1891

Constitutionality of Sugar Bounties

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CONSTITUTIONALITY

OF

SUGAR BOUNTIES

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1891.
The McKinley Tariff Act of 1890 among other things provides:
"That on and after July first, 1891, and until July first 1905, there shall be paid, from any moneys in the Treasury not otherwise appropriated under the provisions of section 3689 of the Revised Statutes, to the producers of sugar testing not less than ninety degrees by the polariscope, from beets, sorghum or sugar cane grown within the United States, or from maple sap produced within the United States, a bounty of two cents per pound; and upon such sugar testing less than ninety degrees by the polariscope, and not less than eighty degrees, a bounty of one and three fourth cents per pound under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.

And for the payment of these bounties the Secretary of the Treasury is authorized to draw warrants on the Treasurer of the United States for such sums as shall be necessary, which sums shall be certified to him by the Commissioner of Internal Revenue, by whom the bounties shall be disbursed, and no bounty shall be allowed or paid to any person licensed as aforesaid in any one year upon any quantity of sugar less than five hundred pounds."

The subject of this paper will be: First the authority under which Congress acted in granting bounties to sugar pro-
ducers: Second, the extent to which the courts may go behind the legislature in declaring an act unconstitutional.

Other questions might very appropriately be dealt with in this connection if time would allow. What constitutes a public as distinguished from a private purpose; and whether lending government aid for the purpose of developing the United States into a sugar producing country is a public purpose or not, are questions that should receive more attention than will be possible to give them here. However, they are largely question of policy or expediency; they must be passed upon by the legislature rather than the judiciary. Questions of this nature have given rise to much animated controversy in the past. In the discussion of them ablest and purest minds in our history have disagreed; they have been and are prominent in the struggles of political parties; defeat on either side does not seem to silence opposition or to give security to victory. The contest is often renewed; and the attack and defence maintained with equal ardor.

In considering the first point, it must be remembered that the Federal government is one of enumerated powers, its jurisdiction being limited to subjects named in the Constitution. Herein lies the chief difference between the Federal
Constitution and the State Constitutions. In the latter the powers are limited by the subjects enumerated; and in this the one is no more a limited government than the other. The general government finds its jurisdiction in the subjects enumerated; the state governments find theirs in the subjects not enumerated. It should ever be kept in mind, however, that this difference extends only to subjects of jurisdiction and not authority and modes of administration.

The powers delegated to the general government are found in Article I section 8 of the Federal Constitution. These powers are classified under eighteen subdivisions. The power to give encouragement to sugar growing must be gathered from them or the act is unconstitutional; as Congress has power only to legislate upon subjects within the scope of the enumerated powers.

It requires but little study of this section to convince one that this power, if it exists at all, is found in subdivision one. It would be impossible to justify the act under any of the subsequently enumerated powers. They specifically name the subjects over which Congress shall have authority. The power to lend government aid to any great interest in which the people of the United States are engaged, may be said to exist in two instances only: First is that of subdivision
three, which is as follows: "Congress shall have power to regulate commerce with foreign nations, and among the several states and with the Indian Tribes." And the second that of subdivision eight reading as follows: "Congress shall have power to promote the progress of Science and the Useful Arts, by procuring for limited times, to authors and inventors the exclusive right to their respective writings and discoveries."

It could not be seriously contended that the granting of bounties to sugar producers had to do either with the regulation of commerce or the promotion of science or the useful arts.

The constitutionality of the sugar bounty clause of this act then, depends primarily upon the powers given to Congress by subdivision one of section eight which is as follows: "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."

The extent of the power given to Congress by the clause last quoted has been in the past, is at present, and probably will continue to be, a source of much discussion. The power granted by the phrase, "to provide for the general welfare."
has been the chief bone of contention. Many of our ablest statesmen have differed as to the proper construction to be upon this clause. Some contend that the words "to lay and collect taxes, duties, imposts and excises," constitute a substantive grant of power in themselves and are not limited by that part of the clause which follows. Others argue that the clause "to pay the debts and provide for the common defence and general welfare" qualifies what goes before, and that taxes, imposts etc., could only be levied for the purpose of paying the debts and providing for the common defence and general welfare of the nation. The latter construction is the generally accepted one; it is in accordance with the practice of the national government, and sanctioned by eminent constitutional writers.

