinszen* and *Rafferty* cases, *supra,* it seems that Congress surely should have the right to validate when the only defect is its own failure to authorize correctly.

The ratification here could not be successfully attacked on the ground that Congress did not have

power to impose this tax at the time of ratification. A tax is not necessarily invalid because retroactively applied. Taxing Acts having retroactive features have been upheld in view of the particular circumstances disclosed. *Milliken* v. *United States,* 283 U. S. 15; *Stockdale* v. *Insurance Companies,* 20 Wall. 323, 331; *Cooper* v. *United States,* 280 U. S. 409; *Railroad Co.* v. *Rose,* 95 U. S. 78, 80; *Railroad Co.* v. *United States,* 101 U. S. 543, 549; *Flint* v. *Stone Tracy Co.,* 220 U. S. 107; *Billings* v. *United States,* 232 U. S. 261, 283; *Brushaber* v. *Union Pac. R. R.,* 240 U. S. 1, 20; *Lynch* v. *Hornby,* 247 U. S. 339, 343; *Hecht* v. *Malley,* 265 U. S. 144, 164.

The amendment is not subject to the objection that it "would be to impose an unexpected liability that if known might have induced those concerned to avoid it and to use their money in other ways"—the element essential to invalidate a retroactive excise. *Lewellyn* v. *Frick,* 268 U. S. 238, 252.[48]

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[48] Likewise, *Nichols* v. *Coolidge*, 274 U. S. 531, and *Blodgett* v. *Holden*, 275 U. S. 142, seem to have been decided upon the principle that:

> It seems wholly unreasonable that one who, in entire good faith and without the slightest premonition of such consequence, made absolute disposition of his property by gifts should thereafter be required to pay a charge for so doing (275 U. S. 147).

Percy K. Hudson v. *United States*, decided by the Court of Claims on November 4, 1935, not yet officially reported, which involved the tax levied by the Silver Purchase Act, was decided on the same ground.

Processors have conducted their businesses in the knowledge that a processing tax was being collected in the name of the United States, under color of a statute enacted by the Congress, intending and attempting to impose the tax. The situation is comparable to that involved in *Milliken* v. *United States, supra,* wherein rates on gifts in contemplation of death were raised retroactively. The Court said (p. 23):

> Not only was the decedent left in no uncertainty that the gift he was then making was subject to the provisions of the existing statute, but in view of its well understood purpose he should be regarded as taking his chances of any increase in the tax burden * * *.

Congress having the power to impose the tax, respondents could not have processed without the payment of a processing tax, had it not been for the defect of unlawful delegation of power which has been assumed. It is submitted that this privilege with notice of the assessment and collection of the tax suffices to support a retroactive levy. *United States* v. *Heinszen & Co., supra.* In this case, therefore, there existed the power to do the ratified act at the time of ratification, which was missing in *Forbes Boat Line* v. *Board of Commrs.,* 258 U. S. 338. The decision in the *Forbes Boat Line* case seems to be distinguishable from the earlier case of *United States* v. *Heinszen & Co., supra,* and the later case of *Graham & Foster* v. *Goodcell,* 282

U. S. 409, on the ground that the *Boat Line* decision involved private contractual rights which could not be taken away by a legislature after they were once vested, while the latter two cases and the instant case involve taxation in which the rights of individuals are subject to the higher rights of the Nation or the State. *Hodges* v. *Snyder,* 261 U. S. 600; *Seattle* v. *Kelleher,* 195 U. S. 351, 359.

The power of ratification is necessary that government may not be defeated by omissions or inaccuracies in the exercise of functions necessary to its administration. And whether or not the effect of the amendment be retrospective, no injustice results, nor have rights vested unsubjected to higher rights of government, for at the time of the consummation of acts upon which the excise is imposed, a tax was being collected in the name of the United States under the color of an Act of Congress.

We submit that the ratification, whether considered as such or as a retroactive levy, is good and obviates any objection to the taxes on the ground of delegation of legislative power.

VII

THE PROCESSING AND FLOOR-STOCKS TAXES DO NOT CONTRAVENE THE FIFTH AMENDMENT

So far as the application of the Fifth Amendment is concerned, the guarantee of due process requires only that the law shall not be unreasonable, arbitrary, or capricious, and that the means

selected shall have a real and substantial relation to the object sought to be attained. *Helvering* v. *City Bank Farmers Trust Co.,* decided by this Court Nov. 11, 1935; *Nebbia* v. *New York,* 291 U. S. 502, 525; *Retirement Board* v. *Alton R. Co.,* 295 U. S. 330, 347 (footnote 5).

No valid challenge on this score lies to the levy and the collection of taxes under the Agricultural Adjustment Act. As this Court pointed out in *Magnano Co.* v. *Hamilton,* 292 U. S. 40, 44:

> Except in rare and special instances, the due process of law clause contained in the Fifth Amendment is not a limitation upon the taxing power conferred upon Congress by the Constitution.

Of the rare and special instances so recognized, none is found in the method of raising revenue here adopted.

The Fifth Amendment is not violated because the tax operates on some commodities and not on others. Congress may make reasonable classifications of objects to be taxed and select from the same in its discretion. *McCray* v. *United States,* 195 U. S. 27. As long as the classification is not simply arbitrary and entirely unnatural, as long as it is based on some practical distinction, no objection can be made. *Nicol* v. *Ames,* 173 U. S. 509, 521. It has always been recognized that the legislature possesses the most ample authority to select some and omit other possible subjects of excises, to select one calling and omit another, to

tax one class of property and to forbear to tax another. *Flint* v. *Stone Tracy Co.*, 220 U. S. 107.[49] It is self-evident that the basic agricultural commodities, as defined in the statute (Sec. 11), are more widely produced and used than many other agricultural commodities. A tax upon their processing would, therefore, be better calculated to achieve the Congressional purpose of raising revenue than a tax on the processing of other agricultural products which are not so important commercially. There is nothing arbitrary or unreasonable in recognizing this fact and in applying a tax in accordance therewith.

Nor is there anything arbitrary or capricious about selecting processing as the particular use of the commodity which is to be taxed. As indicated by the decisions of this Court upholding excise taxes on a great variety of uses of property (see cases set forth, *supra,* pp. 30–31), Congress may choose any of the uses of the commodity it wishes on which to levy the excise.

Objection to the rate of the tax will not lie under the Fifth Amendment. There is no limit on the

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[49] See first footnote on page 160 of that opinion for an extensive collection of cases permitting selections and classifications of various kinds. See also *Alaska Fish Co.* v. *Smith*, 255 U. S. 44, where a tax upon a use of herring was sustained although the similar use of other kinds of fish was not taxed; *Haavik* v. *Alaska Packers Assn.*, 263 U. S. 510, upholding a tax which discriminated against nonresident fishermen in favor of residents; and *Billings* v. *United States*, 232 U. S. 261, sustaining an excise on the use of foreign-built yachts.

burden which Congress may impose by taxation. The rate of the tax is in the sole discretion of that body. *McCulloch* v. *Maryland,* 4 Wheat. 316; *Fox* v. *Standard Oil Co.,* 294 U. S. 87, 99; *Stewart Dry Goods Co.* v. *Lewis,* 294 U. S. 550, 562; *Magnano Co.* v. *Hamilton, supra.* No principle is known which circumscribes the factors to be used by Congress in arriving at its rate, whether such factors remain completely unexpressed, are expressed in the Committee Reports, or are expressed in the Act itself. As stated in *Patton* v. *Brady,* 184 U. S. 608, 619, 620, "the obligation of the individual to the State is * * * proportioned to the extent of the public wants. * * * Taxation may run *pari passu* with expenditure"; and when Congress determines to tax, the rate is within its discretion "and the judgment of Congress in respect thereto is not subject to judicial challenge."

In this connection it should be pointed out that the contention that *Heiner* v. *Donnan,* 285 U. S. 312; *Nichols* v. *Coolidge,* 274 U. S. 531; *Schlesinger* v. *Wisconsin,* 270 U. S. 230; and *Hoeper* v. *Tax Commission,* 284 U. S. 206, prohibit the fixing of the rate of tax with reference to factors not related to the taxpayer is based on a confusion of the principles governing the selection of rates with those governing the subjects which may be included in the measure of the tax to which the rate is to be applied. The cited cases deal only with the inclusion of improper subjects in the measure of the

tax. In each of those cases the tax was imposed upon property which the taxpayer had wholly disposed of before the effective date of the Act, or, as in the *Hoeper* case, never at any time owned, with the result that one person's tax was measured by property belonging to another. No question of the *rate* of the tax was involved. The respondents here cannot complain that the *measure* of the tax has no relation to their business. Their assessments are measured solely by the number of pounds of cotton put through their plant. The measure is dependent upon their own activities. No improper subjects are included in that measure. Respondents are not taxed on property belonging to another. The fact that the *rate* of tax is determined by reference to considerations having nothing to do with respondents is immaterial. Tax rates are not fixed solely according to the affairs of the taxpayer. They are determined by Congress in the exercise of its own discretion, and in making such determination Congress may consider such factors as it sees fit. See *Patton* v. *Brady, supra.*

It has been argued that these taxes are not for a public purpose in that they take property from one class and give it to another class for the private benefit of the latter, and that, therefore, they offend the Fifth Amendment. But this contention is simply another way of challenging the character of these taxes as revenue measures. We have shown that, considered separate and apart from the

use of their proceeds, the provisions imposing processing and floor stocks taxes are unquestionably revenue measures. (*Supra,* pp. 24–29.) The money collected from these taxes goes into the Treasury of the United States. In the absence of some further showing, it must be presumed that tax money which goes into the Treasury will be used for a purpose within the powers of Congress. If the money is so used, certainly no objection could be made on the ground that the taxes are not levied for a public purpose. *Mountain Timber Co.* v. *Washington,* 243 U. S. 219; *Noble State Bank* v. *Haskell,* 219 U. S. 104. If the levy is truly one to raise revenue for purposes within the power of the Government, it cannot be invalid on the ground that it takes private property or that it bears mainly on one class. *Veazie Bank* v. *Fenno,* 8 Wall. 533. All taxes take private property; most bear more heavily upon one class than upon another. All money expended by a government must necessarily be paid out to persons, and very seldom are the persons who receive the money in the same class as those taxed. Consequently, the argument here that these taxes unlawfully take property from one class and give it to another amounts to no more than the proposition that the money, after it gets into the Treasury, will be taken out for rental and benefit payments to farmers and that such payments are not within any of the powers of Congress.

This contention is the basic argument underlying most of the points urged by respondents and our answer to it is twofold. First, we will urge (*infra,* pp. 122–135) that respondents, as taxpayers, should not be allowed to defeat payment of their otherwise valid taxes by challenging the appropriation by Congress of the proceeds of the taxes. And, second, we will show (*infra,* pp. 135–241) that Congress does have power to provide for rental and benefit payments to farmers to carry out the declared policy of the Act; that in so doing Congress does no more than exercise its power to levy taxes and appropriate the proceeds thereof for the general welfare. If either of these two positions is well taken, the argument that the taxes take property from one class and unlawfully bestow it on another cannot succeed.[50]

We submit, then, that in the levy and collection of the taxes there is no violation of the Fifth Amendment.

