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Congress and the Welfare Power

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tion does not quite fall within one of the already-established exceptions.[88] This seems unusual in light of the fact that the tribunals of this state have, generally, kept abreast of changes in the law engendered by changing conditions. However, there has been some judicial recognition in Illinois (especially in food cases) of the fact that merchandising methods in the past decade are evidencing more and more a return to the methods prevalent in the 19th century where the manufacturer sold direct to the consumer. Today, with the advent of large-scale advertising through the media of radio, television, newspapers, and magazines the manufacturer creates consumer demand for his product. The retailing function has lost its effect as an instrument for inducing purchases of particular products, and is, today, generally, a *clerking*, rather than a *selling* function. Thus the circle is complete. The manufacturer is once again the seller, and the consumer is once again the party to whom his warranties are directed. This practice has already been recognized by the courts of the states which have abolished the privity requirement. It seems only a matter of time before the Illinois courts will recognize it.

[88] Biller v. Allis Chalmers Mfg., Co., 34 Ill. App. 2d 47, 180 N.E. 2d 46 (1962); Albin v. Illinois Crop Improvement Ass'n., 30 Ill. App. 2d 283, 174 N.E. 2d 697 (1962); Watts v. Bacon & Van Buskirk Glass Co., 20 Ill. App. 2d 164, 163 N.E. 2d 425 (1959).

CONGRESS AND THE WELFARE POWER

The increasing concern over Congressional legislation geared to promoting the "welfare" of the nation can hardly be disputed. One only need refer to the daily newspapers and various legal periodicals to find a growing awareness of the extensive welfare power being vested in the federal government today. Illustrative of this is a transcript of an "All America Wants to Know" program entitled "What's Welfare Worth," read into the *Congressional Record* of Monday, February 11, 1963.[1] The program consisted of a panel discussion based on an article entitled "The Fallacy of Too Much Planning" appearing in the February, 1963, issue of *Reader's Digest* and being one of a series of articles written by Mr. Henry Hazlitt. Senators Goldwater, Randolph and Ribicoff, as well as Mr. Hazlitt, participated in the panel discussion. Some of the statements made during this program illustrate the concern over welfare legislation prevalent in this country today; Sen. Goldwater speaking:

First of all Mr. Hazlitt and myself are not opposed to welfare. I don't think any Christian human being can be opposed to helping his brother. But we are fearful that when the state takes this entire responsibility, I speak of the state

[1] 109 Cong. Rec. 1999 (daily ed.) Feb. 11, 1963.

as the federal government, the controls that have to go with the expenditure of this money–constitutionally have to go with it–will result in other controls that ultimately can be destructive of freedom.[2]

Senator Ribicoff speaking later on:

we are a people who aren't going to let people starve. And since we're not going to let them starve, and we don't want to continue giving them relief checks, then we must give them the training for a job. Now who is to give them the training? The only one that can give them the training is some level of government–local, state or national. Now the weakness of Senator Goldwater's argument to give this all back to the State is because these problems are national in scope, and we have wealthy states if we do it, and we would have some very poor states, where the needs are greatest, that would do nothing for their needs.[3]

The significant factor to be observed is that this disagreement over the welfare power of Congress has involved two of the leading Congressional figures. Strong criticism of the Supreme Court of the United States along the same lines has emanated from the Illinois Legislature. A recent issue of the *Chicago Tribune*[4] carried an article written by Mr. Robert Howard which reported that the Illinois Senate has adopted two resolutions proposing amendment of the federal constitution and calling for the first convention of state delegates since 1787. The gravamen of the criticism of the Illinois Legislature is that the Supreme Court's decisions have usurped a great deal of state's rights and powers. Several other articles have appeared in bar journals which have expressed fears and doubts as to Congress' exercise of power in the area of welfare, and the Supreme Court's approval of such action.[5]

A look at the bills pending before Congress at the present time gives some insight into those welfare areas where Congress has already gained control, those areas where Congress is seeking to enlarge its control, and the power Congress is relying upon to pass such welfare legislation. One such pending bill is the Clean Air Act of 1963,[6] advocated by Senator Ribicoff, which proposes to "accelerate, extend, and strengthen the federal air pollution control program."[7] As Senator Ribicoff points out, the federal government has only participated in such a program to the extent

[2] *Id.* at 2001.

