inflicted upon wrongly seized properties, and give property owners 60 (rather than 10) days to contest federal forfeitures. Such reforms are appropriate in a nation whose government allegedly respects citizens private property rights.

More sweeping than the Hyde bill is one introduced by Rep. John Conyers (D-Mich.). The Conyers bill would effectively abolish civil forfeiture by requiring that all property forfeitures follow only upon criminal convictions of owners. Levy prefers Conyers's bill, but supports Hyde's efforts as a step in the right direction.

Of course, any reforms adopted by Congress would rein in only federal forfeiture powers. Citizens would remain subject to abusive state forfeitures, such as the one suffered by Tina Bennis. Consequently, courts ultimately cannot escape their constitutional responsibility to ensure that government does not abuse its forfeiture powers. Most important among these responsibilities is looking past legislative labels to the substance of government action. If the government punishes someone for wrongdoing, the action should be treated for what it is: a criminal prosecution. Allowing government to inflict punitive sanctions under the guise of civil proceedings is too risky for innocent property owners.

As Levy reports, law-enforcement agencies are none too keen to have their forfeiture powers curtailed. Federal and state officers warn direly of criminals getting the upper hand if even modest reforms such as the Hyde bill are enacted. But to argue that the sanctity of property rights should be ignored in the war on crime is to forget the most important sentiment that Pennsylvania's Old Whig shared with other founding-era Americans: an unconstrained government is the most terrifying of all criminals.

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Reference

Storing, H.J. (ed.) (1981) *The Complete Anti-Federalist*, Vol. 3. Chicago: University of Chicago Press.

Madison on the "General Welfare" of America: His Consistent Constitutional Vision
Leonard R. Sorenson
Lanham, Md.: Rowman & Littlefield, 1995, 172 pp.

Article I, section 8 of the Constitution confers upon Congress certain enumerated powers and a potentially more sweeping authority to provide for the general welfare, a goal also set forth in the Preamble. For proponents of a limited central government, the General Welfare Clause has

been a source of great mischief. Interpreted elastically by constitutionalists of the "living document" persuasion, the Clause has helped serve up a gourmand's feast of government programs, regulations, and intrusions that would have been unimaginable to the Framers.

Forty-three years ago, William W. Crosskey of the University of Chicago attempted to set the record straight—to uncover the original meaning of the Constitution and shut down the revisionists who had robbed the document of its stability and permanence. Alas, Crosskey's tome, *Politics and the Constitution in the History of the United States*, published in two volumes in 1953 with a third volume issued posthumously in 1980, only muddied the waters. Worse still, Crosskey managed to tarnish the image of James Madison, until then revered as a paladin in the struggle against encroaching government.

Leonard R. Sorenson, a professor of politics at Assumption College in Massachusetts, has undertaken to rescue us from our rescuer. According to Crosskey, Madison was duplicitous: Publicly, Madison proclaimed that the General Welfare Clause is merely a synonym for the enumerated powers considered collectively, not an independent source of power. But privately, Madison believed that the General Welfare Clause delegates to the Congress plenary legislative power; that the enumeration of specific powers served simply to allocate and assign governmental functions, establish certain procedural limitations, and illustrate some of the powers deemed to be necessary and proper. This alleged difference between Madison's public and private persona is at the root of the so-called Madisonian contradiction.

Sorenson's thesis, based primarily on *Federalist* No. 41, is that Madison regarded the enumeration as defining the objects entailed within the general welfare and the other general clauses that make up the Preamble (*i.e.*, justice, domestic tranquility, common defense, and liberty). But those objects are the broad ends or purposes of the Constitution, not just means or powers. Therefore, states Sorenson, Madison understood the general terms of the Preamble to enlarge the dominion of government beyond the enumeration itself, although not to confer plenary power. Madison's public position, ascribed to him by Crosskey, was that substantive powers are defined by specifying their number, kind, and application. On the contrary, Sorenson's explanation is that (1) Madison perceived the Preamble of the Constitution as prescribing a limited number of limited ends; (2) the enumeration defines those ends more precisely; (3) the general welfare and other clauses that make up the Preamble vest particular powers beyond the enumeration, but only to accomplish the limited ends; and (4) the particular powers thus vested can be identified only through an examination of the enumerated powers themselves, in their relation to the authorized ends.

If that sounds recursive, it is intended to be. Sorenson maintains that the general ends or objects of the Constitution, as specified in the Preamble, define the purposes of the enumerated powers qua powers; but the enumerated powers, in their end-defining dimension, provide more

specific meaning to the general purposes. Sorenson concludes that the purpose of the enumeration is to define the limited number of objects or purposes that fall within the idea of the general terms. Thus, a proposed new power must promote an object already authorized; that is, the new power must be derived from a general term, which means that it must also have an immediate and appropriate relation to an already enumerated power.