VIII

RESPONDENTS SHOULD NOT BE ALLOWED TO QUESTION THE APPROPRIATION AS A DEFENSE TO THE PAYMENT OF THEIR TAXES

Heretofore we have sought to show that the taxing sections of the Agricultural Adjustment Act, considered apart from the use made of the proceeds to be derived thereunder, are valid. In dealing with objections raised under the Fifth Amend-

[50] On the question of public purpose see pp. 227–240, *infra.*

ment, we have expressed the view that the objections to these taxes are in final analysis based upon the ground that Congress has not acted within its powers in appropriating the proceeds to the making of rental and benefit payments to farmers. We now urge that as a matter of public policy respondents should not be permitted to question the appropriation as a defense to the payment of their taxes.

This Court has recognized that "The power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man." *Nicol* v. *Ames,* 173 U. S. 509, 515. The Court has further specifically recognized the danger to the normal functioning of government if it be subjected to interruption by taxpayers who object to the purposes for which Congressional appropriations are made. *Massachusetts* v. *Mellon,* 262 U. S. 447, 487. If respondents may question the propriety of the appropriations contained in the Agricultural Adjustment Act, their action will constitute a new type of attack, not sanctioned by any prior decision of this Court, upon the vital power of taxation.

It is no new departure for Congress to announce in a taxing statute the purposes for which the reve-

nues to be derived thereunder are intended.[51] Since taxes are levied only to provide funds needed to

[51] Congress has often expressed in taxing Acts the purpose of the tax, both by making actual appropriations in the Act of the revenues to arise therefrom and by earmarking the revenues for a particular expenditure. Thus, actual appropriations were made by the Act of March 3, 1791, c. 15, 1 Stat. 199, 213–214, where a tax was levied on spirits and it was provided that the proceeds thereof were pledged and appropriated for the payment of interest on loans and the payment of the public debt; the Act of May 8, 1792, c. 32, 1 Stat. 267, 270, levying a tax on spirits and pledging and appropriating the proceeds to the purposes set forth in the Act of March 3, 1791, and in the Act of May 2, 1792, *infra;* the Tariff Act of March 3, 1797, c. 10, 1 Stat. 503, appropriating the duties derived thereunder (1) to the payment of the Federal foreign debt and (2) to the payment of the debt owing to the Bank of the United States; the Tariff Act of May 13, 1800, c. 66, 2 Stat. 84, appropriating the proceeds to the discharge of interest and principal of the debts of the United States. And revenues were earmarked for particular expenditures in the Tariff Act of May 2, 1792, c. 27, 1 Stat. 259, 262, where it was provided that the surplus of the duties levied thereunder were to be applied to carry out a Federal Act for the protection of the frontiers of the United States; the Act of March 26, 1804, c. 46, 2 Stat. 291, increasing all tariffs and providing that the proceeds from the increase go into a separate fund to be used for the sole purpose of carrying on a war against the Barbary powers; the Liquor Tax Act of December 21, 1814, c. 15, 3 Stat. 152, which authorized the Secretary of the Treasury to pledge the proceeds thereof in obtaining a loan on such a pledge; the Revenue Act of 1917, c. 159, 39 Stat. 1000, providing that the taxes collected under Title II and one-third of the taxes collected under Title III of that Act should constitute a separate fund for expenditures under certain acts providing for war preparedness; the tax on the sale of motor fuels sold in the District of Columbia, Act of April 23, 1924, c. 131, 43 Stat. 106, wherein it is specified that the proceeds were to be available only for road improvement and repair. See also Seligman, Essays in Taxation (1895 Ed.), pp. 345–349.

carry on governmental activities, it seems apparent that there is a natural and proper relation between the amount of anticipated governmental expenditures and the amount of revenue to be raised by taxes.[52]

This Court has specifically recognized that this relationship is a normal and necessary incident of the legislative function. In *Knights* v. *Jackson,* 260 U. S. 12, it was said (p. 15):

> The reimbursement [of cities and towns in the State of Massachusetts for specified increases in the salaries of school teachers, supervisors, superintendents and the like] from the general funds of the Commonwealth was lawful and *to make it the funds must be provided.* The fact that the end was contemplated * * * is no more than was necessary in some form to bring about the result. (Italics supplied.)

The opinion in *Patton* v. *Brady,* 184 U. S. 608, 620, contains the following:

> A war had been declared. National expenditures would naturally increase and did

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[52] See the report of the Select Committee on the budget of the House of Representatives (H. Rep. No. 14, 67th Cong., 1st Sess.) commenting on the importance of considering expenditures along with revenue. Indeed, some proponents of governmental budgetary reform believe the connection should be made obligatory by law. For example, Senate Joint Res. No. 123 of the present Congress would require any appropriation in excess of estimated revenues to be accompanied by taxation provisions designed to raise, within not more than fifteen years, revenue equal to the excess.

> increase by reason thereof. Provision by way of loan or taxation for such increased expenditures was necessary. There is in this legislation, if ever such a question could arise, no matter of color or pretence. There was an existing demand, and to meet that demand this statute was enacted. * * * Taxation may run *pari passu* with expenditure. The constituted authorities may rightfully make one equal the other.

It has been the uniform practice in both the House and the Senate to consider the financial needs of the Government in the preparation of revenue bills.[53] The Budget and Accounting Act of June 20, 1921 (c. 18, 42 Stat. 20, 21), provides that if the estimated receipts are less than the estimated expenditures for the ensuing fiscal year, the President in the Budget shall make recommendations to Congress for new taxes, loans, or other appropriate action to meet the estimated deficiency.

We submit "it is of much significance that no precedent sustaining the right to maintain suits like

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[53] See House Hearings, p. 1, Revenue Act of 1934; House Hearings, p. 1, Revenue Act of 1932; Senate Hearings, p. 1, Revenue Act of 1932; House Hearings, p. 1, Revenue Act of 1928; Senate Hearings, p. 269, Revenue Act of 1928; House Hearings, p. 1, Revenue Act of 1926; Senate Hearings, p. 1, Revenue Act of 1926; House Hearings, p. 317, Revenue Act of 1924; Senate Hearings, pp. 1, 39, Revenue Act of 1924; House Hearings, Executive Session, p. 384, Revenue Act of 1921; Senate Hearings, letter from the Secretary of the Treasury, p. 7, Revenue Act of 1921; House Hearings, pp. 9, 13, Revenue Act of 1918.

this" can be found. See *Massachusetts* v. *Mellon, supra,* at p. 487.

In *Field* v. *Clark,* 143 U. S. 649, it was not necessary to consider the right of a taxpayer, or indeed of any citizen, to question the disposition of public funds. In *United States* v. *Gettysburg Electric Railway,* 160 U. S. 668, the case arose under an attempt to condemn lands in the course of administering an appropriating statute. The railroad company was not objecting to the essential governmental function of raising revenue; it was not even objecting to the right to appropriate; it merely raised the time-honored claim that the courts should determine *whether its land was being taken for a public purpose.*

Again, in *United States* v. *Realty Co.,* 163 U. S. 427, the objection to the appropriation involved was not raised by a taxpayer. There the appropriation was questioned by the United States itself,[54] in response to the claim of an individual inincluded within the terms of the Congressional Act providing for sugar bounties. It is significant that even under these circumstances this Court said that the decision of Congress appropriating money for the payment of a claim recognized by it, "can

[54] The Federal Government's position was taken because of the declaration by the Court of Appeals of the District of Columbia in a similar case (*Miles Planting Co.* v. *Carlisle,* 5 App. D. C. 138) that the sugar bounties were unconstitutional. 163 U. S. at pp. 432–433.

rarely, if ever, be the subject of review by the judicial branch" (p. 444).

We submit that the doctrine enunciated by this Court (*United States* v. *Realty Co., supra,* p. 433) that an appropriation by Congress should be subjected to the scrutiny of the courts "only when absolutely necessary to the determination of the rights of the parties", forbids a taxpayer, subject to a tax which time has demonstrated to be an eminently appropriate and reasonable means of raising revenue, from defeating the payment of that tax by questioning a proposed expenditure of governmental funds which does not touch him or his property in any sense more directly than it affects the citizens of the nation in general. The raising and appropriating of revenue is essentially of public, not of private, concern. A contrary conclusion in this case would both enlarge the prior ambit of court review of Congressional appropriations and subject the vital power of taxation to new limitations.

The Constitution has provided in the legislative procedure required for the raising of public moneys a special safeguard against abuse that is not applicable to other functions of Congress. By Article I, Section 7, "All Bills for raising Revenue shall originate in the House of Representatives; * * *." As appears from the views of many of those who participated in the framing or adoption of the Constitution or in the early activi-

ties of the Government it created (see *infra,* pp. 173–177), this was considered to be the only appropriate or practicable check upon the wisdom of Congressional taxation and was at the same time regarded as ample protection against the possibility of unjust exactions.

This Court has noted how effective a guarantee against the unwise exercise of great governmental powers the people possess in the responsiveness of frequently elected representatives to the will of their constituents. For example, in *McCulloch* v. *Maryland,* 4 Wheat. 316, speaking of the discretion of Congress concerning the rate of taxation, it is said (p. 428):

> The only security against the abuse of this power, is found in the structure of the government itself. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation.[55]

Again, in refusing to interfere with the discretion of the political branch of the Government in the exercise of power conferred by Article IV, Section 4 of the Constitution, guaranteeing to every state a republican form of Government, this Court in *Luther* v. *Borden,* 7 How. 1, said (p. 44):[56]

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[55] See *Magnano Co.* v. *Hamilton,* 292 U. S. 40, and *Pacific Insurance Co.* v. *Soule,* 7 Wall. 433, 443.

[56] See also a similar statement of this Court in *United States* v. *San Jacinto Tin Co.,* 125 U. S. 273, 284, where there was sustained the plenary power of the Attorney General over litigation involving the interest of the United States.

> * * * the elevated office of the President, chosen as he is by the people of the United States, and the high responsibility he could not fail to feel when acting in a case of so much moment, appear to furnish as strong safeguards against a wilful abuse of power as human prudence and foresight could well provide.

We submit that wise public policy requires that no taxpayer may avoid the payment of otherwise valid taxes by questioning the purpose of the levy or of an appropriation contained in the taxing statute. The appropriateness of such a rule is particularly apparent where, as here, it is not possible to ascertain the exact use to which the taxpayers' money will be put.[57]

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[57] The decision in *Field* v. *Clark*, *supra*, is not contrary to this position. This Court there refused to consider an appropriation contained in the Tariff Act on the ground that the appropriating provision was separable. It is true that language used (p. 696) in the opinion might be construed as intimating that if the Act were inseparable the appropriation would be reviewable. However, it is apparent that this Court did not find it necessary to consider the considerations of public policy there urged or the effect of the uncertainty as to whether the taxpayer's money will be used for the purpose attacked. Indeed, any intimation to the contrary in *Field* v. *Clark* would seem to be inconsistent with the reasoning of this Court in the later case of *Massachusetts* v. *Mellon*, *supra*. Nor does the decision in *Head Money cases*, 112 U. S. 580, present an instance in which a taxpayer was permitted to challenge the purpose for which a tax was levied. The exaction imposed in that case did not purport to be levied under the taxing power. It was a mere attempt

As in the case of any other revenue measure, the proceeds of these taxes are to be paid directly into the Treasury of the United States. Section 19 (a). There they become part of the public funds. It is true that the Agricultural Adjustment Act in its original form contained an appropriation in the taxing Act itself. Section 12 (b). But this fact would not have made the money, if collected at that time, any the less a part of the public funds. See *Knights* v. *Jackson,* 260 U. S. 12. Furthermore, Congress was not foreclosed by its own appropriation. Money collected under the original Act could be used to defray any of the Government's expenses should Congress see fit to change the appropriation before the money was actually transferred from the general fund of the Treasury as a set-off against advances made out of that fund. Thus, until actual expenditure, it was not possible to say with certainty what the final use of the money collected under the original Act might be. This is illustrated by the fact noted below that since respondents' taxes fell due, Congress has already once changed the appropriation and specified objects not before included. Whether this might be done again cannot be foretold, but the fact remains that, at any time prior to the transfer, which generally occurs at the end of the fiscal year,

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by means of an exaction to effect a regulation of commerce. See page 595. Furthermore, this Court indicated that had it been a true tax it would have been valid as being for the general welfare. *Ibid.*

the taxes paid into the fund of the Treasury may be reappropriated.

