

and "Freezing." Later that evening, in the library, just as the Western, resilient rest of me was beginning to thaw out in front of the fire with a dry *grappa*, a perfectly passable Tuscan cigar, and a volume of Winston Churchill's war-time memoirs, my Eastern, decadent side resumed its suit. With perfect timing, it drew my attention to the description of Sir Winston's stay at State Villa No. 7, near Moscow, in August 1942:

The hot and cold water gushed. I longed for a hot bath after the journey. . . . All was instantly prepared. I noticed that the basins were not fed by separate hot and cold water taps and that they had no plugs. Hot and cold turned on at once through a single spout, mingled to exactly the temperature one desired. Moreover, one did not wash one's hands in the basins, but under the flowing current of the taps.

"In a modest way," adds the English country bumpkin with becoming humility, "I have adopted this system at home. If there is no scarcity of water it is far the best." And who might you be, exclaimed my troublesome side driving the point home, to disagree with him? Come on, be fair! Should his wide-eyed fascination with Stalin's state-of-the-art faucets be considered somehow objectionable just because they are Stalin's?

Anyway, in the days when Churchill took the bath, at State Villa No. 7 but also in Teheran and in Yalta, the hunting estate of Marsiliana had 9,000 hectares. After the war ended the Communist local authorities expropriated all the arable land and much of the forest, leaving my Florentine hosts with 2,700 hectares of hillside underbrush. Back then, hunting wild boar was only a pastime, while real wealth was believed to lie in good fat Maremman land, suitable for agricultural use. Since then, the value of such land has plummeted—it is now only worth as much as the European Community will pay farmers for not growing anything edible on it—while the useless underbrush, where the wild boar thrives, has become precious. Rich businessmen from all over the world want to hunt there, for the same funny reason they want to wear Ralph Lauren tweeds and collect medieval armor.

A few days after I arrived in Marsiliana, my hosts were informed by the local authorities, who no longer call them-

selves Communist, that all hunting permits of the estate are revoked until a substantial tract of the underbrush is legally ceded to them in perpetuity. There was much shouting during lunch, and everyone had the kind of face that people have when something obviously bad yet deeply inexplicable happens to them.

So I took off my borrowed Barbour

and gum boots, and thought again that living in the country in wintertime, without mixer taps and all the other creature comforts of city life, softens the brain. Look at Winston Churchill.

*Andrei Navrozov is Chronicles' European correspondent.*

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## Hunters and Prey

*by Timothy Murphy*

*And there came a voice to him,  
"Rise, Peter, kill, and eat."  
—Acts X, 13*

### I. Brother Fox

A windless cloudless night  
refroze the puddled ice  
where geese chose to alight.  
Waking at dawn they found  
their feet webbed to the pond.  
Drawn by their doleful cries  
a fox strolled from the wood  
with mayhem in his eyes.

### II. Whitetails

Hoofed rats that they are,  
they live in cervine fear  
of carnivores who dine  
on tenderloin of deer  
or crown rack of fawn  
downed with a young red wine.

### III. Little Heart Butte

Grouse peck at its breast  
and pheasants at its foot.  
Buffalo berries west  
and Russian olives east  
girdle this shortgrass butte,  
this table set for a feast.  
I, the unbidden guest,  
have little heart to shoot.

## LAW

## The Necrosis of Limited Government

by Douglass H. Bartley

The words “general welfare” have had the greatest significance in modern American life of any in the Constitution. Originally regarded by its 18th-century Federalist creators as a *restraint* on federal power, the brake of general welfare has been transformed, retooled by the U.S. Supreme Court into a huge turbine, a supercharger that drives today’s immense federal power grid.

In modern times, “general welfare” has become the constitutional touchstone for vast portions of the federal taxing, spending, and regulatory apparatus. “General welfare” is the linchpin of federal expansionism, the last straw almost invariably grasped by those whose federal social schemes cannot find constitutional warrant in any enumerated power.