[3] *Id.* at 2002.

[4] Chicago Tribune, February 14, 1963, p. 1, col. 7 (final ed.).

[5] White, *Construing the Constitution: The New "Sociological Approach,"* 43 A.B.A.J. (1957).

NILSSON, *There Is No "General Welfare Power" in the Constitution of the United States*, 47 A.B.A.J. 43 (1961).

McKay, *Taxing and Spending for the General Welfare: A Reply to Mr. Nilsson*, 48 A.B.A.J. 38 (1962).

[6] S. 432, 88th Cong., 1st Sess. (1963).

[7] 42 U.S.C. § 1857–1857(f) (1959) (emphasis added).

of scientific research and training of technical personnel. This bill proposes to appropriate $74,000,000 for field laboratories throughout the country and for a control program whereby the federal government would establish enforcement agencies patterned after the Federal Water Pollution Control Act.[8] Although Senator Ribicoff admits that the basic responsibility resides with state and local governments, he believes that the federal government's role in this area is to provide for "leadership, encouragement, technical know-how, and financial assistance to local and State governments in the development of a national program of research and development for the prevention and control of air pollution."[9] In effect, this act exemplifies an attempt by Congress to enlarge its present control over local air pollution, which is essentially, a problem of general welfare.

Another bill pending before Congress which has received wide publicity is the Medicare program sponsored by the Kennedy administration. The program basically provides for a health insurance plan for persons over sixty-five, special housing for the elderly, increased job opportunities, and other provisions to protect the elderly against worthless foods, devices and nostrums. That the motive behind this program is the concern over the welfare of one faction of our population is obvious from Mr. Kennedy's own words in a recent speech to Congress.[10] The underlying approach to this problm is based upon the presumption that the health of the citizens of this country is a national problem, and as such, Congress has the power and the obligation to appropriate and provide for its preservation and care.[11] The intended result of this program is to increase the federal government's regulation in the areas of health and medicine by enlarging the scope of the Social Security Act. In light of these pending programs, the inquiry naturally arises as to what constitutional provision Congress is relying upon in seeking to assert its control over welfare-type activities. It appears to be a reasonable presumption[12] that Congress is relying upon Article I section 8 of the Constitution which provides that, "the Congress shall have power 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; . . ."[13] Assuming this to be the case, the inquiry then turns to the interpretation of this clause. That there is still confusion over the interpretation of this clause after 170

[8] 33 U.S.C. § 466–466K (1959).

[9] See *supra* note 6, at p. 755.

[10] 109 CONG. REC. 1835–36 (daily ed.) Feb. 7, 1963.

[11] *Id.* at 1836.

[12] In light of the language used and the purposes sought, Congress is "appropriating" to provide for the general welfare and this comes directly under Article I § 8.

[13] See other enumerated powers under Article I § 8.

years of constitutional history is apparent from recent articles which have been written by practicing attorneys and scholars of the law.[14] It is the purpose of this comment, then, to discuss the clause from its inception at the time of the Constitutional Convention of 1787, and follow its development by the Supreme Court throughout the twentieth century to the present time in order to discern the nature of the power that Congress has in this area, and the limitations, if any, on that power.

A cursory examination of the history of Article I section 8 reveals that there are basically two constitutional periods relevant to this clause—the pre-1936 period and the post-1936 period. The starting point of the pre-1936 period dates back to the Constitutional Convention of 1787. At this time, there existed a difference of opinion as to the interpretation of the welfare clause. Madison viewed the general welfare provision as a general caption restricted by the specific powers enumerated in the various clauses immediately following this provision. As he pointed out in one of his Federalist papers,

> But what color can the objection [against the welfare clause] have, when a specification of the objects alluded to by these general terms immediately follows, and is not even separated by a longer pause than a semicolon? . . . for what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power? Nothing is more natural or common than first to use a general phrase, and then to explain and qualify it by recital of particulars.[15]

