

# Founders Online

## BOUNTY PAYMENTS FOR COD FISHERIES, [6 FEBRUARY] 1792

### Bounty Payments for Cod Fisheries

[6 February 1792]

On 3 February 1792 the Committee of the Whole began consideration of the bill for encouragement of the cod fisheries. As passed by the Senate, the first section of the bill replaced the existing drawback (of the import duty on salt) to exporters of salted fish with a new one based on tonnage to owners of fishing vessels. Debate on 6 February centered on the advantage which the bill bestowed on New England and stressed the importance of the fisheries as a source of trained sailors in case of war.

Mr. Madison. In the conflict I feel between my disposition, on one hand, to afford every constitutional encouragement to the fisheries, and my dislike, on the other, of the consequences apprehended from some clauses in the bill, I should have forborne to enter into this discussion, if I had not found, that, over and above such arguments as appear to be natural and pertinent to the subject, others have been introduced, which are, in my judgment, contrary to the true meaning, and even strike at the characteristic principles of the constitution. Let me premise, however, to the remarks which I shall briefly offer, on the doctrine maintained by these gentlemen, that I make a material distinction in the present case, between an allowance as a mere commutation and modification of a drawback, and an allowance in the nature of a real and positive bounty. I make a distinction also, as a subject of fair consideration at least, between a bounty granted under the particular terms in the constitution, “a power to regulate trade,” and one granted under the indefinite terms which have been cited as authority on this occasion. I think, however, that the term “bounty” is in every point of view improper as it is here applied, not only because it may be offensive to some, and, in the opinion of others, carries a dangerous implication; but also because it does not express the true intention of the bill as avowed and advocated by its patrons themselves. For if, in the allowance, nothing more is proposed, than a mere reimbursement of a sum advanced, it is only paying a debt; and when we pay a debt, we ought not to claim the merit of granting a bounty.

It is supposed by some gentlemen, that Congress have authority not only to grant bounties in the sense here used, merely as a commutation for drawbacks, but even to grant them under a power by virtue of which they may do anything which they may think conducive to the “general welfare.”<sup>1</sup> This, sir, in my mind, raises the important and fundamental question, whether the general terms which had been cited, are to be considered as a sort of caption or general description of the specified powers, and as having no further meaning, and giving no further power, than what is found in that specification, or as an abstract and indefinite delegation of power extending to all cases whatever; to all such at least, as will admit the application of money, which is giving as much latitude as any government could well desire.

I, sir, have always conceived—I believe those who proposed the constitution conceived; it is still more fully known, and more material to observe, those who ratified the constitution conceived, that this is not an indefinite government deriving its powers from the general terms prefixed to the specified powers—but, a limited government tied down to the specified powers, which explain and define the general terms.

The gentlemen who contend for a contrary doctrine are surely not aware of the consequences which flow from it, and which they must either admit, or give up their doctrine.

It will follow, in the first place, that if the terms be taken in the broad sense they maintain, the particular powers, afterwards so carefully and distinctly enumerated, would be without meaning, and must go for nothing. It would be absurd to say, first, that Congress may do what they please; and then, that they may do this or that particular thing. After giving Congress power to raise money, and apply it to all purposes which they may pronounce necessary to the general welfare, it would be absurd, to say the least, to superadd a power to raise armies, to provide fleets, &c. In fact, the meaning of the general terms in question must either be sought in the subsequent enumerations which limits and details them, or they convert the government from one limited as hitherto supposed, to the enumerated powers, into a government without any limits at all.

It is to be recollected, that the terms “common defence and general welfare,” as here used, are not novel terms first introduced into this constitution. They are terms familiar in their construction, and well known to the people of America. They are repeatedly found in the old articles of confederation, where, although they are susceptible of as great latitude as can be given them by the context here, it was never supposed or pretended that they conveyed any such powers as is now assigned to them. On the contrary, it was always considered as clear and certain, that the old Congress was limited to the enumerated powers; and that the enumeration limited and explained the general terms. I ask the gentlemen themselves, whether it ever was supposed or suspected, that the old Congress could give away the money of the states in bounties to encourage agriculture or for any other purpose they pleased. If such a power had been possessed by that body, it would have been much less impotent, or have borne a very different character from that universally ascribed to it.

