

THE GENERAL WELFARE CLAUSE

WHY DON'T WE LISTEN TO GEORGE WASHINGTON AND JAMES MADISON AND
PULL THE CONSTITUTION OUT OF THE FIRE BEFORE IT'S TOO LATE ?

by *JOHN W. BUGLER*

We Americans find ourselves faced with the disquieting specter of a five trillion dollar national debt, a sum truly inconceivable. Many economists and politicians tell us this debt portends a disastrous financial collapse in the future and we worry. Once debt free, we are now the largest debtor nation in the world and as we find ourselves on the precipice we are confounded as to how we got there. For answers, however, we need look no further than the farewell address of our first President, George Washington, who, in reference to our constitution, warned,

"Let there be no change [in the Constitution] by usurpation. For though this, in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed."

Change in the constitution by usurpation? When did that happen? It happened in 1937!

Few Americans realize that up until 1937 the Congress of the United States conducted its business within the boundaries of seventeen enumerated powers granted under Article I Section 8 of the United States Constitution. [Appx. 1] these powers defined clearly the areas of national purposes over which Congress could enact legislation including the allocation of funds and levying of taxes. Anything not set down in the enumerated powers was considered outside the purview of the national government and hence, a matter for the states. There were occasional challenges to the concept but it was not until Franklin Roosevelt's new deal that it was attacked in deadly earnestness.



Ill winds prevailed against the Constitution in the 1930'S. The country was in the depression and Franklin D. Roosevelt asked for extraordinary "powers similar to those necessary in time of war," to meet the emergency. Poorly crafted legislation, some of it not printed in time for floor vote were rammed through a docile and Compliant 73RD Congress. Everything he asked for was given, with little or no debate.

The first of the new deal statutes to reach the Supreme Court for review, arrived in January 1935. in the sixteen months following, The court decided ten major cases or groups of cases involving new deal statutes. In eight instances out of ten the decisions went in favor of the United States Constitution and against the new deal. Eight of the ten pieces of "must legislation" were found to be unconstitutional.

The President reacted as one would after having received a kick in a sensitive area. He went to the American people with a fireside chat and stated

"we have therefore, reached the point as a nation where we must take action to save the Constitution from the Court and the Court from itself." (March 9,1937) [II [P.754]



The President declared war on the Supreme Court.

To appreciate the depth of FDR's resolve in such issues, one need only read his correspondence to representative Snyder of Pennsylvania asking Congress to pass the national bituminous coal conservation act regardless of any doubts, "however reasonable," that it might have about the bill's Constitutionality. It appeared in this case at least, the President was urging Congress to disregard the Constitution. [2] [p.738]

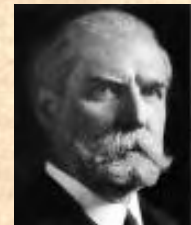
"In November 1936 the Democratic Party won an overwhelming victory at the polls. The election confirmed the Roosevelt administration in power and inspired the President to attempt a reorganization of the Judiciary in order to win control of that last remaining outpost of conservative Constitutionalism, the United States Supreme Court." [2] [P.749]



Constitutional historians refer to what happened next as the "Revolution of 1937." The President proposed that for each sitting justice over the age of seventy there be appointed one new Justice to "help them with their case load." In reality FDR wanted to pack the court with six additional justices willing to declare all of his "must legislation" Constitutional.

Chief Justice Hughes was traumatized. He looked for a way to disengage the President's plan which appeared almost certain to pass both houses and be signed into law. What to do? What was about to happen would ultimately lead our country to the clear and present danger of economic insolvency.

One observer noted "Hughes was profoundly convinced that what was at stake in the crises precipitated by the [President's] court plan was nothing less than the fate of the Supreme Court's historic role as guardian of the Constitution." He went on to state that What happened next was a "decision to retreat in the immediate skirmish in order to insure victory in the larger, struggle for judicial supremacy." [3] CP.111)



The supreme court at the time consisted of four conservatives, three liberals, one moderate, and one swing. The liberals were; Stone, Cardozo and Brandeis. The conservatives were: McReynolds, Sutherland, Butler, and Van Deventer. The moderate was Hughes. The swing was Roberts.

Hughes prevailed on Roberts to desert the Conservative camp, swing over with him and join the three liberals in declaring the social security cases [Steward Machine Co. v. Davis (301 us 548, May 24, 1937)] Constitutional.[4] [P.56] This Roberts did, and by so doing, took the wind from the sails of the President's court packing plan. It went back to committee and died. one Administration official called the court's action, "*the switch in time that saved nine.*"



This decision said in effect, Congress would no longer be held to enumerated powers but instead could tax and spend for anything; so long as it was for "general welfare."

