

General Welfare and Health Care

Written by Shanghai Dan

Wednesday, 08 July 2009 23:08 - Last Updated Thursday, 03 December 2009 17:48

On a [forum I frequent](#), we were discussing nationalize health care. A poster (of the liberal bent, but a very nice fellow altogether) made the following statement:

If access to health care is a fundamental right,

This was meant as a means to support the nationalization of health care inside these United States. For if the supposition is true - health care is a fundamental right - then clearly it would be within the purview of the US Federal Government to nationalize and control the administration and delivery of that health care!

But is that a true supposition? Is health care a fundamental right? It all hinges on what is a fundamental right, which gets into the whole general Welfare clause. What is done for the general Welfare, as defined in [Article 1, Section 8 of the US Constitution](#) ?

My personal belief is that it applies only to the powers enumerated to the Federal Government. It can only operate to provide for the general Welfare of the States (not individuals) within those constraints. So that strikes a lot out - health care, education, SSI/Medicare, etc. The general Welfare clause is more an introduction of why the powers that make up Section 8 of Article 1 exist (we need to do X, so here are the functions Y to achieve it):

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1. Borrow money from other nations;
2. Regulate commerce with foreign nations, between States, and with the Indian Tribes;
3. Establish immigration and bankruptcy rules;
4. Coin money, and establish weights and measures;
5. Punish counterfeiters;
6. Deliver the mail;
7. Provide copyrights and patents;
8. Provide lower courts;
9. Take care of pirates;
10. Declare war and regulate how our military behaves;
11. Create the army, navy, and military;
12. Create a national militia (National Guard);
13. Arm and train the national militia;
14. Set the rules for Federally-owned property;
15. To make laws establishing how these functions are carried out.

These are the powers given to Congress that will provide for the general Welfare and common defence. This list is how you do the preamble of Section 8; the preamble does NOT exist as its own grant of powers, but as an introduction TO the granted powers.

Given that list, I do not see anything that applies to the benefit of the individual. The closest you can get is copyrights and patents, yet those were predominantly for regulation of commerce! And in fact, along with the coining of money and establishing of weights and measures serves to simply standardize the process of manufacturing and payment. A pound is a pound everywhere, a bushel is a bushel, and you get to keep your invention when you move from Virginia to another State.

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In this context, and looking at the rest of the Section 8, I do not see where specific benefits for the individual come about. I see protection for how they are dealt with in relating to their State or the Federal Government (bankruptcies, copyrights, patents, money, etc). I do not see a requirement to give benefits to individuals based upon need or desire; in fact, the vast bulk of Section 8 (13 of the 15 clauses - all but numbers 5 and 8) deal only with foreign relations either directly (commerce) or indirectly (maintenance of armies and the like)! And the two that deal with individuals are more of courts and punishments!

Given that, I would argue that Section 8's general Welfare clause grants the Federal Government the powers needed to promote these United States internationally, by setting taxation, trade, and protection (both intellectual and property, via counterfeiting, weights, and bankruptcy) rules to stimulate foreign investments. It is not about making sure that Johnny can read; it is about making sure that Johnny will have a job.

This is a subtle distinction! Johnny may need to read to DO the job, but that is his responsibility; the Government will do what it can to make sure jobs exist. It is the role of the Government to promote the economic Welfare to create jobs; it is the role of the individual to prepare themselves to fill such jobs. The Government does not OWE you a job - that is not what I am stating. What the Government owes you is its pledge and activity to make as many jobs available as possible! It is up to the individual to find the proper job and to equip themselves to so fit that role! Thus anything that the Government does to restrict the economy (say by increasing the capital gains tax) is actually unconstitutional - it does not promote the general - economic - Welfare of the US.

HOWEVER, I know that viewpoint is not widely accepted, and probably in the minority (not wrong, just not widespread...:). So we must then assume that general Welfare means not just the States but the people. But then, I would argue that there must be equal protection under the law, as that is also a requirement of the Constitution! Thus having sliding scales of taxation with

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capped benefits would not be equal protection; some receive disproportionately compared to what they contribute. The Federal Government is then violating its own regulations regarding equal protection; the rich man pays much more for much less, so to speak.

So, if we are to assume that the general Welfare clause is an actual power (rather than an explanation of why the laundry list of powers that follow were enumerated), then the promotion of the general Welfare must be equal under the law. Everyone must receive from it equally, and must contribute equally. If nationalized health care costs \$5,000+ per year per person, then everyone must pay the same amount, and receive the same care - no limits, no exemptions. Otherwise we are not providing equal protection under the law.

So, I guess that's where I would come down. First, the general Welfare clause does NOT give authority to Congress to supply health care. But if we go ahead and break that concept anyway, then we must at least stick to the Constitutional concept of equality; all pay equally for the same benefit. I don't think you can argue that a health care plan will provide more benefit to a rich man, over a poor man. All receive the same benefit, thus the costs borne must be equal as well.

Government is not constitutionally provided with the right to provide health care; but if we are going to ignore that fact, then we should at least pay heed to the principle of equal protection and make sure any such plan meets that basic standard - what is given to one is given to all, regardless of their station in life.