The novel idea now annexed to those terms, and never before entertained by the friends or enemies of the government, will have a further consequence which cannot have been taken into the view of the gentlemen. Their construction would not only give Congress the complete legislative power I have stated; it would do more; it would supercede all the

restrictions understood at present to lie on their power with respect to a judiciary. It would put it in the power of Congress to establish Courts throughout the United States, with cognizance of suits between citizen and citizen, and in all cases whatsoever. This sir, seems to be demonstrable: For if the clause in question really authorizes Congress to do whatever they think fit, provided it be for the general welfare, of which they are to judge, and money can be applied to it, Congress must have power to create and support a judiciary establishment, with a jurisdiction extending to all cases, favorable, in their opinion, to the general welfare, in the same manner as they have power to pass laws and apply money providing in any other way for the general welfare. I shall be reminded, perhaps, that according to the terms of the constitution, the judicial power is to extend to certain cases only, not to all cases. But this circumstance can have no effect in the argument, it being presupposed by the gentlemen, that the specification of certain objects does not limit the import of the general terms. Taking these terms as an abstract and indefinite grant of power, they comprise all the objects of legislative regulation, as well such as fall under the judiciary article in the constitution, as those falling immediately under the legislative article; and if the partial enumeration of objects in the legislative article does not, as these gentlemen contend, limit the general power, neither will it be limited by the partial enumeration of objects in the judiciary article.

There are consequences, sir, still more extensive which as they follow clearly from the doctrine combated, must either be admitted, or the doctrine must be given up. If Congress can apply money indefinitely to the general welfare, and are the sole and supreme judges of the general welfare, they may take the care of religion into their own hands; they may establish teachers in every state, county, and parish, and pay them out of the public treasury; they may take into their own hands the education of children, establishing in like manner schools throughout the union; they may assume the provision for the poor; they may undertake the regulation of all roads other than post roads; in short, every thing, from the highest object of state legislation, down to the most minute object of police, would be thrown under the power of Congress; for every object I have mentioned would admit the application of money, and might be called, if Congress pleased, provisions for the general welfare.

The language held in various discussions of this house, is a proof that the doctrine in question was never entertained by this body. Arguments, wherever the subject would permit, have constantly been drawn from the peculiar nature of this government as limited to certain enumerated powers, instead of extending, like other governments to all cases not particularly excepted. In a very late instance, I mean the debate on the representation bill, it must be remembered that an argument much used, particularly by a gentleman from Massachusetts,<sup>2</sup> against the ratio of one for 30,000, was that this government was unlike the state governments, which had an indefinite variety of objects within their power, that it had a small number of objects only to attend to, & therefore that a smaller number of representatives would be sufficient to administer it.

Arguments have been advanced, to shew, that because, in the regulation of trade, indirect and eventual encouragement is given to manufactures, therefore congress have power to give money in direct bounties, or to grant it in any other way that would answer the same purpose. But surely, Sir, there is a great and obvious difference, which it cannot be necessary to enlarge upon; a duty laid on imported implements of husbandry, would in its operation be an indirect tax on exported produce: but will any one say that by virtue of a mere power to lay duties on imports, Congress might go directly to the produce or implements of agriculture, or to the articles exported? It is true, duties on exports are expressly prohibited; but if there were no article forbidding them, a power directly to tax exports could never be deduced from a power to tax imports, although such a power might indirectly and incidentally affect exports.

In short, sir, without going further into the subject, which I should not have here touched on at all, but for the reasons already mentioned, I venture to declare it as my opinion, that were the power of Congress to be established in the latitude contended for, it would subvert the very foundation, and transmute the very nature of the limited government established by the people of America: and what inferences might be drawn or what consequences ensue from such a step, it is incumbent on us all well to consider.

With respect to the question before the house for striking out the clause, it is immaterial whether it be struck out, or so amended as to rest on the avowed principle of a commutation for the drawback, but as a clause has been drawn up by one of my colleagues, in order to be substituted, I shall concur in a vote for striking out, reserving to myself a freedom to be governed in my final vote by the modification which may prevail.<sup>3</sup>

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*Federal Gazette*, 20 Feb. 1792 (reprinted in *General Advertiser*, 20 and 21 Feb. 1792, *National Gazette*, 23 Feb. 1792, and *Gazette of the U.S.*, 7 Mar. 1792).

<sup>1</sup>. Laurance, in a speech immediately preceding JM's, had defended the bill by invoking the general welfare clause of the Constitution.

<sup>2</sup>. Probably Sedgwick, who had discussed the distribution of powers between the federal and state governments in his speech on apportionment of 19 Dec. 1791.

<sup>3</sup>. On 7 Feb. a motion to strike out the first section was defeated, and a motion to substitute the word "allowance" for "bounty" was approved the following day. JM voted with the majority when the House passed the amended bill on 9 Feb. The president signed it on 16 Feb. Hamilton later criticized JM for what he construed as the inconsistency between his speech and his vote (*Annals of Congress*, 2d Cong., 1st sess., 396, 397, 400, 402; *U.S. Statutes at Large*, I, 232; Hamilton to Edward Carrington, 26 May 1792, Syrett and Cooke, *Papers of Hamilton*, XI, 437-38).

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