That this possibility of reappropriation in itself is sufficient to forbid the striking down of a tax on the ground that the appropriation contained in the taxing act is invalid, was expressly recognized by this Court in the *Head Money Cases,* 112 U. S. 580. The Court there said (pp. 599–600):

> The act itself makes the appropriation, and even if this be not warranted by the Constitution, it does not make void the demand for contribution, which may yet be appropriated by Congress, if that be necessary, by another statute.

In the case of respondents' taxes, not only is the use uncertain because of the power of Congress to change the appropriation, but also the use is made even more uncertain by the terms of the appropriation provisions found in the Agricultural Adjustment Act itself. Section 12 (b) of the original act appropriated the proceeds from all taxes imposed under the title to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products, and the following purposes under part 2 of the title: Administrative expenses, rental and benefit payments, and refunds on taxes. The section further provided that advances might from time to time be made from the Treasury to the Secretary of Agriculture and that the Treasury should be reimbursed out of the proceeds of the taxes. Also, subdivision (a) of the section

specifically appropriated, out of any money in the Treasury not otherwise appropriated, $100,000,000 to be used for administrative expenses and rental and benefit payments. Thus, by reason of the terms of the original appropriation itself, the actual use to which respondents' taxes would be put was unascertainable. They might have gone for one or more of several purposes other than rental and benefit payments, including expansion of markets, removal of surplus agricultural products, and reimbursement of the Treasury.

But, since the decision below in this case, Congress has changed the appropriation in such a way as to cast further doubt upon the eventual use of respondents' money. Section 12, the appropriation section of the Act, was amended by Section 3 of the amendments to the Agricultural Adjustment Act approved August 24, 1935, so that, although as before, the money arising from these taxes ~~is not directly appropriated for any purpose, but~~ simply goes into the Treasury and is there commingled with other public funds, now the appropriation is out of the general funds of the Treasury in an amount equivalent to the taxes collected under the Agricultural Adjustment Act. Also, under the appropriation the Secretary of Agriculture may now use any part of the money for additional kinds of payments and for the acquisition of agricultural commodities pledged as security for certain loans made by Federal agencies. Thus, additional objects of expenditure and additional elements of uncertainty have been introduced. Consequently even

if respondents' attack on the rental and benefit program were sustained, it could hardly be said that the proceeds of the taxes here involved necessarily would go to that purpose. It is true that at the time respondents' taxes were due these amendments had not been passed. Nevertheless, the money was not then paid, and even if it had been, it might not have been spent prior to the adoption of the amendments. If the money is now paid, it will be subject to the Act as it now stands, provided no further changes are made by Congress. It would seem that in attempting to ascertain the use to which respondents' money will be put the amendments must be considered. However, whether the Act is considered in its original form or as amended, the eventual, actual use of respondents' money is uncertain and indeterminable.

This Court decided in *Massachusetts* v. *Mellon,* 262 U. S. 447, that a Federal taxpayer had no right to seek the aid of a court in questioning the appropriation to be made of revenues raised by taxation. The grounds for the decision in the *Mellon* case were that the administration of appropriation Acts was essentially a matter of public, not individual, concern, and that the taxpayer's interest in the appropriation concerned was indeterminable. So here we have an appropriation Act of great public concern and a taxpayer whose interest, as we have seen, is not definitely ascertainable. To permit the appropriation to be challenged here would enlarge the rights of taxpayers beyond what has ever been recognized in the past.

If the Court agrees with our suggestion that respondents should not be allowed to question the appropriation as a defense to the payment of their taxes, then the contention that the taxes are not revenue measures because their proceeds are unlawfully used (*supra*, p. 29), and the contention that the taxes are not for a public purpose in that they take property from one class and transfer it to another in violation of the Fifth Amendment (*supra,* p. 122) are disposed of.

If the Court disagrees with the above suggestion and permits respondents to question the appropriation, then it is our position (1) that Congress may appropriate and expend moneys for the general welfare; (2) that the general welfare should be construed broadly to include anything conducive to the national welfare, the clause not being limited to the enumerated powers; (3) that Congress is the primary judge of what is for the general welfare and the courts will not substitute their judgment for the judgment of Congress; (4) and that in any event the appropriation here was for the general welfare.

IX

CONGRESS MAY APPROPRIATE PUBLIC MONIES TO PROVIDE FOR THE GENERAL WELFARE

Article I, Section 8, of the Constitution empowers Congress—

> To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; * * *.

We conceive that it is universally recognized that under this provision Congress may lay and collect taxes and excises and appropriate the revenues derived therefrom [58] to provide for the general welfare of the United States. Controversy arises only as to the scope to be given to the phrase "general welfare."

1. The general welfare clause should be construed broadly to include anything conducive to the national welfare; it is not limited by the subsequently enumerated powers

Three different theories exist as to the proper interpretation to be given the general welfare clause: First, it is said that the clause should be construed as granting Congress power to promote

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[58] This Court has determined that since by this provision Congress has the authority to lay taxes to pay the debts of the United States, "it of course follows that it has power when the money is raised to appropriate it to the same object." *United States* v. *Realty Co.*, 163 U. S. 427, 440. See also *Legal Tender Case*, 110 U. S. 421, 440. This reasoning compels the like conclusion that if Congress may lay taxes to provide for the general welfare, it must follow that it may appropriate for the same purpose the revenues derived from such taxes. It should be noted that the power of Congress to expend Federal funds may also be based upon Article IV, Section 3, Clause 2, of the Constitution which gives Congress power "to dispose" of the "property" of the United States. See for a full discussion of the applicability of this clause to the disposition of public moneys the brief filed by the late Joseph H. Choate in *United States* v. *Realty Co.*, 163 U. S. 427, No. 870, October Term, 1895.

the general welfare independently of the taxing power.[59] This view has generally been rejected. Secondly, it is said that the general welfare clause is a limitation on the taxing power; that the clause itself has reference to and is limited by the subsequently enumerated powers; that is, that Congress can tax only to carry out one or more of these latter powers. This is known as the Madisonian theory. Thirdly, it is said that while the clause is a limitation on the taxing power, it was intended to embrace objects beyond those included in the subsequently enumerated powers; that is, that although Congress may not accomplish the general welfare independently of the taxing power, nevertheless it may tax (and appropriate) in order to promote the national welfare by means which may not be within the scope of the other Congressional powers. This is commonly known as the Hamiltonian theory. That this third, or middle ground is the correct theory, is, we submit, clearly shown by the plain language of the Constitution; by the circumstances surrounding the adoption of the clause; by the opinion of most of those who participated in the early execution of the Constitution; by the opinion of later authorities on the Constitution; and finally by the long-continued practical con-

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[59] See Remarks of Representative David J. Lewis, in House of Representatives, June 29, 1935, Cong. Rec., 74th Cong., 1st sess., Vol. 79, Part 10, pp. 10, 399–10, 411.

struction given the clause during the entire course of our Constitutional history.[60]

2. The Madisonian theory does violence to the plain language of the Constitution

Congress is empowered to lay taxes "to provide for the * * * general Welfare." We submit that the clause means exactly what it says; that Congress may tax to provide for the general, as distinguished from local, for the national, as distinguished from state, welfare. We merely ask the Court to accept the plain, natural, and unambiguous meaning of the words used. As Mr. Justice Story observed, the words have a "natural and appropriate meaning as a qualification of the preceding clause to lay taxes. Why, then, should such a meaning be rejected?" (Story on the Constitution, Sec. 912.)

Those advocating the Madisonian theory say that the natural meaning should be rejected because the clause is without significance; that it is merely a superfluous rhetorical flourish, and is defined by the subsequent enumeration of Congressional powers, to which it is simply an introduction. (See

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[60]Although this Court has never thus far directly passed on the meaning of the clause, the question has been elaborately discussed in the briefs filed in *Field* v. *Clark*, 143 U. S. 649; *United States* v. *Realty Co.*, 163 U. S. 427; *Smith* v. *Kansas City Title Co.*, 255 U. S. 180; *Massachusetts* v. *Mellon*, 262 U. S. 447, and we believe, for reasons which appear at pp. 170–172, infra, that the view here urged is supported by prior decisions of this Court.

1 Richardson's Messages & Papers of the Presidents, 585.) But such a contention violates the basic principle of Constitutional construction, laid down in *Holmes* v. *Jennison,* 14 Pet. 538, 570–571:

> In expounding the constitution of the United States, every word must have its due force and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added * * *. No word in the instrument, therefore, can be rejected as superfluous or unmeaning; * * *.

The fallacies of the Madisonian theory are thus exposed by Mr. Justice Story (Story, op. cit., Secs. 912–913):

> * * * there is a fundamental objection to the interpretation thus attempted to be maintained, which is that *it robs the clause of all efficacy and meaning.* No person has a right to assume that any part of the Constitution is useless, or is without a meaning; and *a fortiori* no person has a right to rob any part of a meaning, natural and appropriate to the language in the connection which it stands * * *. It is not said to "provide for the common defense, and general welfare, *in the manner following, viz.*", which would be the natural expression to indicate such an intention. But it (the clause) stands entirely disconnected from every subsequent clause, and is no more a part of them than they are of the power to lay taxes. (Italics supplied.)

The Madisonian theory attempts to explain away the constitutional provision, not to expound and apply it. Such a construction of the power of taxation, the "sole means by which sovereignties can maintain their existence" (see *Bank of Commerce* v. *Tennessee,* 161 U. S. 134, 146) would transform this great independent mandate into a mere incident of other powers. This not only robs the words of their natural meaning but is inconsistent with another principle of constitutional construction. As announced by Chief Justice John Marshall in *Gibbons* v. *Ogden,* 9 Wheat. 1, 187, 188:

> This instrument contains an enumeration of powers expressly granted by the people to their government. It has been said, that these powers ought to be construed strictly. But why ought they to be so construed? Is there one sentence in the constitution which gives countenance to this rule? * * * What do gentlemen mean, by a strict construction? If they contend only against that enlarged construction, which would extend their *natural* and *obvious* import, we might question the application of the term, but should not controvert the principle. If they contend for that narrow construction which, in support of some theory not to be found in the constitution, would deny to the government those powers which the words of the grant, *as usually understood,* import, and which are consistent with the general views and objects of the instrument—for that narrow construction, which would

> cripple the government, and render it unequal to the objects for which it is declared to be instituted, and to which the powers given, *as fairly understood*, render it competent—then we cannot perceive the propriety of this strict construction, nor adopt it as the rule by which the constitution is to be expounded. (Italics supplied.)