That use of the General Welfare Clause is a development that would have jolted James Madison, the Father of the Constitution, and his close friend Thomas Jefferson—had they envisioned the judicial torture that modern jurists have inflicted on the clause.

Indeed, the abuse of the clause would have startled even the fervent arch-centralist and expansionist Alexander Hamilton. Selling the proposed Constitution to the ratifying states, Hamilton assured readers of *Federalist* 83 that the new Constitution would grant *no* “general legislative authority.” Hamilton’s representation alone disembowels the arguments of the federal expansionists.

How did we get from a federal government having *only* delegated powers to a government vested with “general legislative authority” to do everything not specifically denied in the Constitution? In large part, the transformation came through the Supreme Court’s contortion of the words “general welfare.” Article I, section 8, gives Congress power “to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Wel-

fare of the United States. . . .”

Before ratification, the clause was the subject of controversy over the meaning of “provide for the common Defence and general Welfare.” Opponents of ratification argued (and modern revisionists still argue) that “general welfare” gave Congress an unlimited power to tax and to spend for any purpose that could somehow be related to promoting the national welfare or the public good.

More specifically, the argument was that the words would create a general public purpose power, complete of itself, independent, separate, and distinct from the 17 other enumerated powers in the following clauses. The general power would be limited in scope only by the provision that federal taxing and spending must be for the *common* defense and *general* welfare, rather than insular or provincial defense or welfare.

That view originated with Alexander Hamilton in a statement in 1791, just three years after his assurances to the contrary in the *Federalist*. Reversing himself, Hamilton said that the General Welfare Clause

is as comprehensive as any that could have been used, because it was not fit that the constitutional authority of the Union to appropriate its revenues should have been restricted within narrower limits than the general welfare.

The contrary view, advanced by James Madison, was that “general welfare” conveyed no independent federal power, but was “a sort of caption or general description,” as Madison put it, of the 17 enumerated powers listed in the following clauses. The so-called “Hamiltonian view” ultimately received the imprimatur of the U.S. Supreme Court in 1936 in *United States v. Butler*, a truly seminal and tragic case in our constitutional history. *Butler* was the Actium for limited federal power and the Waterloo for the notion of a binding Constitution.

In *Butler*, the immediate issue was the constitutionality of Franklin Roosevelt’s Agricultural Adjustment Act of 1933, which imposed a federal tax on processors of agricultural commodities. The proceeds were then distributed to farmers who agreed to limit their production of particular commodities. The govern-

ment, urging the court to adopt the “Hamiltonian view” of unlimited federal power, argued that the tax was constitutionally justified as an exercise of its power to legislate for the general welfare—i.e., to help end the depression in agriculture by raising farm prices.

Though the Supreme Court ruled against the government on separate grounds, it nonetheless fully embraced the Hamiltonian notions that: Congress had power to tax for whatever purposes could qualify as advancing the general welfare; the General Welfare Clause was an independent source of public-purpose spending power for Congress; and “public purposes” were unlimited in scope. “[T]he power of Congress to authorize expenditures of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution,” declared the Court.

*Butler* crossed the constitutional Rubicon, cutting the taxing power loose from the restraint of the other enumerated federal powers. Until then, everyone had thought that the taxing power could be used only for funding measures that were exercises of the specific, enumerated powers. *Butler* changed the constitutional landscape by holding that Congress could tax for any unenumerated purpose that qualified as a public purpose. That opened the door for a Brobdingnagian taxing binge and ultimately the floodgates for the deluge of federal spending that inundates us today.

The only hope that *Butler* left alive was in one wheezing passage that intimated “general welfare” might be subject to some limitations. But a year later, that faint hope was dashed in *Helvering v. Davis*, which upheld the establishment of Social Security as a proper use of the general welfare power. In *Helvering*, Justice Cardozo proved that judicial giants can have bad—even tragically bad—days, as he announced the Court’s almost total surrender to Congress on the subject of constitutional limits to the government’s taxing power:

The line must still be drawn between one welfare and another, between particular and general. Where this shall be placed cannot be known through a formula in advance of the event. There is a middle ground or certainly a penum-