Hamilton, on the other hand, developed the view that the welfare clause conferred upon Congress an independent power to tax and spend for the general welfare of the Nation and was not limited by the specific enumerated powers listed thereunder. The only limitation that Hamilton conceived in this power was that this exercise of power be limited to general welfare purposes.[16] It must be realized that the people in this political climate feared a strong central government and to support the view that this clause granted to the federal government unlimited welfare power would have undoubtedly resulted in a failure to get the proposed constitution ratified by all the states. Thus, the view that this clause granted Congress unlimited welfare power, if advocated at all, at this time, was done so by a very limited minority. Despite these differences of opinion, the Constitution was ratified with the general welfare clause included therein, and throughout this whole pre-1936 period, the Supreme Court managed to steer a course clear of any involvement with this problem by

[14] Nilsson, *There Is No "General Welfare Power" in the Constitution of the United States*, 47 A.B.A.J. 43 (1961).
McKay, *Taxing and Spending for the General Welfare: A Reply to Mr. Nilsson*, 48 A.B.A.J. 38 (1962).

[15] FEDERALIST PAPER, No. 41.

[16] FEDERALIST PAPER, No. 83.

side-stepping the issue of the scope of the national spending power when it arose. Thus, in *Field v. Clark*,[17] suit was instituted by importers to obtain a refund of duties placed on imported merchandise under a tariff act.[18] The Supreme Court declared that the question of the scope of the national spending power was one of very gravest importance, that it should not be decided without very mature investigation and deliberation, and only when absolutely necessary. The rights of the parties were passed upon without entering into a discussion as to the validity of the bounty.[19] Four years later, the Court repeated this statement in *United States v. Realty Co.*,[20] where action was brought under the Tucker Act[21] to obtain payment of money in regard to sugar bounties. Effectually, the Supreme Court was relieved of deciding whether the Madisonian or the Hamiltonian view was the proper interpretation of this constitutional provision.

At this juncture, it would be pertinent to draw a very relevant distinction between legislation passed under the welfare clause, and legislation passed under one of the other enumerated powers but which involves the regulation of some activity which concerns and affects the general welfare. Throughout this whole pre-1936 period, the cases which came up before the Supreme Court did not involve Congressional Acts passed pursuant to the welfare clause. The principal cases involved legislation passed primarily under the taxing power or the commerce power, and involved an attempted regulation by Congress of activities which could be considered as harmful to the welfare of the Nation. The case of *Mc Cray v. United States*[22] is significant as illustrative of this distinction under the taxing power. Congress passed an Act increasing a federal tax on yellow margarine from two to ten cents per pound, while the tax on white margarine was one-fourth cent per pound. The Court held that the tax was a legitimate exercise of Congress' taxing power. In considering the constitutionality of this Act, the Supreme Court stated that the tax was neither a regulation of a state concern, nor a penalty on its face, and the fact that a motive other than taxation was involved would not invalidate the Act. The "other motive" referred to was the concern by Congress over the possible pawning-off of yellow margarine as butter by retailers. Although this was the evil Congress sought to avert, the regulation of this evil was accomplished under the taxing power. In *Bailey v. Drexel Furniture Co.*[23]

[17] 143 U.S. 649 (1892).

[18] 26 Stat. 567, c. 1244.

[19] Field v. Clark, 143 U.S. 649, 695 (1892).

[20] 163 U.S. 427 (1896).

[21] 28 U.S.C. §§ 761, 1346, 1491–1494, 1501, 1503, 2071, 2072, 2401, 2411, 2412, 2501, 2509–2511 (1959).

[22] 195 U.S. 27 (1904); Aff'd in Sonzinsky v. U.S., 300 U.S. 506 (1937).

[23] 259 U.S. 20 (1922); Aff'd in U.S. v. Constantine, 296 U.S. 287 (1935).

(Child Labor Tax Case), a federal statute imposed an excise tax of ten per cent of the entire net profits for the year upon persons who knowingly employed children and thereby violated the statute's provisions. The Court stated that Congress may tax any appropriate subject-matter and these taxes will not lose their character as such because of an ulterior or incidental motive of Congress. The Court continued saying that if a tax regulates and/or punishes, it may lose its character as a tax and become a penalty. Here Congress' attempt to regulate child labor by taxation showed on the face of the Act and amounted to a penalty, a penalty on purely local subject-matter—child labor. Thus, the Act was declared unconstitutional because the proposed tax was in fact, as it appeared on its face, a penalty. Penalties mean control and regulation, and Congress can only control and regulate in those areas of enumerated powers, and child labor is not such an area. In this case, Congress' motive was to eliminate child labor but the legislation was not framed as a direct prohibition against child labor. Rather, the prohibition was once again attempted under the guise of the taxing power. In both of these cases, the Supreme Court was only called upon to decide if the particular Acts of Congress were constitutional under the Congressional power to tax, and therefore the general welfare clause was not discussed. Thus, Congress used its taxing power to exert regulation and control in the area of general welfare.