If the former be the proper interpretation the government of the United States it is said, is in reality, one of unlimited powers notwithstanding the subsequent enumeration of specific powers. "It not only renders wholly unimportant and unnecessary the subsequent enumeration, but plainly extends far beyond them, and creates a general authority in Congress to pass all laws which they may deem for the common defence and general welfare." (Story on Const. § 909.)

But as to whether there are two distinct grants of power
included in subdivision one, or the clause "to pay the debts and provide for the common defence and the general welfare", is made to qualify what goes before, can make but little difference for all practical purposes. The power of the government or the security of the people has little to gain or lose by the adoption of one or the other of these constructions. Either one attains the same end. If the power of taxation contained in the grant is unlimited, it means simply the power of the people to tax themselves; for it must not be forgotten that our government is administered by the people coming from each state and the districts in the state. When they lay and collect money for any purpose, they alone must bear the burden; and there can be but little to fear in the power of a government which is ever to be administered by the people. It is safe to say that the people will not long oppress themselves beyond their own endurance. "The fears and jealousies expressed of the aggressiveness of governments upon the people presupposes the separation of the government from the people, or its independence of the people." (Tiffany on Const. § 338).

On the other hand if we limit the powers of the government "to lay and collect taxes, duties, imposts and excises" only for the purposes of "paying the debts and providing for the common defence and general welfare" of the nation; recognizing
as we do also, that the administrators of the government are the people themselves, who must necessarily be the exclusive judges of what purposes are for the common defence and general welfare; the limitation is a check of but little value. There will never arise an occasion to raise a revenue for any other purpose than those specified in the limitation. When the wide range of subjects which may engage the attention of governments having to do with the common defence and general welfare of the nation are taken into consideration it will be found that everything pertaining to the duty of the government is necessarily included. It is the duty of every civil government to provide for the security and for the general welfare of the people. The government founded by our ancestors was intended to be entrusted with the authority of promoting the general welfare of the people and was clothed with every power essential to that end. It is not to be presumed that they had any misgivings as to this power. They were then, as the people ever after would be, the best judges of what means were necessary for such purposes. Judge Story says at p, 638: "If the power to provide for the common defence and general welfare is an independent power, then it is said the government is unlimited, and the subsequent enumeration of powers is unnecessary and useless. If it is a mere appendage or quali-
fication of the power to lay taxes, still it involves, of gener-
al appropriations of the money so raised, which indirectly pro-
duces the same result."

Another interpretation contended for is that the clause
"to provide for the common defence and promote the general
welfare" of the nation has no significance per se; but is
merely a prelude to what follows; that it simply contains gen-
eral terms, explained and limited, by the subjoined specifica-
tions, and therefore could never be taken into consideration
in justifying the legislative act. But the great objection to
this construction is that it robs the clause of all meaning.
No one has a right to assume that any part of the constitu-
tion is useless or without a meaning; and especially is the
true, when the attempt is to rob it of what is a natural and
appropriate meaning. Such an interpretation of the constitu-
tion would not be construing it; it would be reading that in-
strument to suit ourselves; in short, it would be doing the
very thing so much complained of, to make a constitution, and
not to administer or construe that which our forefathers
gave us. Commenting on this unnatural construction Judge Story
says at § 913: "it is not said to 'provide for the common de-
fence and promote the general welfare in the following man-
ner, viz.,' which would be the natural expression to indicate
such an intention. But it stands entirely disconnected from every subsequent clause, both in sense and punctuation; and is no more a part of them than they are of the power to lay taxes.

The same great author says: at p. 642: "One of the best rules of interpretation, one which common sense and reason forbid us to overlook, is, that when the object of a power is clearly defined by its terms or avowed in the context, it ought to be construed so as to obtain the object, and not to defeat it. The circumstance that so construed, the power may be abused, is no answer. All powers may be abused; but are they then to be abridged by those who are to administer them, or denied to have any operation?"