But the words "General Welfare" in the introduction to the enumerated powers of Article I Section 8 were never intended to be an object for extension of the power to tax and spend; and up until the cases noted above, no court ever so averred.[Appx. 1]

The supreme court surrendered to the new deal on the most fundamental of constitutional issues. "it is

scarcely conceivable that Chief Justice Hughes and Justice Roberts... were unaware of the political implications of their move. the President had lost a battle but won a war. In a remarkable series of decisions . . .the Court executed the most abrupt change of face in its entire history..."-[2] [p.753-754]

Justice Roberts, writing in 1951, said in effect: "We voted against the Constitution to save the Court." His exact words were:

Looking back it is difficult to see how the Court could have resisted the popular urge ... an insistence by the Court on holding Federal power to what seemed its appropriate orbit when the Constitution was adopted might have resulted in even more radical changes to our dual structure than those which have gradually accomplished through the extension of limited jurisdiction conferred on the federal government. [3] [p.113]



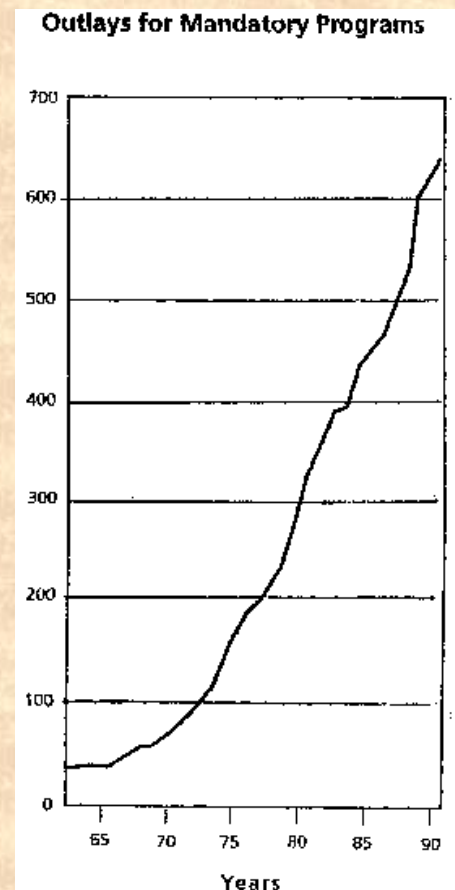
His statement "limited jurisdiction"- "conferred on the federal government" is understandable only when one considers that very few "extensions" of "limited jurisdiction" had been executed by Congress from the time of the great retreat decisions,[1937] Up to the year 1951. (The year Roberts book was published)

Nothing much happened immediately after these decisions because of WW II; then post war reconstruction with a strong conservative Republican leadership under Bob Taft and a coalition of conservative democrats; then Korea; then the Eisenhower years; then Kennedy [who basically was a fiscal conservative]; then Dallas; then Lyndon B. Johnson and the Great Society, [1965] the arrival of which signaled the commencement of the full implementation of "Stewart Machine Co. v. Davis"--1937.

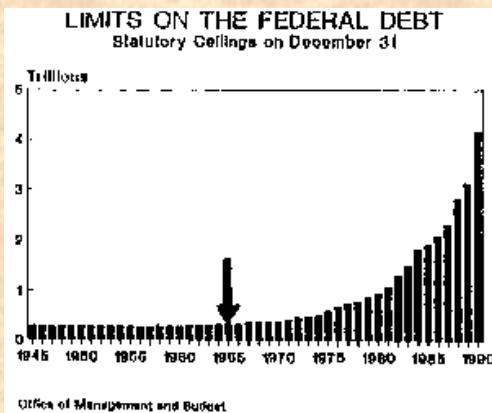
Until this time, the American people's demands on government were modest and for the most part the government lived within its means. But LBJ and his cohorts, both Democrat and moderate Republican, said in effect, "damn the enumerated powers, full speed ahead." Something for everyone: spend now, pay later.

As time went on elected representatives in Washington found it virtually impossible to say no to constituent demands. Many of the demands were for good things. [It seemed so, if someone else paid the bill.] Most if not all of these things are best left to the states, regional authorities, voluntary agencies and, yes, families. [In terms of sheer economic efficiency, nothing in all of history ever equalled the family. *Whatever happened to them?*]

Fifty legislative debates on the merits and uses of taxpayers dollars for local purposes is very healthy. Our founding fathers believed in the idea and we practiced it, almost perfectly until 1965. This gave great power and strength to our country. People retained more than 80% of their wages, whereas today they are left with less than 50% and many of us find ourselves reduced to asking the general government for this or that. "Give me, give me, give me."