It does not aid the opponents of this view to state that the clause must be considered in the light of the nature of the Federal Government. The very question in issue is whether the nature of the Government of the United States is such that its power to spend money is limited to furtherance of its enumerated regulatory or coercive powers, or whether it may appropriate its funds for additional purposes of vital concern to the national Government.

3. The circumstances surrounding the adoption of the clause and the opinions of most of those who participated in the adoption and early execution of the Constitution support this view

Section 8 of the Articles of the Confederation provided for the defraying out of a common treasury of "all charges of war, and *all other expenses that shall be incurred for the common defence or general welfare.*" (Italics supplied.) Thus the general welfare clause was lifted bodily from the Articles of Confederation, and the power under the Constitution, so far as appropriations were concerned, are certainly as great as those which existed under the Confederation, which was meant to

create only a loose association of independent States, not a nation. The Constitution simply changed the method of obtaining revenue—from requisition on the States to direct taxation.

The clause was not given a restricted meaning under the Articles of the Confederation and *a fortiori* it should not be restricted under the Constitution. Madison, himself, admitted that the practice under this clause of the Articles of Confederation was one of "undefined authority." 9 Writings of James Madison (Hunt Ed.), pp. 411–424, 370–375; 4 Madison, Letters and Writings, p. 126. And Mr. Sherman said in the Convention—"Congress, indeed, by the Confederation, have the right of saying *how much* the people should pay and *to what purposes it should be applied;* * * *." V Elliott Debates (2d ed.), p. 218. (Italics supplied.) And Mr. Nicholas in the Virginia Convention, referring to the welfare clause, said (III Elliott's Debates, 2d ed., pp. 244–245):

> It is a power which is drawn from his favorite Confederation, the 8th Article * * *. The common defense and general welfare are the objects expressly mentioned to be provided for, in both systems. The power in the Confederation to secure and provide for those objects was constitutionally unlimited. The requisitions of Congress are binding on the states, though, from the imbecility of their nature, they cannot be enforced. *The same power is intended*

> *by the Constitution.* The only difference between them is, that Congress is, by this plan, to impose the taxes on the people, whereas, by the Confederation, they are laid by the states. The amount to be raised, and the power given to raise it, is the same in principle. The mode of raising only is different, and this difference is founded on the necessity of giving the government that energy without which it cannot exist. (Italics supplied.)

Since the welfare clause under the Articles of the Confederation gave the Continental Congress the right to say *to what purposes* public monies should be applied, the use of the identical language in the Constitution should give no less power to the Congress it created. It is unthinkable to us that our forefathers, in founding a new government with decidedly stronger power over the raising of revenues, should intend to lessen the new government's power over appropriations. It is even more unthinkable that, if they had such an intention, they should evidence it through the use of precisely the same language as was employed under the old broad grant.

The circumstances under which the clause was adopted by the Constitutional Convention further indicate that it was meant to describe at the same time the fullness of the taxing power granted to Congress and the limitation upon that power,

namely, that it might not be used for purely local objects.

The first draft of the Constitution reported on August 6, 1787, contained most of the Congressional powers conferred by the final instrument, including the power to levy taxes and excises. But it included no general welfare clause. I Elliott's Debates, 2d ed., pp. 223–230. Many of the Congressional powers contained in the draft were adopted on August 16. *Ibid.,* p. 245. Thereafter, resolutions were considered which were directed specifically to Congressional power to provide for the general interests of the union and to pay debts incurred during the Revolutionary War and the Confederacy. *Ibid.,* pp. 247–248, 253–254, 256, 260, 264. Finally on September 12 the clause in its present form was first reported in a revised draft of the Constitution (*ibid.,* pp. 297–305); and on September 14 it was adopted (*ibid.,* p. 309), only three days before the Constitution was signed. (*Ibid.,* p. 317.) It is significant that the clause, adopted late in the Convention, was reported not by the committee on style but by a committee appointed to deal with matters not acted on or postponed. (*Ibid.,* pp. 280, 283.) Thus, the clause was adopted along with that relating to payment of the debts, after a prolonged discussion, not only of the Revolutionary debts, but also of the powers of Congress, as against that of the States, in regard to matters of general interest. Compare 4 Madison, Letters & Writings, p. 121 et seq.

Furthermore, it appears that before the clause was adopted there was a heated discussion over the power of taxation and that this bitter debate was prompted by a fear on the part of the representatives of the smaller States that the power might be exercised to the advantage of the larger States. We know that as a compromise it had been agreed (1) that direct taxes should be apportioned among all the States, and (2) that indirect taxes should be uniform among the States. In other words, it was required that all States should bear their fair share of the *burden* of taxation. Except for those limitations Congress was left with unlimited power to tax. See *Knowlton* v. *Moore,* 178 U. S. 41. It is only reasonable to suppose, therefore, that since the *burden* of taxation was to be borne by all the States, it was decided that the power of distributing the *benefits* of taxation should be limited to purposes serving the general good of all the States, and should not permit promotion of localized welfare of one or more of the larger States. This, we submit, is the logical explanation of the reasons for the adoption of the provision that taxes might be laid for that which would promote the general welfare. In any event, there is certainly nothing in the reports of the Convention to indicate that the words were employed in any other sense than their plain meaning imports.

Indeed, the discussion in the ratifying Conventions indicates clearly that the almost unan-

imous view, both of the proponents and opponents of the proposed Constitution, was that the clause was not limited by the enumerated powers. Thus, Mr. Gore in the Massachusetts Convention, speaking of the taxation clause, declared (II Elliott's Debates, 2d ed., p. 66):

> The exigencies of government are in their nature illimitable, so, then, must be the authority which can meet these exigencies.

In the same Convention Symmes declared (*id.*, p. 74):

> When Congress have the purse they are not confined to rigid economy, and the word debts here is not confined to debts already contracted; or indeed, if it were, the term "general welfare" might be applied to any expenditure whatever.

Alexander Hamilton, when battling with all his great genius a hostile sentiment in New York, did not fall back on any argument that the Constitution placed any check on the power of Congress to raise and appropriate money. On the contrary, he boldly declared (*id.*, p. 351):

> A constitution cannot set bounds to a nation's wants; it ought not therefore, to set bounds to its resources. * * * The contingencies of society are not reducible to calculations. They cannot be fixed or bounded, even in imagination.

In the same Convention, Mr. Smith said (*id.*, p. 334): "By this clause unlimited power in taxation

is given." And in the North Carolina Convention Goudy objected that (IV *id.*, p. 93): "The purse strings are given up by this clause." Mr. Randolph, in the Virginia Convention, declared (III *id.*, p. 466):

> They [Congress] have 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." Is this an independent, separate, substantive power, to provide for the general welfare of the United States? No, sir. They can lay and collect taxes, etc. For what? To pay the debts and provide for the general welfare. Were not this the case, the following part of the clause would be absurd. It would have been treason against common language. Take it all together, and let me ask if the plain interpretation be not this—a power to lay and collect taxes, etc., in order to provide for the general welfare and pay debts?

See also II *id.*, pp. 60, 63–64, 66, 71, 79 (Massachusetts); *id.*, 190, 195 (Connecticut); *id.*, pp. 330, 332, 338, 350, 351 (New York); *id.*, pp. 467–468, 501 (Pennsylvania); III *id.*, pp. 181, 443 (Virginia).[61]

It seems clear from these discussions that the Constitution was not adopted under any belief that

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[61] See also O. R. McGuire, The New Deal and the Public Money, 23 Georgetown Law Journal, pp. 155, 167 et seq. Excerpts from these debates are contained in Part B of the Appendix.

the welfare clause was limited by the enumerated powers which follow it. And it is certain that many of those who "acted a principal part" (see *Martin* v. *Hunter,* 1 Wheat. 304, 350) in the framing and adoption of the Constitution and in the earliest activities under its authority of the government it created were satisfied that the clause was not so limited.

Of Hamilton's opinion we have already spoken. In his Report on Manufactures (December 5, 1791), III Hamilton's Works (Hamilton Ed.), 192, 250, he set forth his views on the subject at some length. Among other things he said:

> The terms "general welfare" were doubtless intended to signify more than was expressed or imported in those which preceded; otherwise, numerous exigencies incident to the affairs of a nation would have been left without a provision. The phrase is as comprehensive as any that could have been used; because it was not fit that the Constitutional authority of the Union to appropriate its revenues should have been restricted within narrower limits than the "general welfare"; and because this necessarily embraces a vast variety of particulars, which are susceptible neither of specification nor of definition. * * * The only qualification of the generality of the phrase in question, which seems to be admissible, is this: That the object, to which an appropriation of money is to be made, be general, and

> not local; its operation extending, in fact, or by possibility, throughout the Union, and not being confined to a particular spot.

President Monroe in vetoing the Cumberland Road Bill on May 4, 1822, said (II Richardson's Messages and Papers of the Presidents, pp. 165, 173):

> More comprehensive terms than "to pay the debts and provide for the common defense and general welfare" could not have been used * * *
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> * * * * *
>
> My idea is that Congress have an unlimited power to raise money, and that in its appropriation they have a discretionary power, restricted only by the duty to appropriate it to purposes of common defense and of general, not local, national, not state benefit.[62]

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[62] It is interesting and important to note that Monroe's conclusions received the unofficial approval of Chief Justice Marshall and other members of the Supreme Court. 2 Warren, The Supreme Court in United States History, 55–57. Monroe had caused his views in connection with his veto of the Cumberland Road Bill to be sent to the Judges of the Supreme Court. It appears that Judge Johnson obtained the views of his associates and communicated them to the President, saying:

"Judge Johnson has had the honor to submit the President's argument on the subject of internal improvements and is instructed to make the following report. * * * they are all of the opinion that the decision in the Bank question [*McCulloch* v. *Maryland*] completely commits them on the subject of internal improvements as applied to post roads and military roads. *On the other points, it is impossible to resist the lucid and conclusive reasoning contained in the argument.*" (Italics supplied.)

The above is but typical of similar views entertained by most of the statesmen of the time.[63] There would seem no doubt that President Washington agreed with Hamilton and Monroe (Story on the Constitution, Sec. 978, note). And it is clear that John Quincy Adams was of the same opinion,[64] as was likewise Calhoun.[65] Henry St. George Tucker, of Virginia, representing a special committee of the House of Representatives in 1817, expressed the same opinion,[66] as did also Daniel Webster.[67] Apparently, Jefferson likewise shared this view, although his opinion on the Bank of the United States has been quoted both as supporting the Hamiltonian and the Madisonian view.[68]

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[63] For the Court's convenience we are setting forth in Part B of the Appendix the statements of many of these men. See also 36 Harvard Law Review, 548; 23 Georgetown Law Journal, 155; 22 Georgetown Law Journal, 207; 8 Virginia Law Review, 167–180; 42 Yale Law Journal, 878.

[64] See his letter to Mr. Stevenson, July 11, 1832, reprinted in Congressional Record, 49th Cong., 1st Sess., Vol. 17, Part 8, Appendix, pp. 226 to 229, Part B of Appendix.

[65] 30 Annals of Congress, 14th Cong., 2nd Sess., p. 855, Part B of Appendix.

[66] II American State Papers (Misc.), 443, 446, 447, Part B of Appendix.