The history of the proceedings in the convention would seem to show, with regard to this clause, that it had no reference whatever, to the subsequently enumerated powers. The first resolution adopted on the subject of the powers of the general government was, "that the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of independent legislation." Jour. of Con. pp. 68, 86, 87, 135, 136. Later it was amended so as to read: "And, moreover, to legis-
late in all cases for the *general interest of the Union*, and also in those, to which the state are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation." Id., p. 181, 182, 208.

The first draft of the Constitution reported by the "Committee of Detail" on August 6, 1787, read as follows: "The legislature of the United States shall have the power to lay and *collect taxes, duties, imposts and excises*:" there being no limitation whatever, on the power to levy taxes. Later steps were taken with a view to providing for the payment of debts incurred during the Revolutionary War. A committee of eleven was appointed to consider the expediency of the general government assuming the debts incurred by the several states during that struggle. The report of this committee was as follows: "The legislature of the United States shall have power to fulfill the engagements, which have been entered into by Congress, and to discharge, as well the debts of the United States as the debts incurred by the several states during the late war, for the common defence and general welfare." Afterwards it was moved to amend the report so as to read as follows: "The legislature shall fulfill the engagements and discharge the debts of the United States," which passed unanimous-
ly after an ineffectual attempt to change the phrase "discharge the debts" to "liquidate the claim." Id., 279, 280.

Later the following amendment to the first section of the seventh article, (to lay and collect taxes etc.), was moved and carried: "The legislature shall fulfill the engagements and discharge the debts of the United States, and shall have power to lay and collect taxes, duties, imposts and excises." Id., 284. On a subsequent day the following clause was proposed and agreed to: "All debts contracted, and engagements entered into by or under the authority of Congress, shall be as valid against the United States under this Constitution, as under the Confederation." On the following day the following amendment to the article, (to lay taxes etc.), was proposed and defeated: "For the payment of said debts, and for the defraying the expenses, that shall be incurred for the common defence and general welfare." Id., 291.

So that as yet the power to lay and collect taxes was unlimited. Whatever dissatisfaction there was seems clearly to have been in allowing Congress to have this power without a check somewhere. On September 4, another committee reported that the clause respecting taxation should read as follows: "The legislature 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." This is substantially as it now stands in the Constitution. From this it will be seen that it was never discussed as an independent power; nor as a mere prelude to the subsequent powers. What discussion there was in regard to this clause was in connection with the power to lay taxes. Whether or not the taxing power should be unqualified seems clearly to have been the only question under discussion.

"This clause has no reference whatsoever to the Articles of Confederation nor indeed, to any other clause of the Constitution. It is on its face, a distinct, substantive, and independent power. Who then is at liberty to say that it is to be limited by the other clauses, rather than they to be enlarged by it; since there is no avowed connection or reference from the one to the other? Interpretation would here desert its proper office, that which requires that every part of the expression ought, if possible to be allowed some meaning and made to conspire to some common end." Story on Const. § 917.

It has been further urged in favor of the narrower construction that it matters little whether the clause in question is to be construed to embody every measure that would be conducive to the general welfare; or every measure only in which there might be an appropiation of money, as is contended by some; the effect would be the same in making useless the subse-
quently enumeration of powers. For it is said that there is no power which may not have some reference to the common defence and general welfare; nor a power which in its exercise does not involve an appropriation of money. According to this interpretation it is said we have an unlimited government founded by a particular enumeration of powers.

There is no better refutation than that given by Judge Story at § 919, he says: "Stripped of the ingenious texture, by which this argument is disguised, it is neither more or less, than an attempt to obliterate from the Constitution the whole clause 'to pay the debts, and provide for the common defence and general welfare of the United States', as entirely senseless, or inexpressive of any intention whatsoever. Strike them out, and the Constitution is exactly what the argument contends for. It is, therefore, an argument, that the words ought not to be in the Constitution; because if they are, and have any meaning, they enlarge it beyond the scope of certain enumerated powers and this is both miscievous and dangerous!"

To deny effect to any clause in the Constitution, if it is sensible in the language in which it is expressed and in the place in which it stands would certainly seem to be a most unjustifiable latitude of interpretation. If words are inserted we are bound to presume that they have some definite object
and intent; and to reason them out of the Constitution upon arguments ab inconvenienti (which to one mind may appear wholly unfounded, and to another wholly satisfactory) is to make a new Constitution not to construe the old one.