The mechanism used by Congress to effectuate welfare legislation based on the taxing power was similarly employed with the commerce power. Illustrative of the use of the commerce power in this pre-1936 period is the case of *Hammer v. Dagenhart*.[24] In this case, Congress had passed an Act which essentially forbade the interstate transportation of goods which had been manufactured with the help of children under the age of fourteen. The plaintiff, a minor, sought to enjoin the enforcement of the Act on the basis that it infringed upon the first, fifth and tenth amendment rights. The Supreme Court held the Act unconstitutional on the basis that Congress was really attempting to regulate child labor, a social evil, and the regulation of social evil was held to be exclusively within the power of the state because such regulation is not granted to Congress anywhere in the Constitution. Thus, it must be a power reserved to the state within the meaning of the tenth amendment. It is clear that the motive of Congress in passing such an Act was to regulate an activity harmful to the general welfare of the Nation—child labor. The point is, although the Act was intended to regulate an activity harmful to the welfare, this piece of legislation was passed pursuant to the commerce power.

[24] 247 U.S. 251 (1918). Although this case was overruled by the Supreme Court in U.S. v. Darby, 312 U.S. 100 (1941) it illustrates the point the writers are distinguishing in the pre-1936 period.

A second significant example of a decision by the Supreme Court involving an Act where Congress attempted to effect general welfare by using its commerce power was *Champion v. Ames*[25] (The Lottery Case). Here, it was held that Congress might pass a law punishing the transmission of lottery tickets from one state to another, in order to prevent the carriage of those tickets to be sold in other states and thus demoralize, through a spread of the gambling habit, individuals who were likely to purchase tickets. Thus, Congress was again able to legislate for the general welfare, i.e. protection of the Nation's morals, by using the commerce power. The examples would be endless.[26] Thus, the conclusion is that whenever Congress sought to regulate some activity harmful to the general welfare of the Nation, it could fashion this piece of legislation in the form of a tax, or a regulation under interstate commerce. If its constitutionality was questioned, the Supreme Court would only be called upon to determine whether or not the extent of the attempted regulation was within the scope of the power, *i.e.* tax or commerce, relied upon to pass the Act. So long as the legislation neither appeared on its face to be a regulation of a state concern, nor a penalty, the Supreme Court was compelled to uphold the Act.

Throughout this pre-1936 period, the Supreme Court's approach was to analyze the motives of Congress behind the piece of legislation in question when deciding whether or not to uphold the particular Act. More often than not, Congress' motives were kindled by a concern for the general welfare, discussed above, but the legislative product of these motives was based on some other power of the Constitution. Thus, the Supreme Court was called upon to determine the constitutionality of particular Acts only on the basis of whether or not the attempt to regulate the activity in question (the motive behind the tax) was within constitutional limitations of specific legislative powers. Since Article I section 8—the welfare clause —was never used to justify any legislation, the Supreme Court was relieved of deciding the scope of the general welfare clause and the nature of the power it conferred.

This brings us to the case of *United States v. Butler*,[27] decided in 1936. Prior to this time, Congress had passed the Agricultural Adjustment Act which established parity prices for the farmers, designed to increase their purchasing power. The Act called for a tax to be levied on the processing of certain goods, which was then earmarked for use by the Secretary of

[25] 188 U.S. 321 (1903).

[26] Further cases involving some commerce clause legislation of a "welfare" character are; (1) U.S. v. 43 Gallons of Whiskey, 93 U.S. 188 (1876); (2) U.S. v. Marigold, 9 How. 560 (1850); (3) U.S. v. Boston & A.R.R., 15 F.209 (1883).

[27] 297 U.S. 1 (1936).