[67] Webster's Great Speeches, 243, Part B of Appendix.

[68] IV Elliott's Debates, 2d ed., p. 610, Part B of the Appendix. See Story on the Constitution, Sec. 926 (note); 1 Hare, American Constitutional Law, 244, and see President Jackson's statements in his veto of the Maysville Road Bill set forth in Part B of the Appendix.

It is of interest that Madison himself in later years recognized that his view had not been followed in practice.[69] He wrote in 1831 that his opinion was "subject, as heretofore, to the exception of particular cases, where a reading of the Constitution different from mine may have derived from a continued course of practical sanctions an authority sufficient to overrule individual constructions" (4 Madison's Letters & Writings, 146). We shall demonstrate below (pp. 153–170, *infra*) that the "exceptions of particular cases" has been so significant as, by Madison's own test, to leave nothing of the original Madisonian doctrine.

It should also be remembered that although Madison played an active part in framing the Constitution, his advocacy, as against most of his contemporaries, of a strict construction of the entire Constitution, was in general a position which time has failed to vindicate. For example, as a member of the House of Representatives he strenuously opposed the Act creating a national bank, asserting that the proposal was unconstitutional. The bill was passed over his objection (2 Annals of Congress, p. 1894 et seq.). That the creation of such a

[69] Indeed, Professor Hare was of the opinion that Madison later reversed his opinion and adopted the view here supported. 1 American Constitutional Law 243–245, 248. Madison's later views are set forth in Part B of the Appendix.

bank was within the powers of Congress, was, of course, established by this Court in *McCulloch* v. *Maryland,* 4 Wheat. 316.

Not only was the Hamiltonian theory adopted by the "weight of contemporaneous exposition" (See *Martin* v. *Hunter,* 1 Wheat. 304, 350); it has been accepted by most of the later great commentators on the Constitution. See Mr. Justice Story, of whom we have already spoken; Pomeroy on the Constitution (3d ed., 1883), pp. 174–175; Willoughby on the Constitution, pp. 582–593; I Hare, American Constitutional Law, p. 241 et seq.; Mr. Justice Miller's "Lectures on the Constitution", pp. 229–231, 235; Burdick on the Constitution, Sec. 77.

Of even more importance than the opinions of these distinguished authorities is the practical construction placed on the clause by the earlier Congresses. Even as early as 1817, John C. Calhoun noted that "our laws are full of instances of money appropriated without any reference to the enumerated powers." (30 Annals of Congress, 14th Cong., 2nd Sess., p. 855.) Henry St. George Tucker, in 1817, noted the same fact (II American State Papers (Misc.), 443, 446, 447), as did also Mr. Justice Story, who observed that some of these appropriations were made "not silently, but upon discussion." (Story, op. cit., Sec. 991.) The action thus taken by the earlier Congresses, specific in-

stances of which are referred to hereafter at pp. 153–168, infra, and in Part C of the Appendix, in which sat many members of the Constitutional Convention, should of itself settle the construction to be given the clause in question. This Court has frequently stated that the early legislative exposition of the Constitution must be taken to fix the construction to be given its provisions. *Stuart* v. *Laird,* 1 Cranch 299, 309; *Martin* v. *Hunter,* 1 Wheat. 304, 351; *McCulloch* v. *Maryland,* 4 Wheat. 316, 401; *Cohens* v. *Virginia,* 6 Wheat. 264, 420; *Prigg* v. *The Commonwealth of Pennsylvania,* 16 Pet. 539, 621; *Cooley* v. *Board of Wardens of Port of Philadelphia,* 12 How. 299, 315; *Lithographic Co.* v. *Sarony,* 111 U. S. 53, 57; *Ames* v. *Kansas,* 111 U. S. 449, 465, 469; *The Laura,* 114 U. S. 411, 416; *Wisconsin* v. *Pelican Ins. Co.,* 127 U. S. 265, 297; *McPherson* v. *Blacker,* 146 U. S. 1, 28, 33, 35; *Knowlton v. Moore,* 178 U. S. 41, 56; *Fairbank* v. *United States,* 181 U. S. 283, 308; *Ex Parte Grossman,* 267 U. S. 87, 118; *Myers* v. *United States,* 272 U. S. 52, 175; *Hampton & Co.* v. *United States,* 276 U. S. 394.

4. The Hamiltonian view has been so continuously and so extensively followed by Congress that many of our most familiar and significant governmental policies and activities are dependent upon its validity

The practice of the earlier Congresses above adverted to has since been uniformly followed by Congress and the executive branch of the Govern-

ment, down to the present day. The list of such actions by Congress is a long one.[70]

RELIEF OF DISTRESS DUE TO CATASTROPHES

A large class of such statutes deals with relief of distress caused by catastrophes to substantial sections of our population, and even at times to residents of foreign countries. As early as 1795 (c. 33, 1 Stat. 423) Congress provided relief to citizens sustaining losses due to the destruction of their property by insurgents in western Pennsylvania, and in 1812 (during Madison's administration) an appropriation was made for the purchase of provisions for the sufferers from an earthquake

[70] For the convenience of the Court we are listing in Part C of the Appendix a large number of such appropriations. A careful attempt has been made to eliminate those appropriations that might be attributable to an enumerated or implied power. There are many appropriations that seem to be justified only under the general welfare clause, but which are remotely connected with some express power. For example, by the Act of July 4, 1789 (c. 2, 1 Stat. 24, 27), the first Congress provided for bounties on exports of salted and dried fish, and on February 16, 1792 (c. 6, 1 Stat. 229), it provided for the payment of subsidies to American citizens engaged in cod fisheries. Bounties of this sort were continued for a great many years. The appropriation of $15,000,000 for the purchase of Louisiana, and similar appropriations to consummate the Gadsden Purchase from Mexico and for the acquisition of Alaska from Russia, of the Philippines from Spain, or the Virgin Islands from Denmark, are further examples. These and many others seem to us to be justified only under the welfare clause, but since they have a remote connection with some other express power, we have eliminated them in order to avoid unnecessary controversy.

in Venezuela (c. 79, 2 Stat. 730). Since that time many appropriations have been made to aid sufferers from earthquakes, Indian depredation, fires, war, or famine, tornadoes or cyclones, yellow fever, grasshopper ravages, and floods.[71] Even today the Federal Government in its vast relief program is furnishing means of subsistence to those destitute by reason of unemployment.

HEALTH

As early as 1813 Congress recognized the obligation of the Federal Government in the matter of public health, passing an Act in that year to encourage vaccination (c. 37, 2 Stat. 806). Since that time there have been many appropriations directed toward the elimination of diseases and the advancement of public health.[72]

The Public Health Service cooperates with state and local health authorities, conducts studies in sanitary engineering and rural sanitation, disseminates health information, and carries on research

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[71] See a list of these appropriations set forth in Part C of the Appendix.

[72] See Part C of the Appendix for a number of these appropriations. And see The Chronological Development of Federal Health Legislation and Public Health and Medical Activities, Reprint No. 1024, from Public Health Reports, July 3, 1925, pp. 1419–1423, wherein is listed over seventy Acts of Congress relating to public health. Many of these appropriations can be justified under the Army, Navy, or Commerce Powers, but many others find justification only under the Welfare clause.

into the nature and cure of diseases. Annual appropriations are made to carry on this work.[73]

EDUCATION

Even before the adoption of the Constitution, the Continental Congress, by ordinance of May 20, 1785, for ascertaining the mode of disposing of lands in the Western Territory, prepared the way for the advancement of education. This ordinance decreed that "There shall be reserved the lot No. 16 (640 acres) of every township for the maintenance of public schools." Section 7 of the Act of April 30, 1802 (c. 40, 2 Stat. 175), under which Ohio was admitted to the Union, granted land "for the use of schools." Since this time the Federal Government has made approximately 200 separate grants of land for various schools, colleges, and similar educational institutions totalling 113,511,688 acres.

Since the second Morrill Act of August 30, 1890, c. 841, 26 Stat. 417, and down through the year 1930, Congress has appropriated for colleges of agricultural and mechanical arts, experimental stations, cooperative extension work, and for vocational edu-

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[73] See The Work of the United States Public Health Service (Reprint No. 1447, from the Public Health Reports, Vol. 46, No. 6, February 6, 1931, pp. 269–299), 1934, pp. 3, 14, 15, 16, 17. It is there stated that (p. 4) one of its primary justifications is to "carry out the Government's obligation to promote the welfare of the people." The legislative authority for its activities is found in U. S. C., Title 42, Secs. 7, 9, 29, 30.

cation the sum of $318,138,727.65.[74] Annual appropriations for these purposes have been continued since 1930.

The Bureau of Education was organized in 1867 (see Section 516, Revised Statutes; U. S. C., Title 20, sec. 1) for the collection and dissemination of such information "as shall aid the people of the United States in the establishment and maintenance of efficient school systems, and otherwise promote the cause of education throughout the country." Annual appropriations have been made to carry out this purpose.

In 1879 Congress established a trust fund for aiding the education of the blind and since then has made annual appropriations for this purpose.

The annual appropriations made to the Howard University, the Smithsonian Institution, and the National Gallery of Art, are further examples.[75]

SCIENCE

The Bureau of Mines was organized in 1913 to " conduct inquiries and scientific and technologic investigations concerning mining, and the prepa-

[74] The above figures are taken from Digest of Legislation, Providing Subsidies for Education, 1930, No. 8, U. S. Department of Interior (1930). The figures represent grants of land and appropriation only through the year 1930. Grants to individuals and numerous small grants to particular towns or communities are not included.

[75] The appropriations to further the cause of education referred to in the text and similar appropriations are listed in Part C of the Appendix.

ration, treatment, and utilization of mineral substances with a view to improving health conditions, and increasing safety, efficiency, economic development, and conserving resources through the prevention of waste in the mining, quarrying, metallurgical, and other mineral industries" (c. 72, 37 Stat. 681). Annual appropriations have been made to carry out this work, $1,000,000 being appropriated in 1934 (c. 104, 48 Stat. 529, 565).[76]

On March 3, 1879, Congress empowered the Geological Survey to examine the geological structure, mineral resources, and products of the *national domain* (c. 182, 20 Stat. 377, 394), and in 1925 authorized the President to complete a general utility topographical survey of the *territory of the United States* (c. 360, 43 Stat. 1011). Maps and atlases are distributed gratuitously to foreign governments, to literary and scientific associations, and educational institutions or libraries (Public Resolution No. 13, 29 Stat. 701).

The wide activities of the National Bureau of Standards, created in 1901, extend far beyond the power given Congress by the Constitution "to fix the standard of weights and measures." Extensive

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[76] For work of this Bureau see Powell, The Bureau of Mines (1922), Service Monograph of the United States Government, No. 3, p. 7; Annual Report of the Secretary of the Interior, 1934, pp. 307–8, see also pp. 332–7. In 1934 more than one-fourth of the Bureau's total expenditures were related to the preservation of the health of miners. *Ibid.*, pp. 307–8, 332–7.

research and technical studies are made of a large variety of subjects and the results made available to the public.[77]

SOCIAL WELFARE

The Bureau of Labor Statistics was organized "to acquire and diffuse among the people of the United States useful information on subjects connected with labor, *in the most general and comprehensive sense of that word,* and especially upon its relation to capital, the hours of labor, the earnings of laboring men and women, and the means of promoting their material, social, intellectual, and moral prosperity" (c. 389, 25 Stat. 182). (Italics supplied.) The Commissioner of Labor Statistics is especially charged to investigate labor disputes "which may tend to interfere with *the welfare of the people* of the different states, and report thereon to Congress" (c. 389, 25 Stat. 182, 183). (Italics supplied.)