Some of our greatest men have advanced the argument which Judge Story criticizes as unsound and in violation of recognized rules of interpretation. Mr Madison, who next to Hamilton, perhaps possessed the greatest knowledge of every phase of our national government, held these views. Thomas Jefferson was always a strong opponent of the liberal construction; though in carrying on the government he was obliged to relax in practice what he so ably contended for in theory. Tiedeman on Const. Law, p. 133.

Alexander Hamilton believed in a liberal construction of all the powers granted to the Federal government. In favor of this theory as applied to the clause in question he said: "The terms 'general welfare' were doubtless intended to signify more than was expressed or was imparted in those which followed; otherwise, numerous exigencies incident to the affairs of a nation would have been left without a provision. The phrase 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 revenue should have been restrict-
ed within narrower limits than the 'general welfare,' and because this necessarily embraced a vast variety of particulars, which are susceptible neither of specification nor definition. It is, therefore, of necessity left to the discretion of the national legislature to pronounce upon the subjects which concern the general welfare and for which under that description, an appropriation of money is requisite and proper."

One Hamilton's Works (1810, p. 230).

This is the interpretation given by one of, if not the greatest, of those great men who founded our government. Hamilton's Writings seem, in the estimation of the greatest writers in America, Great Britain, and France, to place him in the first rank of master minds. It has been said that they exhibit an extent and precision of information, a profundity of research and an accuracy of understanding, which would have done honor to the most illustrious statesmen of ancient or modern times. From his large experience as one of the framers of the Constitution; his numerous writings and deep study of every phase of our government; certainly his views on this subject are entitled to much weight. And whether his views are in accord with the true meaning intended to be conveyed or not, they are in harmony with the practice of the government for the past one hundred years. Appropriation have never been
limited by Congress to cases fully within the specific powers enumerated in the Constitution, whether looked upon in their broad or narrow sense. Money has been raised in an especial manner to aid internal improvements of all kinds, in our roads, for the purpose of navigation and other objects of national character and importance. (Pres. Monroe's Message of May 4, 1822) In 1794, Congress raised money to aid the St. Domingo refugees. (Act of Feb. 12, 1794, ch. 2.) Again in 1812, money was raised to aid the inhabitants of Venezuela who had suffered from an earthquake. (Act of May 8, 1812, ch. 79.) It would indeed be difficult to justify such legislation under any of the powers delegated to the general government. Another illustration of a domestic nature, which is identical with the sugar bounty clause, is the bounty given in the cod fisheries in 1792. (Act of Feb. 16, 1792, ch. 6.) The annual appropriation acts speak very strong language on this point. Every president of the United States, with the single exception of Madison, seems to have acted upon this doctrine. Mr. Jefferson certainly gave it a partial sanction in signing the bill for the Cumberland road. (Act of March 29, 1806, ch. 19.) President Jackson followed with manifest reluctance, but allowed that it was firmly established by the practice of the government. (See veto of Maysville Road Bill May 27, 1830.)
It is safe to say then, that so far as a course of legislative enactments can settle anything, the power of Congress to provide for the general welfare of the nation, by means which are plainly adapted to that end, and not prohibited, may be considered as well established. In other words though much discussion has been indulged and no judicial tribunal has ever been called upon to squarely place a construction upon the "general welfare" clause, yet the people of this country have solved the question in conformity with the broader construction.

But even if it were true, that the framers of the Constitution believed that they had provided for all the exigencies that would have to do with the general welfare of the people; and that the subsequently enumerated powers included all that the general welfare clause meant at that stage of the world, there could be no great objection to giving to that clause the new shade of meaning which the terms general welfare may have to day. It is generally conceded by all that the people of the United States have nothing to regret, as yet because of the concessions of power made by the states from time to time to the Federal government. The newly added strength has in each instance worked admirably. More and more as time goes on, our people regard the close of our late war as marking the completion of our national government. The fears and jealous-
ies of the tyranny of governments, entertained so largely by our forefathers, are no longer a part of the anxieties of the people. These misgivings were honestly entertained, being born out of their political experience with Colonial governors, and the cruel treatment received at the hands of a tyrannical government three thousand miles away. It was natural that they should look upon any form of government as they did. But time and experience have proven that a government wholly dependent upon the people for their existence; a government over which the people have absolute control; in short, a government which, in our case, are the people themselves, will never attempt much tyranny; for to do that, would be to oppress themselves, which is unnatural for man to do.