Agriculture to regulate market and surplus agricultural products. The Secretary of Agriculture included cotton on the list of taxable items and assessed the processing tax against the defendant, a cotton processor. The defendant challenged the Act and Congress' power to tax and appropriate for the purpose of controlling the production of cotton. The government contended that:

> . . . Congress may appropriate and authorize the spending of moneys for the "general welfare" that this phrase should be liberally construed to cover anything conducive to national welfare; that decision as to what will promote such welfare rests with Congress alone, and the courts may not review its determination; and, finally, that the appropriation under attack was in fact for the general welfare of the United States.[28]

In effect, the government used the welfare clause of Article I section 8 to justify the AAA and the Court finally had the opportunity to decide the scope of this clause. The majority came to the conclusion that the Hamilton view was the correct one, namely, that according to this view, Congress was given an independent grant of power to tax and spend for the general welfare by this provision in the Constitution.[29] The Supreme Court held, however, that the AAA was unconstitutional because the revenue was earmarked for spending by the Secretary of Agriculture in advance, and since the money was not going into the general treasury, it was not going toward supporting the government and hence was not a true tax. More important than this, however, the Court held that the regulation of agriculture was a purely state matter and thus, reserved to the state by the tenth amendment. Therefore, Congress' attempt to regulate in this area was violative of tenth amendment guaranties. The significance of this case lies in the fact that it represents the first occasion the Supreme Court had to pass on the spending power of Congress, and the Court gave full force and effect to the power of Congress to tax and spend for the general welfare, as an independent power.

In the following year, *Sonzinsky v. United States*,[30] another significant case, came before the Supreme Court. Sustaining a tax on firearms, the Court said:

> Every tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed. But a tax is not any the less a tax because it has a regulatory effect, . . . ; and it has long been established that an Act of Congress which on its face purports to be an exercise of the taxing power is not any the less because the tax is burdensome or tends to restrict or suppress the thing taxed. *Inquiry into the hidden motives which may move Congress to exercise a power constitu-*

[28] *Id.* 64.

[29] FEDERALIST PAPER, no. 83.

[30] 300 U.S. 506 (1937).

tionally conferred upon it is beyond the competancy of courts. . . . They will not undertake, by collateral inquiry, as to the measure of the regulatory effect of a tax, to ascribe to Congress an attempt, under the guise of taxation, to exercise another power denied by the Federal Constitution.[31]

This decision in 1937 had great significance in so far as the Supreme Court expressly denied itself the power to look into the motives of Congress in passing legislation and in effect, the Court surrendered a great deal of its power of judicial review over legislative Acts of Congress. Then, in *City of Cleveland v. United States*,[32] where the Supreme Court upheld the constitutionality of the U.S. Housing Act of 1937, the Court declared that, "it not only is no longer an open question that Congress has power to appropriate money to promote the general welfare, *but the determination of the Congress that the projects are in furtherance of the general welfare is decisive, unless arbitrarily made and clearly wrong.*"[33] The import of this decision was that the Court ascribed to Congress the power to determine what projects are in furtherance of the general welfare, and declared that it would no interfere unless it was "arbitrarily made and clearly wrong." Such a test is of doubtful value, since one would rarely ever find the Supreme Court declaring a decision by Congress clearly wrong or arbitrarily made. About the only limitation set upon this decision by Congress as to the scope of what is included under general welfare is that the project in question be national in scope.[34] But this limitation is further narrowed in that the Court is limited to determining only whether or not there is *any reasonable ground* for the conclusion reached by Congress that the project is national in scope.[35] In any case, the net result of the cases in this period has been to vest broad regulatory power in the federal government to regulate and control the general welfare of the Nation, subject only to very inconsequential judicial review by the Supreme Court.

An article by Mr. Thomas White, investigating the centralization of power in the federal government as a result of the Supreme Court's interpretation of the welfare clause, appeared in the American Bar Association Journal in 1957.[36] The conclusion of this comment concurs with what Mr. White asserted in his article. He goes on, however, to discern the

[31] *Id.* 513–14. (emphasis added). [32] 323 U.S. 329 (1945).

[33] United States v. Boyle, 52 F. Supp. 906, 908 (1943) (emphasis added).

[34] Washington Water Power Co. v. City of Coeur D'Alene, 9 F. Supp. 263 (D. Idaho 1934).

[35] Larabee Flour Mills Co. v. Nee, 12 F. Supp. 395 (D. Mo. 1935).