The Women's Bureau was established to "formulate standards and policies which shall promote the *welfare* of wage-earning women, improve their working conditions, increase their efficiency, and advance their opportunities for employment."

[77] See the United States Department of Commerce, June 1935, pp. 65–72, for a discussion of the various activities of this Bureau. The pamphlet states that many people come to the Bureau for advice on difficult problems. That the answers given "cover diverse subjects in almost every field of science and technology" (p. 72).

The Bureau is also authorized "to investigate and report upon all matters pertaining to the *welfare* of women in industry" and to publish the result of its investigations (c. 248, 41 Stat. 987).

The Children's Bureau, in addition to its duties in the administration of the Act to promote the welfare and hygiene of maternity and infancy (c. 135, 42 Stat. 224), is directed to investigate and report "upon *all matters* pertaining to the *welfare* of children and child life *among all classes of our people.*" (Italics supplied.)

Annual appropriations are made to carry on the function of each of the several above-named bureaus.

Beginning with the Act of June 2, 1920, appropriations have been made for the promotion of vocational rehabilitation of persons disabled in industry or in any other legitimate occupation, on the condition that the States expend at least equal sums and meet certain Federal requirements (c. 219, 41 Stat. 735, 736, as amended by c. 265, 43 Stat. 430, 431).[78]

INDUSTRY

The Bureau of Fisheries, first organized in 1871, makes extensive studies of the habits of fish, and

[78] From 1920 through the year 1930, $10,500,000 have been appropriated for this purpose. Federal Subsidies for Education Bulletin, 1930, No. 8, Dept. of Interior, p. 41. From 1934 to date annual appropriations of $1,000,000 have been made (c. 324, 47 Stat. 448, 449).

the causes of depletion of the fisheries and suggests remedial measures to the states or industries interested. It maintains hatcheries for the purpose of restocking streams or lakes which are depleted. It is continually seeking new uses for fish products and waste products. It undertakes to perfect methods of production of fish oil, fertilizer, meals, etc. Industries are surveyed to eliminate waste. Storage, refrigeration, handling, shipping, wholesaling, and retailing are checked in the interest of the consumer. Studies of nets and other fishing equipment are made. It has charge of the fur seals of the Pribilof Islands.[79]

The Bureau of Foreign and Domestic Commerce has little to do with the "regulation" of interstate and foreign commerce. It maintains twelve commodity divisions, consisting of experts conversant with the details of a given industry. Valuable statistical and other information with respect thereto is collected and disseminated to the various trades. It maintains technical divisions, devoting intensive study to special phases of economic effort, and supplying industry with information on various aspects of the economic system. It supplies industry with valuable information of such subjects as foreign tariffs, quotas, trade agreements, treaties, and foreign commerce laws. It supplies data on

[79] The United States Department of Commerce, June 1935, pp. 25–29.

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the changes in the monetary, financial, and budgetary developments in foreign countries. It furnishes names of foreign importers and exporters and sales information regarding such firms. It serves business by collecting and disseminating data relating to ocean and land shipping, trade and cable routes, rates, charters, ports, and harbor conditions. And among many other functions in the interest of industry it maintains a division on Negro Affairs, which is specifically concerned with the problem and welfare of the Negro in trade and commerce.[80]

Annual appropriations are made to carry out the functions of the foregoing bureaus.

Appropriations have frequently been made to industrial expositions and fairs.[81]

AGRICULTURE

The general interests of agriculture have always been regarded as proper subjects for Federal aid. In his First Message to Congress, Washington recommended the advancement of agriculture, and in his Eighth Annual Message he again urged the importance of Federal pecuniary aid to the farmers, saying that "with reference either to individual or *national welfare,* agriculture is of primary importance", and that such aid would be a "very cheap

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[80] The United States Department of Commerce, June 1935, pp. 31–37.

[81] See Part C of the Appendix.

instrument of immense *national benefit.*" [82] (Italics supplied.)

On February 2, 1817, Mr. Hulbert, from the select committee to whom was referred the petition of the Berkshire Association for the promotion of agriculture and manufactures, praying for a national board of agriculture, made the following report to the House of Representatives (II American State Papers (Misc.), 14th Cong., 2nd Sess., pp. 442–443):

> The great extent of the territory, and the richness, and consequent productiveness, of the soil of our country, can never fail to invite and employ in the cultivation of the earth far the greater portion of American industry. The interests of agriculture must, therefore, be primarily important to the people of the United States, and must at all times deserve the warm support and liberal patronage of Government.
>
> The committee observe with pleasure that President Washington, in his speech to Congress of the 7th of December 1796, recom-

[82] See I Richardson's Messages and Papers of the Presidents, pp. 66, 68, 69, 202. See also Part B of the Appendix. This view of President Washington is supported by similar views of the later presidents. Thus Andrew Johnson (VI Richardson 578) spoke of aid to agriculture as "an interest eminently worthy of the fostering care of Congress, * * *" This was elaborated on by Rutherford B. Hayes on at least two occasions (VII Richardson, 505, id. 578). He noted that from the origin of the government, the importance of agricultural aid was recognized. See also Grover Cleveland's views (VIII Richardson, 362, id. 527).

> mended to that body the interests of agriculture, and the establishment of a national board to promote the same.
>
> In different parts of Europe, as well as in several States of this Union, such boards have been instituted under the auspices of Government, and have diffused much useful information, and contributed largely, as the committee believe, to the public welfare.
>
> After due consideration of the subject, the committee are of opinion that it is advisable to establish at the seat of Government a national board of agriculture; and report a bill for that purpose.

The Act of March 3, 1839, appropriated from the patent fund [83] $1,000 "to be expended by the Commissioner of Patents in the collection of agricultural statistics, and for other agricultural purposes" (c. 88, 5 Stat. 353, 354).[84] The Commissioner's Report for the following year stated that over 30,000 packages of seeds had been distrib-

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[83] In 1855 Congress appropriated some $40,000 from the general Treasury to reimburse the Patent Fund for this and later similar agricultural appropriations (c. 175, 10 Stat. 643, 673).

[84] On January 22, 1839, the Commissioner of Patents replied to the Chairman of the House Committee on Patents that the collection of Agricultural statistics and distribution of seeds could be carried out by the Patent Office and would be of general benefit to the Nation. It appears from this letter that the Patent Office had previously collected seeds on a gratuitous basis and distributed them through individual members of Congress. 3 House Doc. No. 80, p. 57, 25th Cong., 3rd Sess.

uted.[85] From this time on the collection of more and more elaborate statistics[86] relating to agriculture and the distribution of seeds became a permanent feature of governmental activity.[87]

In 1862 the Department of Agriculture was established "to acquire and diffuse among the people of the United States information on subjects connected with agriculture in the most general and comprehensive sense of that word and to procure, propagate, and distribute among the people new and valuable seeds and plants" (c. 72, 12 Stat. 387). It was in that year, too, that the Morrill Land Grant Act made possible the establishment of land grant colleges for instruction in agriculture. Annual appropriations to foster such institutions have been referred to above, pp. 156–157.

The great pests, or enemies of crops, have been the subject of constant consideration and frequent appropriations have been made to aid in their elimination. In 1928, in the suppression of the boll-weevil, Congress established zones of about 360,000

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[85] 4 Senate Doc. No. 152, 26th Cong., 2d Sess., p. 2.

[86] See, for example, Annual Report of the Commissioner of Patents, 1847, 6 House Doc. No. 54, 30th Cong., 1st Sess., in which nearly 650 of the total 1,000 pages are devoted to agricultural statistics and conditions and to scientific articles on various questions of agricultural practices. Indeed, in that year Congress directed that the "portion of the annual report of the Commissioner of Patents relating to agricultural subjects shall not exceed four hundred pages." C. 47, 9 Stat. 155, 160.

[87] See Part C of the Appendix.

acres, where no cotton should be grown. An appropriation of $5,000,000 was voted to be used in cooperation with the States to compensate the farmers for the loss suffered from enforced non-production of cotton.[88] In 1916 Congress made an appropriation with similar provisions for the eradication of cattle diseases (c. 13, 39 Stat. 492; see c. 178, 40 Stat. 977).

In 1884, the Bureau of Animal Industry was established to disseminate information as to domestic animals and their diseases. (Pub. Res. No. 46, 23 Stat. 277.) In 1890, the Weather Bureau was put under the supervision of the Department of Agriculture (c. 1266, 26 Stat. 653), to make more readily available comprehensive information of special interest to those engaged in the cultivation of the soil.

The Federal Farm Loan Act, upheld upon a limited ground in *Smith* v. *Kansas City Title Co.*, 255 U. S. 180, was adopted in 1916 "in response to a national demand that the Federal government should set up a rural credit system by which credit, not adequately provided by commercial banks, should be extended to those in agriculture * * *." See *Federal Land Bank* v. *Gaines*, 290 U. S. 247, 250. In addition to the Federal Land Banks, the Joint Stock Land Banks, and the National Farm Loan Association, established by the Farm Loan

[88] C. 572, 45 Stat. 539, 565. See also c. 227, 45 Stat. 1189, 1216; c. 43, 46 Stat. 66; c. 45, 46 Stat. 67; c. 111, 46 Stat. 1064, 1067.

Act (c. 245, 39 Stat. 360), Congress, in response to this national demand, has provided for the Federal Intermediate Credit Banks (c. 252, 42 Stat. 1454), the Regional Agricultural Credit Corporation (c. 520, 47 Stat. 713), and the Central and Regional Banks for Cooperatives (c. 98, 48 Stat. 261, 264). In 1921 Congress appropriated $2,000,000 for loans to certain farmers in drought-stricken areas in western states (c. 127, 41 Stat. 1315, 1347).

In 1929 the Federal Farm Board was established "to promote the effective merchandising of agricultural commodities in interstate and foreign commerce, so that the industry of agriculture will be placed on a basis of economic equality with other industries", $500,000,000 being appropriated therefor (c. 24, 46 Stat. 11). A resolution of March 7, 1932 (c. 72, 47 Stat. 61) authorized the Federal Farm Board to use 40,000,000 bushels of wheat owned by the Grain Stabilization Corporation in providing food for the needy and distressed people and the livestock of the 1931 crop-failure areas.