Consider the national debt. Approaching five trillion dollars. How did this happen? A "General Welfare Congress" [session after session] made this happen. With no limits on their taxing and spending power, they



became like children in a candy store.

Study the national debt and mandatory program curves; they rise exponentially after the full implementation of the great society [APPX.2]. Both national parties must share blame for the enormous catastrophe befalling our country and its posterity.

It's really a "Catch 22". You want to serve your country. To serve your country you must be in power [in Congress]. To be in power you must be re-elected. To be re-elected you must out promise your opponent. To out promise your opponent you must promise to spend for the "General Welfare."

And it goes on and on and on, forever, until one of three things happen:

- I. We adopt good moral sense and courage and say no to the inordinate demands of our constituents and the special interest groups.
 - *This will never happen. Congress prefers to possess the power to buy the allegiance of their constituents by providing for their "general welfare." It is a payoff from organized government and "we the people" have been led to believe someone else will pay for it down the line. i.e. our children.*
 - *Look at the behavior of the "new Congress". Farm district Representatives won't give back on subsidies. Inner city Representatives won't give back on aid to teenage mothers. Defense industry Representatives won't give back on defense spending. The cotton and tobacco representatives won't give back on their subsidies. Good americans all. Some are signers of the contract for america. But they won't give back a dime. They love the power.*
 - *We need a Constitutional Amendment clearly defining just what they can tax and spend for. [Governments control people--constitutions control governments] and if we the people want them to keep all the power they now have, then so be it. we can join together, singing, "we don't have to live in the future, our children do. We want ours and we want it now."*

- II. Our nation suffers an economic collapse and/or a total loss of freedom due to excessive taxation and national debt. This is why the balanced budget amendment is a danger. Congress will balance the budget on the backs of the american workers and entrepreneurs. Congress will not resist unlimited spending power. Why? Because it feels too good and they are spending other peoples money. Your money and my money. It's painless when it's not your money. And the nation as we know it today, will continue the ongoing surrender of individual and economic liberty to a form of government that can best be described as legislative despotism.

- III. Our newly-elected Representatives propose a Constitutional Amendment to the Several States for their consideration, which shall state that:
 1. The phrase "the Common Defense and the General Welfare" in Article I Section 8 of the U.S. Constitution are not grants of power but merely introductions to the enumerated powers concerning the common defense and the general welfare.
 2. That all powers seized and accrued to the federal government since the "revolution of 1937" be submitted to the several states as part of this amendment and they as a whole shall vote up and down as to whether or not these seized powers should be returned to their rightful owners, i.e. the states or the people, or be added to the enumerations presently extant in Article I Section 8 of the U.S. Constitution.
 3. And that all future additions to those enumerated powers for taxing and spending found in Article I Section 8 of the U.S. Constitution be done as the founding fathers provided, by Amendment to the Constitution.

In his farewell address, George Washington speaking on our dual federal system stated: "the spirit of encroachment tends to consolidate the powers...in one, and thus to create?, . . . a real despotism . *

He went on to warn:

Let there be no change in the constitution by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.

[5] [P. 2241] For "customary weapon" read " Stewart Machine Co. v Davis" (301 US 548) 1937.

Presently our ship of state is aground on the shoals of uncertain centralism. At this very moment a great storm -and high tide of optimism have begun to shake her free; but any freedom will be short lived without an amendment enunciating clearly what the founding fathers intended:

The General Welfare clause in Article I Section 8 is an introduction to the enumerated powers that follow and not itself a grant of power.