[36] White, *Construing the Constitution: The New "Sociological Approach,"* 43 A.B.A.J. (1957).

factors which led the Supreme Court to interpret the welfare clause as they have, in order to establish whether or not Congress' present broad power in this area is legitimately within the grant of power in the Constitution. Mr. White's major contention is that the Court has essentially changed the construction of the Constitution by applying a new method of interpreting the Constitution—what he calls the "sociological approach." According to this method, "the inquiry is not what the legislator willed when the law was passed but what he would have willed had he known the present conditions."[37] This approach enables the Court to sustain laws which under previous rulings would have been held invalid. He finds several factors which were relevant in forcing the Court to adopt this approach, among which are: the New Deal administration in the 30's which brought great pressure and criticism upon the Court; the effects of the depression upon the people causing a popular appeal for welfare legislation; and political pressure brought by Congressmen who favored welfare legislation and were being thwarted by the adverse rulings of the Court throughout the early 30's. The fear that Mr. White expresses is that with such an approach to interpreting the Constitution, the Court can effectually change the Constitution whenever it sees the need for so doing, thus endangering our constitutional form of government as the framers viewed it.

Another more recent article,[38] written by Mr. George Nilsson of the Arizona Bar, is critical of the present-day Congress because he feels Congress is exercising general welfare power and he claims that Congress is not given general welfare power *per se* in the Constitution. Mr. Nilsson uses a historical analysis of the welfare clause and examines the Federalist papers and other such documents written during the time of the constitutional conventions, and draws from these the conclusion that the framers never intended Congress to have general welfare power. As forceful as these arguments appear, the fact is that Congress does not exercise welfare power *per se*. Congress does, however, exercise the power to tax and appropriate to provide for the general welfare, and the Supreme Court has upheld this power,[39] subject only to the limitations that the area legislated for be national in scope, and that reasonable grounds exist for Congress' decision that a certain area is national in scope. As intellectually stimulating and interesting as these articles may be, any claim that Congress is exercising general welfare power per se or any criticism of the

[37] *Id.* at 84.

[38] Nilsson, *There Is No "General Welfare Power" in the Constitution of the United States*, 47 A.B.A.J. 43 (1961).

[39] U.S. v. Butler, 297 U.S. 1 (1936).

Supreme Court or Congress based upon historical investigation, is of no practical consequence. The power to tax and appropriate for the general welfare has been found to exist and the Supreme Court has upheld this power as being within the framework of the Constitution. This fact must stand immutably.

Viewing the pending bills discussed at the beginning of this comment in light of the above discussion, the conclusion is clear. Congress has declared that the problems in the areas of health, air pollution, education, and local mass transportation systems are national in scope and the various speeches given in proposing legislation in these areas seek to give reasonable grounds for this decision. Sen. Ribicoff, for example, claims that polluted air has cost this country "billions" annually in the form of waste and has caused other direct burdens upon the health and economy of the nation. The President has declared that this country is only as strong as its resources and services and the health condition of the citizens of this country directly affects those services and resources. In view of this line of reasoning, all these areas are national in scope and apparently valid reasons have been advanced to support these views. Hence, these areas necessarily fall within the category of general welfare thus giving Congress the power "to tax and appropriate" to provide for each of them, and "providing for" necessarily includes regulation. This conclusion should be inescapable and leave no room for confusion in light of the Supreme Court having declared such action by Congress to be within the framework of the Constitution. The present day status of this power is such that it can fairly be said that Congress can control, through its spending power, practically any activity in this country today, without serious fear of interference by the Supreme Court. The only alternatives remaining which could occur to change this condition in the future are: (1) the Supreme Court could overrule itself and adopt a new view of this power, or (2) the Court could develop further qualifications and limitations to curb the exercise of this power. Barring this, the result appears to be that the federal government has not only assumed the State's police power dealing with health, morals, safety and security advancing us toward the welfare state, but also, it has asserted controls on the expenditure of money for these functions which threaten to restrict individual freedoms as well. The moral evaluation of this result involves a plethora of other considerations such as: (1) the stress of international politics, (2) socio-economic policy determinations, (3) contemporary community needs, all of which are beyond the scope of this comment. However, we must at least be aware of the repercussions of this tendency toward increased federalization so that evaluations of future decisions can be accurately contained within those principles upon which our Constitution was adopted.