The services furnished to agriculture by the Department of Agriculture have grown steadily until today it is authorized and directed by Congress to carry out the manifold activities of the Office of Experiment Stations and the Extension Service (whose duties include the administration of the acts providing for cooperation with the states—particularly with the land-grant colleges—in agricultural experiments and education), the Weather Bureau, the Bureau of Animal Industry (whose duties include inspection and quarantine work, the study and eradi-

cation of animal diseases, and experiments in animal feeding and breeding), the Bureau of Dairy Industry, the Bureau of Plant Industry (whose duties include investigations of diseases of plants, of orchard and other fruits, of forests and ornamental trees and shrubs, studies of soil bacteriology, plant nutrition, and soil fertility), the Forest Service, the Bureau of Chemistry and Soils, the Bureau of Entomology and Plant Quarantine, the Bureau of Biological Survey (whose duties include the investigation of the habits of birds and mammals in relation to agriculture), the Bureau of Public Roads, the Bureau of Agricultural Engineering (whose duties include investigations as to farm irrigation and drainage and the construction of farm buildings), the Bureau of Agricultural Economics (whose duties include the collection and analysis of statistical data relating to agriculture and the administration of certain regulatory acts such as the Cotton Futures Act, the Cotton Standards Act, and the Federal Warehouse Act), the Bureau of Home Economics, and the Grain Futures Administration, and the Food and Drug Administration.[89]

By the end of 1932 Congress had appropriated to the Department of Agriculture, as such, in aid of agriculture, over $2,727,000,000.[90]

[89] See Department of Agriculture Appropriation Act of 1934, c. 89, 48 Stat. 467–499; List of Technical Workers in the Department of Agriculture and Outline of Department Functions (1933), U. S. Dept. of Agriculture, Misc. Publication No. 177, pp. 1–7.

[90] This figure represents the total of sums appropriated by Congress and expended according to official reports, by December 31, 1932, computed in the course of the preparation of the Government's case in the District Court.

In view of this long-continued and uniform acceptance by the legislature and the executive of the Hamiltonian construction of the welfare clause, we submit it is too late now to urge the contrary view. As pointed out above (p. 151) even Madison in later years recognized that such a construction should be accepted. This principle was stated by this Court in *Hampton & Co.* v. *United States,* 276 U. S. 394, in the following language (p. 412):

> * * * This Court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution when the founders of our Government and the framers of our Constitution were actually participating in public affairs, long acquiesced in, fixes the construction to be given its provisions.

See also *Myers* v. *United States,* 272 U. S. 52, 175; *Martin* v. *Hunter,* 1 Wheat. 304, 350; *McCulloch* v. *Maryland,* 4 Wheat. 316, 461, and other cases cited, *supra,* p. 153.

Indeed, if the Madisonian theory were to be adopted today, it would mean the destruction of many of our most familiar and significant governmental policies and activities. The people have long been accustomed to rely on the benefits afforded by the permanent bureaus above referred to. These governmental activities have become so interwoven into our commercial, social, and economic life that to strike them down now would result in catastrophic dislocations. An acceptance at this late date of the Madisonian view would mean that the United States, alone among the great na-

tions of the world, could not foster the advancement of learning and the arts. It would retard the development of public health, education, the sciences, and social welfare, all of which to a large measure are dependent on Federal aid and encouragement. It would leave this Nation incapable of relieving widespread distress in times of economic disaster. It would mean that, while as to the producers who have contracted with the Government (footnote *infra,* p. 210) there would remain a moral obligation (considered and upheld in *United States* v. *Realty Co., supra*) to satisfy the balance remaining unpaid of the $1,350,616,379, which the Government has obligated itself to pay, and the $464,994,228 it is estimated the contracts now being offered will require (*infra,* p. 213), as to the future, the aids to agriculture, on which more than thirty millions of our population have learned to rely, would no longer be available to them. We submit this Court should not be called upon to reverse a policy that has existed from the very beginning of our Government.

5. The relevant judicial authorities support the Hamiltonian theory

Although this Court has not yet found it necessary to pass directly upon the meaning of the welfare clause, that question has been presented to the Court on at least four occasions. *Field* v. *Clark,* 143 U. S. 649; *United States* v. *Realty Co.,* 163 U. S. 427; *Smith* v. *Kansas City Title Co.,* 255 U. S. 180; *Massachusetts* v. *Mellon,* 262 U. S. 447.

In *United States* v. *Realty Co.,* 163 U. S. 427, it was held that the phrase "to pay the debts" is to be

broadly construed to include moral obligations not incurred in the exercise of any of the enumerated powers which follow the general welfare clause.

The welfare clause appears in the Constitution as a co-equal phrase with the debt clause, to which it is joined by the conjunction "and." Both clauses equally modify the power to lay and collect taxes and excises. Both are in turn equally modified by the single phrase "of the United States." If the debt clause is not limited by the succeeding enumeration of powers, ordinary principles of construction would seem to require a like conclusion as to the welfare clause.

In any event, the *Realty Company* case decided that the power to levy taxes and excises is not limited to the enumerated powers; this removes the chief basis for the Madisonian construction of the welfare clause. See *Missouri Utilities Co.* v. *City of California,* 8 F. Supp. 454, 462 (W. D. Mo.).

In *United States* v. *Gettysburg Electric Ry.,* 160 U. S. 668, 681, this Court, in sustaining the power of Congress to establish a national memorial park, said:

> Congress * * * has the great power of taxation *to be exercised for the common defense and general welfare.* (Italics supplied.)

Similar expressions are to be found in *Head Money Cases,* 112 U. S. 580, 595; *Gibbons* v. *Ogden,* 9 Wheat. 1, 197.[90a] In these cases this Court did not

[90a] In *Flint* v. *Stone Tracy Co.*, 220 U. S. 108, 153, the Court said: "The Constitution contains only two limitations on the right of Congress to levy excise taxes: they must be levied for the *public welfare* and they are required to be uniform." (Italics supplied.)

refer merely to the "taxing power" or to the great power to tax "for Federal purposes", or "for the purposes of the Constitution." The coupling of the phrase "general welfare" with the power to lay taxes, *without reference to the succeeding enumerated powers,* cannot be regarded as consistent with an interpretation of the phrase as a mere rhetorical flourish which introduces those powers or as receiving its content only from those powers.

The literal reading of the clause has been adopted by most of the lower Federal Courts. *Langer* v. *United States,* 76 F. (2d) 817 (C. C. A. 8th); *Kansas Gas & Electric Co.* v. *City of Independence,* 79 F. (2d) 32, supplemental opinion on rehearing November 7, 1935, not yet reported (C. C. A. 10th); *Missouri Utilities Co.* v. *City of California,* 8 F. Supp. 454 (W. D. Mo.); *F. G. Vogt & Sons* v. *Rothensies,* 11 F. Supp. 225 (E. D. Pa.). Cf. *Miles Planting Co.* v. *Carlisle,* 5 App. D. C. 138; *Washington Water Power Co.* v. *Coeur D'Alene,* 9 F. Supp. 263 (Idaho).

6. The determination of what is for the general welfare is primarily a matter for Congress to decide; the courts will not substitute their judgment for the judgment of Congress

It is our position not only that the welfare clause should be construed in the Hamiltonian sense to include anything conducive to the national welfare; it is our position also that the question of what is for the general welfare must have been left primarily to the judgment of Congress, and as to that question, the judicial branch will not substitute its judgment for the judgment of the legislature.

It is not suggested that the public money may be expended by Congress for any other than national purposes, or for any other uses than those of the Nation. But we do maintain that the question of what is a national purpose, of what is a national use, is, in the first instance, purely a question of governmental policy—of political economy—in the largest sense of that term; and that Congress is necessarily the proper arbiter of that question.

It must be noted that Congress, in exercising this power, is directly accountable to a higher authority. It is subject in the exercise of its discretion to the sovereign people from whom all its powers are derived and who are quick to detect and to punish any abuse of the power entrusted to Congress, as the founders clearly foresaw and as experience has demonstrated.

It seems clear that the founders intended that the procedure provided by the Constitution for the consideration by Congress of fiscal measures and the accountability to the electorate were the only checks on congressional appropriations.[91] The

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[91] In *McCulloch* v. *Maryland*, 4 Wheat. 316, Chief Justice Marshall, speaking of the power of taxation, said (p. 428): "The *only* security against the abuse of this power is found in the structure of the government itself. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation." (Italics supplied.)

See also *Pacific Insurance Co.* v. *Soule*, 7 Wall. 433, 443. The same must hold true with respect to the correlative power of appropriation.

power to tax and appropriate money was given to the Congress. The power to originate revenue bills was given to the House alone, that being the body most quickly responsive to the electorate. A safeguard was provided against irresponsible use by the Executive of the proceeds of taxation by the provision that no money shall be drawn from the Treasury but in consequence of appropriations made by law.

The entire range of discussion in the Convention was directed to *locating* the power and little or no attention was given to the *extent* of the grant, which everyone seemed to concede must, in the nature of things, be discretionary.[92]

[92] Quite early in the discussions, Mr. Gerry moved to restrain the Senate in regard to money bills, urging that the House " was more immediately representative of the people who ought to hold the purse strings." Mr. Williamson favored giving the Senate the power, while Mr. Mason argued that should the Senate be granted the power of *giving away* the people's money, it might soon forget the source whence it was received. Mr. Franklin argued that it was always important that the people should know who had disposed of their money and *how* it was disposed of, and hence he favored giving the power to the House as a body closer to the people and more accountable. Formation of the Union of the American States (69th Cong., 1st sess., House Doc. No. 398, Government Printing Office, 1927), 335–338. The discussion was resumed on August 8. Mr. Ghorum was against allowing the Senate to originate money bills, but favored permitting that body to amend such bills. Mr. Pinckney and Mr. Morris were in favor of the Senate having the initiating power. Mr. Mason stated that the purse strings should never be placed in the hands of the Senate for the reason that its size and the term of office tended to create an ever-growing aristocracy. Id., p. 499. The matter was debated again at length on August 13. Id., 528–535.

At no point in these debates was there any suggestion that the power of Congress should be limited; the whole discussion related to locating the power in those representatives who would be most responsive to the will of the people.

The same is, in general, true of the ratifying conventions. Opponents attacked the Constitution on the ground that unlimited power over taxation was given to Congress. Those advocating adoption pointed out the necessity for such power and showed that accountability to the people was a sufficient check. See O. R. McGuire, The New Deal and the Public Money, 23 Georgetown Law Journal, 155, 167–179.[93]

In the early years following the adoption of the Constitution, the view was generally expressed that Congress' determination of what was for the general welfare was not subject to judicial review.

President Madison, in his veto message of March 3, 1817, said:

> * * * questions relating to the general welfare, *being questions of policy and expediency,* are unsusceptible of judicial cognizance and decision.[94] (Italics supplied.)

Mr. Hamilton in his opinion on the National Bank agreed:

> The quality of the object, as how far it will really promote or not the welfare of the

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[93] Excerpts from these debates are contained in Part B of the Appendix.

[94] IV Elliott's Debates (2d Ed.), p. 469.

> Union, must be a matter of *conscientious discretion, and the arguments for or against a measure in this light must be arguments concerning expediency or inexpediency, not constitutional right.*[95] (Italics supplied.)

President Monroe, in his veto of the Cumberland Road bill, expressed the same view:

> * * * if the right of appropriation had been restricted to certain purposes, it would be useless and improper to raise more than would be adequate to those purposes. *It may fairly be inferred these restraints or checks have been carefully and intentionally avoided.* * * * It was evidently impossible to have subjected this grant in either branch [that is, the power to raise money, and to appropriate it] to such restriction without exposing the Government to very serious embarrassment * * *. *Had the Supreme Court been authorized, or should any other tribunal distinct from the Government be authorized to impose its veto, and to say* that more money had been raised under either branch of this power—that is, by taxes, duties, imposts, or excises—than was necessary, that such a tax or duty was useless, *that the appropriation to this or that purpose was unconstitutional*—the movement might have been suspended, and the whole system disorganized. It was impossible to have created a power within the Govern-

[95] 3 Hamilton's Works (Lodge Ed.), p. 485. See also his report on Manufactures, wherein he discusses the constitutionality of bounties. III Hamilton's Works (Hamilton Ed.), p. 250.