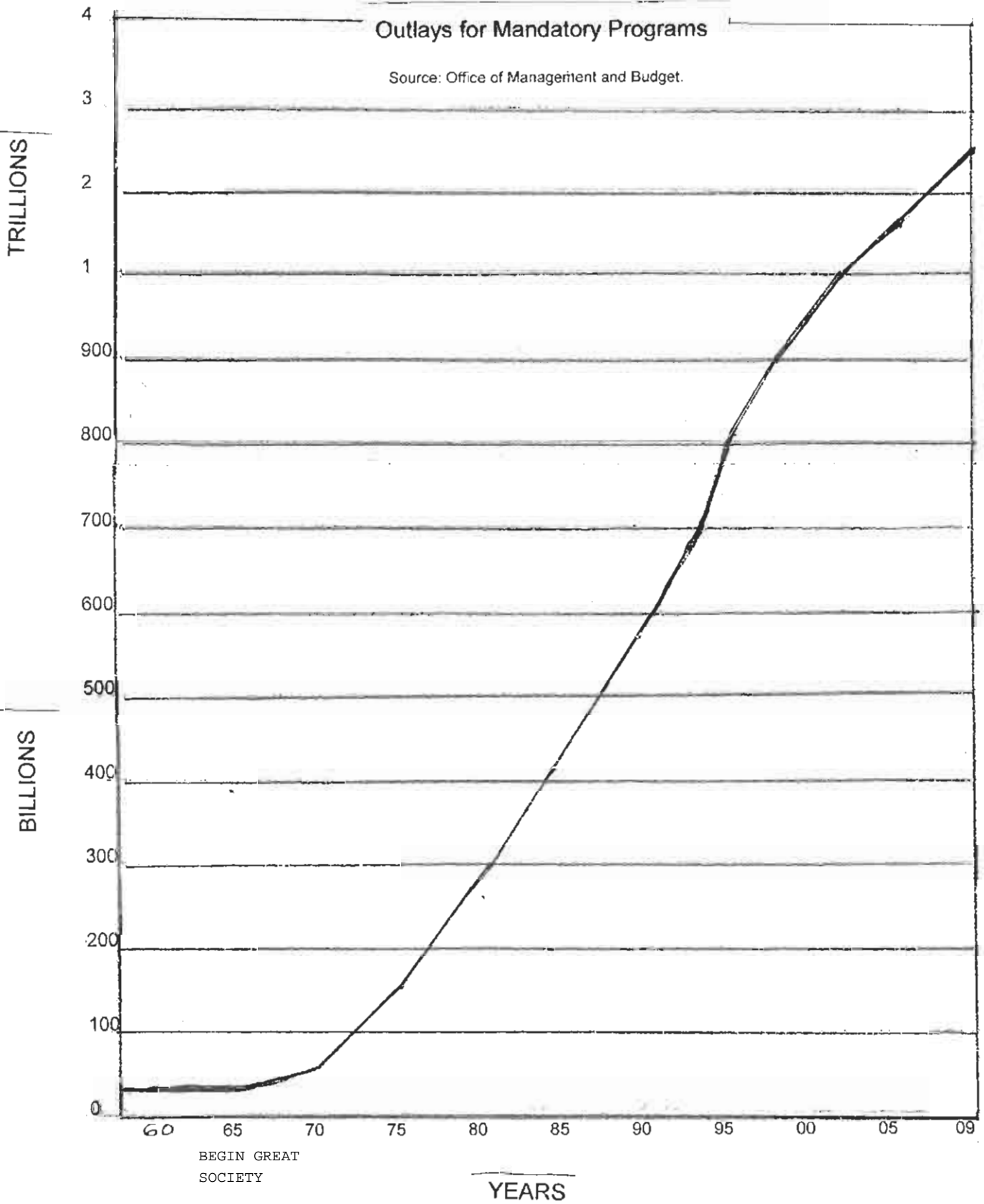
CLOSING

- The limits on federal power to legislate for the "general welfare" remains, to this date, undefined and presumably, boundless
- The question that begs an answer is, "if the framers of our Constitution, who labored so resolutely in philadelphia that torridly hot summer in 1787 intended the powers of Congress to have no boundaries, why did they bother to enumerate seventeen?"
- James Madison, when asked if the "general welfare" clause was a grant of power, replied in 1792, in a letter to Henry Lee,