Indeed, so well pleased have the people been with the workings of the national government that there is going up a cry today that its jurisdiction should be extended. Many think that every interest in which the public can be concerned ought to be managed by the general government. Railroads, telegraphs, express companies and similar corporations should, it is argued, be owned and controlled by the general government; by this they would be made to serve the public better at much less expense. Another equally earnest school urges the nationalization of land as the panacea of all human ills; while
While a third thinks that the government should be the common parent of us all, taking every interest whatever under its control. This is the condition of things that confronts us today. Whether we are passing from better to worse or vice versa, does not enter into the question under consideration. These facts exist, and show beyond all question that the terms "general welfare of the United States" as accepted today, have a widely different meaning from that of one hundred years ago. The progress we have made for the past century has not only added new meanings to old words, but conditions and relations have arisen in the commercial, and politico-economic world that could not have been foreseen by our ancestors.

Would it be in accordance with recognized rules of interpretation to give these new shades of meaning to the written words in the constitution when it was plain that the framers of that document could never have had them in mind? It will not be denied that a true interpretation of the law will disclose the real intention of the law giver; but in countries in which popular governments are established the real law giver is not the men who years ago made the law; it is the living power which is the people in possession of political power. The correct interpreter of the law need not trouble himself so much with the intention of the framers of the Constitution.
as with the modifications of the written word. This rule is recognized by eminent authority. Dr Lieber recognizes this factor when in distinguishing between the interpretation and the construction of a constitutional provision, he says: "That a constitutional sentence then, must be interpreted if we are desirous to ascertain what precise meaning the framers of the constitution attached to it; and construed, if we are desirous of knowing how they would have understood it, respecting new relations which they could not have known at the time and which nevertheless, fall decidedly within the province of this provision." (Hermeneutics p, 168.)

Chief Justice Marshall may be said to have sanctioned the same rule in the celebrated Dartmouth College Case. He said: "That a case may come within the operation of a constitutional provision, even though the framers of the constitution did not anticipate it, providing there is nothing in the written word to indicate that they would have excluded it, if it had been anticipated."

The conclusion is obvious then, that the "general welfare" phrase has a meaning per se. It has it: first, from a fair and natural construction as the clause stands; second, it has been established by the practice of our government for the past century, though frequently disputed on the floors of Con-
gress by the party out of power. And a contemporaneous exposition of the constitution practiced and acquiesced under for such a length of time, fixes the constitution and the courts refuse to shake or control it. (Swaurt v. Laird 1 Cranch 299; Martins v. Hunter's Lessee 1 Wheaton, 304; Cohen v. Com. of Va. 6 Wheaton 204; Prig v. Com. Pa. 16 Peters, 569; Olcott v. Supervisors, 16 Wall. pp, 690-91.)

Third, if the "general welfare" clause had no wider meaning than what is included in the subsequent powers at the time our government was founded, it has come to include more and the new meaning may be read into it.

If this does not establish conclusively, it is certainly sufficient to raise a doubt as to whether Congress is vested with a greater power than that given by the sixteen subsequent enumerations following the general clause. The benefit of that doubt must be given to the legislature; as it is never to be presumed that they overstepped their authority. Judge Coolsey says: "A doubt of the constitutional validity of a statute is never sufficient to warrant its being set aside."
The extent to which the courts may go in declaring an act of the legislature void will next be considered. There has been much difference of opinion as to how far the courts should go; there are some dicta in the various cases that would indicate that the courts are not generally agreed upon this point. But there are some well settled rules recognized by all our courts in passing upon the validity of an legislative enactment.