> ment or any other power *distinct from Congress and the Executive* which should control the movement of the Government in this respect and not destroy it.[96] (Italics supplied.)

These views have been accepted by later authorities on the Constitution. Thus, according to Pomeroy, "What measures, what expenditures will promote the common defense or the general welfare, Congress can alone decide, *and its decision is final.*" (Italics supplied.) Pomeroy, Constitutional Law (10th ed.), Sec. 275. See also I Hare, American Constitutional Law, 249; Cooley, Taxation (2d Ed.),

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[96] II Richardson's Messages & Papers of the Presidents, 142, 165, 166. It is to be remembered that these views of Monroe received the unofficial approval of Marshall and other members of the Supreme Court. See footnote 62, at p. 149, *supra*. Monroe also stated: "The power to raise money by taxes, duties, imposts, and excises is alike unqualified, nor do I see any check on the exercise of it other than that which applies to the other powers above recited, the responsibility of the representative to his constituents." Id., p. 165.

A committee of the House of Representatives reported in 1817: "Nor is there any danger that such a power will be abused, while the vigor of representative responsibility remains unimpaired. It is on this principle that the framers of the Constitution mainly relied for the protection of the public purse. * * * On the other hand, while this principle was calculated to prevent abuses in the appropriation of public money, it was equally necessary to give an extensive discretion to the legislative body in the disposition of the public revenues." 31 Annals of Congress, 15th Cong., 1st Sess., pt. 1, December 1817, p. 459. Jefferson was of a like mind. See his views on the bank printed in Part B of the appendix.

109; 1 Story on the Constitution, Secs 924, 944, 991, 1348.

While this Court has not passed on this precise question, it has given clear intimation of its view. It has repeatedly held that as to matters of policy and expediency it is not at liberty to substitute its judgment for the judgment of Congress. *Wilson* v. *New,* 243 U. S. 332; *Champion* v. *Ames,* 188 U. S. 321; *McCray* v. *United States,* 195 U. S. 27; *Patton* v. *Brady,* 184 U. S. 608, 620, 621. In *Nebbia* v. *New York,* 291 U. S. 502, the Court said (p. 537):

> * * * a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts are without authority either to declare such policy, or when it is declared by the legislature, to override it. * * * With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal.

The principle is applicable here. If Congress may appropriate for the general welfare, the question of what will promote the general welfare presents primarily a question of policy and as such it is primarily for Congress to decide.

United States v. *Realty Co.,* 163 U. S. 427, is more directly apposite. There the court said that the determination of what debts or claimed debts should be paid "depends solely upon Congress"

(p. 441); and that the decision of Congress recognizing a claim founded upon principles of right and justice "can rarely, *if ever,* be the subject of review by the judicial branch of the government" (p. 444). [Italics supplied.] If this be true of the word "debt"—so familiar to our courts—Congressional application of the term "general welfare" cannot be more readily subject to judicial review.[97]

Applying these principles to the instant case, we submit that the court should not substitute its judgment for the judgment of Congress in determining whether the appropriation will promote the general welfare and that the reasonableness of the Congressional determination is apparent upon the face of the statute when read in the light of the conditions which called it into being.

7. The expenditures authorized by the Agricultural Adjustment Act were soundly designed to promote the general welfare

The census of 1930 showed that there were 6,288,-648 farms in the United States and that the total

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[97] And in the cases involving the Alabama claims it was held that awards made under the Treaty with Great Britain and paid to the United States as a Nation constituted "a national fund, to be distributed by Congress *as it saw fit.*" [Italics supplied.] *Williams* v. *Heard*, 140 U. S. 529, 537. "The fact that the Congress of the United States undertook to dispose of this fund, and to administer upon it, in accordance with its own conceptions of justice and equality, precludes at least for the purposes of this decision, judicial inquiry into such questions." *United States* v. *Weld*, 127 U. S. 51, 56. See also *United States* v. *Price*, 116 U. S. 43; *United States* v. *Jordan*, 113 U. S. 418.

farm population of the country was 30,445,350. The total rural population was 53,820,223, comprising 44 percent of the entire population of the country.[98] The welfare of this segment of the nation is obviously a matter of vital national concern. But that welfare has an importance extending beyond the community of agricultural and rural residents. The importance of agriculture as one of the basic elements of our interrelated economic life makes its welfare inseparably bound up with that of the entire country.

As an aid in considering the appropriateness of the rental or benefit payment provisions to carry out the declared policy of the Act and by this means to promote both agricultural and the general welfare, it will be helpful to note first the major characteristics of the agricultural crisis which occasioned the Act and the previous governmental efforts to deal with the situation.

a. The progressive decline in agricultural income and relative purchasing power intensified the general economic depression

After the World War, prices of farm products declined relative to prices of nonagricultural products, and the precipitous fall in farm prices after 1929 brought the ratio of prices of agricultural to nonagricultural products in 1932 to the

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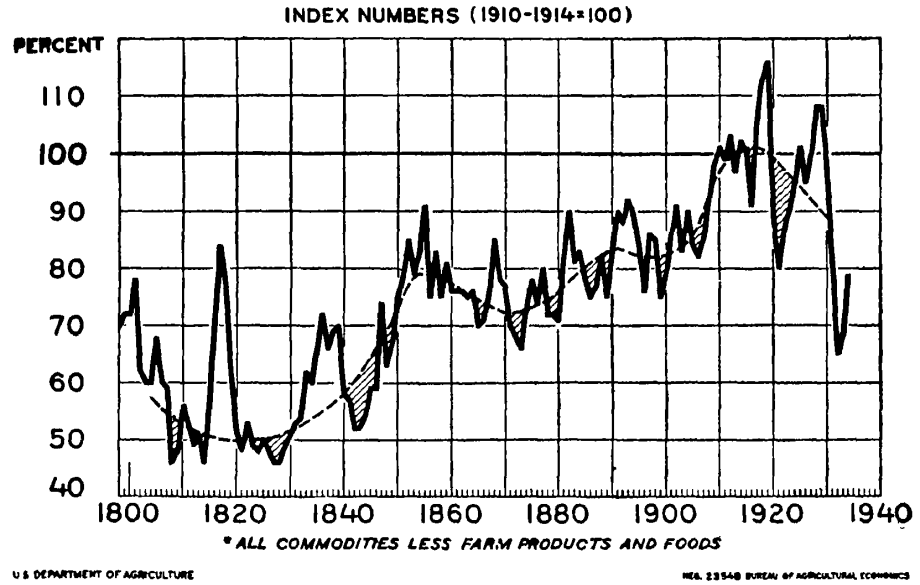
[98] U. S. Census, 1930 (Dept. of Commerce), Agriculture, Vol. I, p. 8; Population, Vol. I, p. 8; Agriculture, Vol. II, part 2, p. 22.

lowest it had been since before the War between the States. (See Chart 1.)[99] Because of declining costs

CHART 1

RATIO OF WHOLESALE PRICES OF FARM TO NONAGRICULTURAL PRODUCTS,* 1798 TO DATE



of manufacture in industry, prices of industrial products normally tend to decline in comparison with prices of agricultural products. This relative decline in industrial costs results from the fact that there is no known limit to the extent to which machine technology can be carried in manufacturing, whereas in agriculture there are obvious limitations in the areas of suitable land, and the biological nature of the processes restricts the farmer's ability to use mass-production technics. The

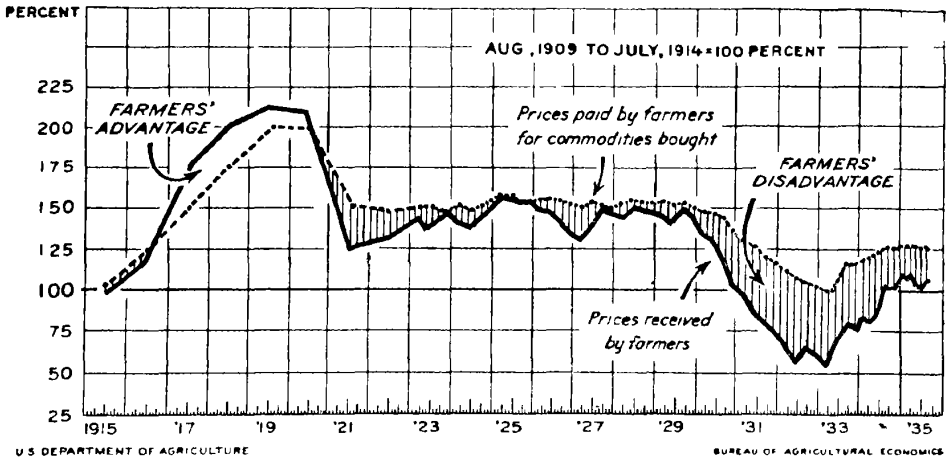
[99] From Addendum, p. 35; taken from L. H. Bean and A. P. Chew, *Economic Trends Affecting Agriculture* (U. S. Dept. of Agric., 1933), p. 42. The solid line represents the ratio of wholesale prices of farm products to wholesale prices of nonagricultural products, with the ratio during 1910–1914 taken as 100 percent. The broken line represents approximately a ten-year moving average.

trend in comparative costs of production in industry and agriculture was reflected in the trend of comparative prices at wholesale generally in the hundred years prior to the World War.[1] The declines in prices of agricultural relative to non-agricultural products after the War did not result from changes in the relative costs of production, and it was therefore impossible for farmers to adjust their operations and costs to the resulting prices.

Ever since the 1920–1921 depression, prices received by farmers had been low compared to the prices paid by farmers for commodities which they buy. (See Chart 2.)[2] This price disparity created

CHART 2

INDEX OF PRICES RECEIVED AND PAID BY FARMERS



[1] This long-time trend was pointed out in 1927. See U. S. Dept. of Agric., *The Agricultural Situation*, March 1927, Vol. 11, p. 23.

[2] Reproduced from *Economic Bases for the Agricultural Adjustment Act*, U. S. Dept. of Agric., 1933, p. 7, brought to date and published as Negative No. 26003, Bureau of Agricultural Economics.

also a disparity between the farm and the national income. Incomes of farmers failed to increase in proportion to the growing national income. Agricultural purchasing power decreased in the sections producing crops affected by the international markets long before the depression of 1929. While the national income continued to advance between 1925 and 1929, gross income from crops actually decreased from $6,147,000,000 in 1925 to $5,609,000,000 in 1929.[3] This weakness in farm income from such products contributed materially toward bringing on the general depression after 1929.

It is unnecessary to describe, as it would be difficult to exaggerate, the severity of the depression existing in all aspects of our economic life prior to and at the time of the enactment of the Agricultural Adjustment Act. The economic crisis was, as this Court has said, "the outstanding contemporary fact, dominating thought and action throughout the country." *Atchison T. and S. F. Ry. Co.* v. *United States,* 284 U. S. 248, 260. It will suffice to point out that after 1929 farm income and purchasing power suffered a catastrophic decline, which substantially contributed to and intensified the general economic depression.

From 1929 to 1932 available cash income from farming operations—that is, cash income minus

[3] See *Facts Relating to the Agricultural Situation*, U. S. Dept. of Agric., May 1932, table 10, p. 26. The 1929 figure was later revised to an even lower amount, $5,434,000,000. *Id.*, November 1934, table 8, p. 20.