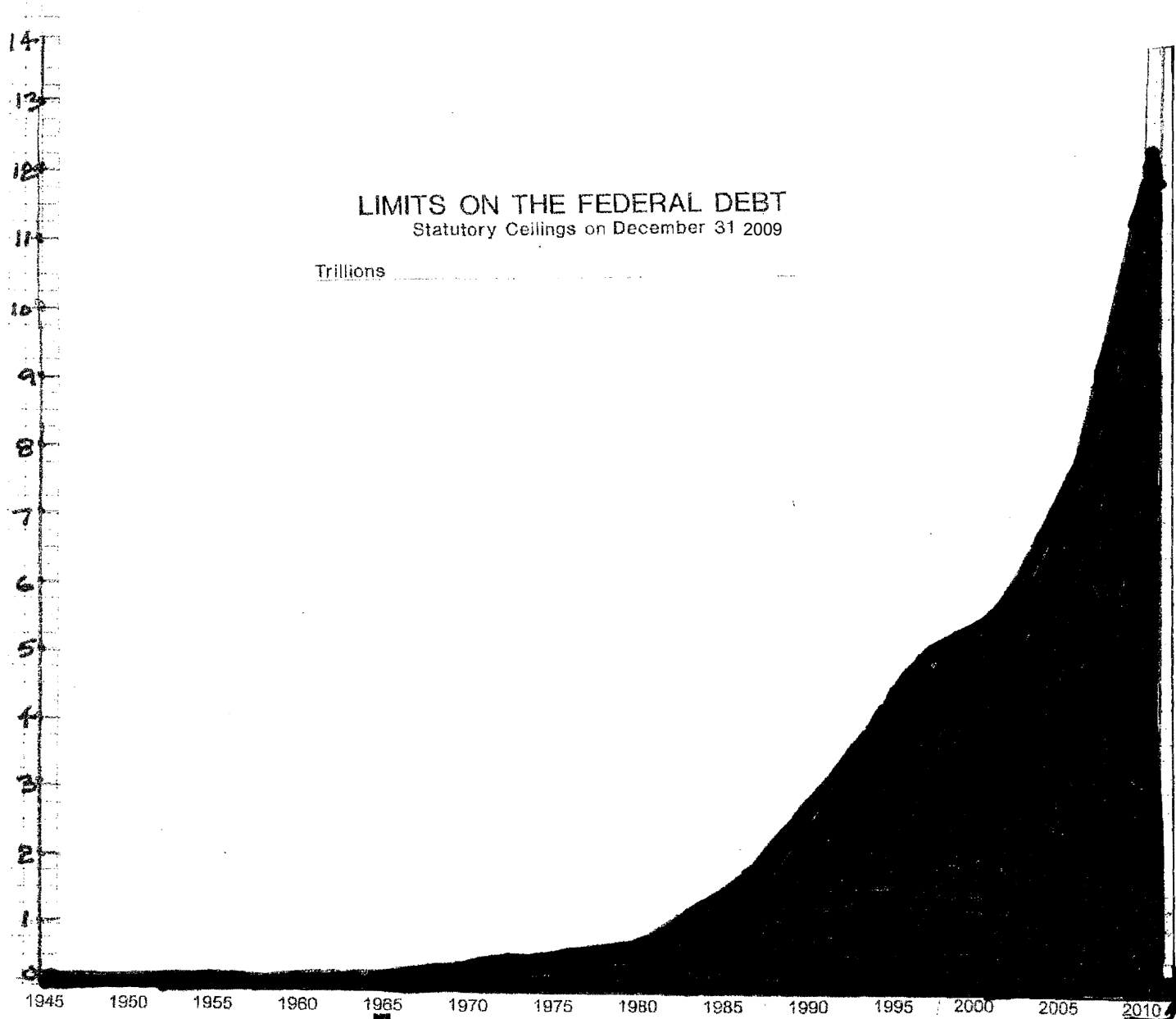
***If not only the means but the objects are unlimited, the parchment [the Constitution] should be thrown into the fire at once.* [6] [p.257]**

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1. Pusey, Merlo, J., Charles Evans Hughes [Vol.2] [Columbia University Press New York, 1963
2. Kelly, A.H. and Harbison, W.A., The American Constitution - Its Origins and Development [W.W.Norton & Co. Inc. New York, 1948
3. Mason, Alpheus, The Supreme Court from Taft to Warren [Louisiana State University Press: Baton Rouge, 1958]
4. Krock, Arthur, The Consent of the Governed - And Other Deceits, [Little, Brown and Company---Boston, Ma. 1971]
5. Hickey, W., The Constitution of the United States of America, with Papers of George Washington. [Philadelphia, 1853] [Farewell Address of George Washington, President, to the people of the United States, September 17, 1796]
6. Brant, Irving the Fourth President - A Life of James Madison [Eyre & Spottiswoode (Publishers) Ltd. London, 1970



APPENDIX 2



enter the great
SOCIETY

Source: Office of Management and Budget

ARTICLE 1:

SECTION 8. 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; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

EDITORS NOTE: THIS PAPER WAS WRITTEN IN 1994.
THE ONLY UPDATES ARE APPENDIX 1 AND 2.
THE UNITED STATES WAS UNTIL 1937 THE ONLY
COUNTRY IN THE HISTORY OF THE WORLD TO LIMIT
TAXING AND SPENDING TO ENUMERATED POWERS.

JWB