Among these is that the national legislature is as omnipotent as the English Parliament, over subjects committed to its care; and while it confines itself within the scope of its power, none of its acts can be questioned on constitutional grounds. It is only when Congress legislates upon subjects not within the sphere of its authority; or uses means to affect an end, when such means are prohibited, that an act may be declared unconstitutional by the courts. The mere fact that a legislative act is unjust or oppressive; that it violates rights and privileges of the citizen, is not sufficient to authorize a court to declare it void, unless it can be shown that such injustice is prohibited, or such rights and privileges guaranteed by the constitution. Judge Cooley says: "The judiciary can only arrest the execution of a statute when it
conflicts with the constitution. It cannot run a race of op-
inions upon points of right, reason, and expediency with the
law making power. The question of the validity of a statute
must always be one of legislative competency to enact it; not
one of policy, propriety or strict justice."

Chief Justice Marshall says: "Let the end be legitimate,
let it be within the scope of the constitution, and all means
which are appropriate, which are plainly adapted to that end,
which are not prohibited, but consist with the letter and the
spirit of the constitution, are constitutional."

No rule of law is better settled than that laid down
above by Marshall and Cooley. And it is settled wisely; for if
the courts were at liberty to determine the validity of legis-
lative acts on grounds of natural justice, legislation could
not be carried on without their assent.

A rule equally as well settled, and about which there
can be no question, is that Congress can lay and collect taxes
for no other than a public purpose. Taxation is a mode of
raising revenue; revenue cannot be raised for a private pur-
pose. When it is prostituted to objects in no way connected
with the public interests or welfare, it ceases to be taxation
and becomes plunder.

"But it must be remembered that what is for the public
good, and what are public purposes, are questions which the legislature must decide upon its own judgment, and in respect to which it is invested with large discretion which cannot be controlled by the courts, except perhaps where its action is clearly evasive, and where under pretense of lawful authority, it has presumed to exercise one that is unlawful." (Cooley's Const. Lim. p. 157).

Where the power that is exercised is legislative in its character, the courts can enforce only those limitation which the constitution imposes; not those implied restrictions which resting in theory only, the people have been satisfied to leave to the judgment, patriotism, and sense of justice of their representatives. Where however, a tax is clearly laid for a private purpose; and this can be seen at first blush; the public interests being in no way affected by it; such a tax is according to the weight of authority void, and it within the power of the courts to so declare it.

To accurately define what constitutes a public purpose as distinguished from a private would be a difficult task. There is but one standard by which it can be decided which is the popular will. What would be beneficial to the public and clearly for the general good in one instance, might not in another. An interest that would be considered strictly pri-
vate in one age might be looked upon as one in which the public was interested by a later generation. If a majority of the people of the United States should become believers of the Bellamy doctrine, then virtually all interests whatsoever would be public. At one time it was thought by nearly all people to be for the general welfare of governments to have an established religion; or one to which the state gave assistance. This is so in many countries at the present time.

But the American people have decided that it is for the general good of the nation to neither hamper or aid any particular creed. The wisdom of this policy has been clearly proven; and the indications are that at no far distant day all peoples will adopt the same view. It may be asked what does this prove? It proves that such questions must be decided by the people and by no other power. This being so, if a majority of the American people decide that developing the United States into a sugar producing nation would promote the general welfare of the people, I know of no power that can restrict a legislative enactment looking to such an end, upon the ground that it was a mistaken policy. All the court could say in such a case would be, that the legislature, had passed an act which, in the opinion of the judges was contrary to abstract principles of right.

"Independently of express constitutional restrictions,
it (legislature) can make appropriations of money whenever the public may require, or will be promoted by it, and it is the judge of what is for the public good." (Judge Denio 3 Kerman, p. 145)

"The doctrine that there exists in the judiciary some vague, loose and undefined power to annul a law, because in its judgment it is contrary to nature, equity and justice, is in conflict with the first principles of government, and can never I think be maintained," (Judge Sheldon Id., p. 428).

Some other ground would have to be shown to justify a court in declaring it void. If paying bounties to sugar producers works an injustice, and such injustice is prohibited, it would be sufficient. If it violates some right, and such right is guaranteed, the same would be true.