Perhaps an example from Sorenson will help. The Alien and Sedition Acts, under which aliens could be detained or deported, permitted prior restraint of speech and the press. It could be argued that Congress's authority to pass the Acts was entailed within the enumerated power to suppress insurrections—a particular means of providing for the common defense, domestic tranquility, and the general welfare. Madison rejects that formulation on the ground that suppressing an insurrection involves subsequent punishment, not prior restraint; the enumerated power neither explains nor defines any of the general terms in a manner that permits of censorship.

Sorenson weaves his way through *The Federalist Papers* (principally Nos. 39–44), dissecting and analyzing the text with diligence, erudition, and fastidious attention to detail. His work product should and perhaps will have an impact upon our courts, but there are significant obstacles to overcome.

First, the battle over the General Welfare Clause was all but lost six decades ago in *United States v. Butler* (1936) and *Helvering v. Davis* (1937). In *Butler*, the Court struck down the Agricultural Adjustment Act, which taxed processors in order to pay farmers to reduce production. Although invalidating the statute, the Court adopted the Hamiltonian view (almost in passing) that the General Welfare Clause is a separate grant of congressional authority, linked to and qualified by the spending power. Sorenson perceives correctly that virtually all governmental activity involves the expenditure of money; accordingly, there is little difference between Hamilton's view and Crosskey's position that the General Welfare Clause represents a plenary grant of power.

Any doubt remaining after *Butler* as to the scope of the General Welfare Clause was dispelled a year later in *Helvering*. There the Court defended the constitutionality of the 1935 Social Security Act, requiring only that welfare spending be for the common benefit as distinguished from some mere local purpose. Justice Benjamin Cardozo summed up what has become controlling doctrine ever since: "Nor is the concept of the general welfare static. . . . What is critical or urgent changes with the times."

Justice Harlan Stone struck the final blow in *Flemming v. Nester* in 1954, holding that questions concerning the propriety of conditions imposed on spending, and questions concerning the generality of the benefits, were for the Congress to resolve—subject to judicial invalidation "only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification." However disheartening such cases may be to advocates of a narrower and more constraining General Welfare

Clause, they do reinforce the urgent need for quality research from competent scholars like Sorenson.

The second hurdle for Sorenson is that his scholarship may be more widely referenced by historians than by jurists. Curiously, Sorenson chose as his principal theme the refutation of Crosskey. Writing long after the Supreme Court had done its damage, Crosskey's influence has been marginal. He is cited but three times in Supreme Court majority opinions, and in only one instance has the cited material implicated (tangentially) the General Welfare Clause. To be fair, Crosskey indisputably provided intellectual ammunition for the bad guys and, in that sense, Sorenson's effort to disarm him (and them) is an important part of the ongoing struggle to secure a more propitious climate of ideas.

Third, the focus of that struggle for ideas may have shifted in light of the Supreme Court's 1995 salvo in *United States v. Lopez*. The explosion of federal power under the expansive rubric of the Commerce Clause—arguably more harmful than any aggrandizement traceable to the General Welfare Clause—has at last been scrutinized by the Court. And if the Commerce Clause is ever restored to its rightful role—that of ensuring the free flow of trade among the states—the next campaign may indeed be waged against the Necessary and Proper Clause. Distended by the Court in *McCulloch v. Maryland* (1819), that Clause now allows Congress to employ means in exercising its powers that are merely convenient—neither necessary nor proper. So, while welcoming Sorenson's attack on the modernized General Welfare Clause, one should not be surprised if it is stalled by the allocation of scarce intellectual resources to more exigent projects. At a minimum, friends of liberty will surely find Sorenson's portrayal of Madison more congenial than Crosskey's.

Proponents of a government constrained to exercise only its enumerated powers should not be discouraged if progress is gradual and halting. Sometimes, in order to effectuate radical change without rending the social fabric, we may have to content ourselves with incremental challenges to long-established doctrines. Sorenson has undeniably supplied more than his fair increment. By tracing to Madison a view less conducive to swollen government than the view embraced by the New Deal Court and its successors, Sorenson enrolls on the side of limited government. He is part of the crusade to circumscribe the reach of the feds—even if his vision of Madison would not bind Congress as tightly to the original enumeration as old-line anti-federalists might desire.

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Pop Internationalism
Paul Krugman
Cambridge, Mass.: MIT Press, 1996, 214 pp.

Competitiveness! The word has a somewhat vague macho connotation—a favorite theme of many business writers and some economists.