The only grounds upon which either of these objections could be raised, is that the act contemplates using revenues for a private purpose. This point was raised in Congress by the opposition. It was argued that in lending government aid to sugar producers, the whole people were being taxed to build up a private industry.

A hypothetical case involving the validity of this clause alone, was recently argued before the Moot Court of the Cornell University School of Law. It was declared void on this ground by the supreme court and on appeal the decision
was affirmed by the upper court. Chief Justice Hutchins, in a very able opinion, after giving much study of what constitutes a public as distinguished from a private interest, held that the clause could not stand as it taxed the people for a purely private purpose. He said: "A public purpose, as I understand the term, is a purpose that has in view the general public. An act is for the public benefit when its immediate object is the good of the people or members of the body politic. If it is primarily for the advantage of a private enterprise and only indirectly beneficial to the public, it cannot in reason or in law be classed as legislation for the public good. It is apparent, I think, that the direct purpose of this law is private in its character."

Looking at the immediate effect of the act, which is to pay to private individuals money taken from the national treasury; and making that the test of its public or private character, the conclusion reached by the court is both reasonable and sound. But it is by no means well settled that such is the true test by which to be guided in such a case. It is laid down in numerous cases that it is the ultimate end or object of appropriations that must be looked to in deciding the character of the use for which the money is expended.

Chief Justice Dickinson in 19 Wis. 689, says: "It is not
the individual payment that tests the public character of the appropriation. Individuals are always the recipients of public funds. We find it paid by way of bounty for the scalps of panthers, wolves, foxes, crows, blackbirds, to the poor, to the education of the young, as rewards for the apprehension of horse thieves, colleges, agricultural societies, and to other useful objects."

One of the ablest judges that ever adorned the supreme bench of Pennsylvania said: "It is enough that we can see any possible public interest in the act, or public benefit to be derived from it. All beyond that is a question of expediency for the legislature, not of law, much less of constitutional law to be determined by the courts." (21 Pa. St. 147).

Numerous other cases of high authority might be cited to the same effect if space would permit. Enough has been quoted to show that the courts upon what is the proper test in passing on this question. Nor is it surprising, as it involves a question of policy; and judges being fallible, are as liable to err in their judgment upon such matters as the legislators.

The arguments for and against the expediency of this legislation forms no part of the subject of this paper. It is sufficient to say that they exist, as was abundantly shown in
the debates on the bill in Congress. Upon the subject party lines were sharply drawn. If an injustice has been perpetrated upon the people by the passage of this act, it can be effect- ively remedied by the people as by a judicial decision. There is much unjust legislation for which the only remedy is the chastisement at the polls of our representatives, who have betrayed the trust imposed in them.

That able and learned jurist, Judge Dillon, has said:

"Justice has her imperial seat in the bosom of every man—and there, and not on specific constitutional provisions, must relief be had in many cases of indefensible legislation—the remedy being, to secure a repeal of the law and not its judicial annulment."

It is further more true that those who are entrusted with making our laws have a greater dread of being "scourged into retirement by their indignant masters" than of a mere judicial decision or decree. The highest ambition of our public men is to please the people; not to offend them by proposing measures with which they have no sympathy. A thorough examination of the "popular pulse" generally precedes every step taken by our legislators both state and national. The people are not only the source of all power; but are fast becoming the source from which our public men draw their convictions on the questions of the day.
The validity of giving government aid for the purpose of developing the United States into a sugar growing country, is soon to be passed upon, it is said, by the highest judicial tribunal in the land. The decision will be waited with much interest, owing to the extensive discussion that has taken place both in Congress and by the press of the country on this subject.

As to whether Congress has power to pass laws looking to the general welfare of the country, under subdivision one of section eight, there can be no doubt. It is also well settled, that the people through their representatives in Congress are the judges of what is for the public good and what is not.

It would appear, according to one standard of deciding what is a public and what a private interest, that the means adopted in this instance are illegal; by another standard it is safe to say that they are not. The result is that a doubt is raised so long as there is no recognized standard by which it can be tested. The act, as has been shown before, is entitled to the benefit of the doubt. This being so, the validity of the sugar bounty clause of the McKinley Tariff is established.

Edward R. O'Malley.