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# Legal Concept of General Welfare

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## THE LEGAL CONCEPT OF GENERAL WELFARE

Let us examine into the meaning of the terms "public welfare," "general welfare," "common good," and other terms of like or similar import. They are often linked with a consideration of that most important power known as the police power. Without a thorough comprehension of them, how adequate or sociologically useful may an understanding of that power be? Or an understanding of the organic law? Or, indeed, for that matter, an understanding of the positive law in any of its branches? And in these times of great economic stress and strain and great political upheaval and unrest, such terms flow frequently from lip and pen.

We speak herein of such terms as "general welfare" and "public good" as employed without qualification. Moreover, as to those or any other expressions we may use in this article, our purpose is not so much to form definitions as to gain concepts. We may gain useful concepts even though, because of the limitations and uncertainties and circumlocutions of language, we may have to content ourselves with not altogether satisfactory definitions or use some particular term with different meanings in different connections. "The poverty of language often compels the employment of terms in quite different significations."<sup>1</sup>

What help have the courts had from the lexicographers in determining the meaning of the adjective "public"?

"The Century Dictionary defines it as: 'Of or belonging to the people at large; relating to or affecting the whole people of a state, nation or community; not limited or restricted to any particular class of the community.' The New International defines it as: 'Of or pertaining to the people; relating to or affecting a nation, state or community at large.'"<sup>2</sup>

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<sup>1</sup> Texas v. White, 74 U. S. 700, 720, 19 L. ed. 227, 236 (1868).

<sup>2</sup> Cawker v. Meyer, 147 Wis. 320, 325, 133 N. W. 157, 159, 37 L. R. A. (N. S.) 510 (1911).

“Mr. Webster says that ‘in general, public expresses something common to mankind at large, to a nation, state, city or town, and is opposed to private, which denotes what belongs to an individual, to a family, to a company, or a corporation.’”<sup>3</sup>

The expressions “common welfare,” “general welfare” and “public welfare” are synonymous.<sup>4</sup> “General” means “having a relation to all,” “common to the whole.”<sup>5</sup> “Common” means “participated in by two or more persons.” “Common” is defined thus: “Pertaining to, belonging to, or participated in by two or more persons, things, or parts alike; participating in or appertaining to all or the whole; joint; general; public.”<sup>6</sup> The three words “common,” “general” and “public” bear upon the meaning of one another as modifiers of the noun “welfare,” with the result that it makes no difference which of the three is used in the modification of that particular noun.

“The word ‘common’ is ordinarily understood to apply to the general public, when not qualified by some word or phrase of limitation. The term ‘general benefits,’ when unqualified, should probably be accepted in the same sense as the term ‘common benefits’; that is to say, when there is no limitation expressed, it should be deemed applicable to the general public, rather than as embracing, as general, but a limited part of the public.”<sup>7</sup>

That which is for the general (public, common) welfare is, of course, for the general (public, common) benefit or good; hence the synonymy of such expressions as “general

<sup>3</sup> Chamberlain v. City of Burlington, 19 Iowa 395, 403 (1865).

<sup>4</sup> Stockton v. Williams, 1 Doug. (Mich.) 546, 570 (1895); Kirkendall v. City of Omaha, 39 Neb. 1, 6, 57 N. W. 752, 754 (1894); Aymette v. The State, 2 Humph. (Tenn.) 154, 158 (1840); Spokane Traction Co. v. Granath, 42 Wash. 506, 512, 85 Pac. 261, 264 (1906).

<sup>5</sup> Vide Koen v. State, *infra* note 34.

<sup>6</sup> NEW STANDARD DICTIONARY.

<sup>7</sup> Kirkendall v. City of Omaha, 39 Neb. 1, 6, 57 N. W. 752, 754 (1894), cited note 4, *supra*, quoted, Spokane Traction Co. v. Granath, 42 Wash. 506, 512, 85 Pac. 261, 264 (1906), cited note 4, *supra*.

[public, common] welfare," "common [public, general] good," "public [general, common] benefit," etc., may be assumed without argument.

If "public" means something "common to mankind at large," and, therefore, public welfare is the welfare of mankind at large, does that mean the welfare of all mankind, the welfare of mankind throughout the world, the world-welfare, the welfare of the world-community?—or how else should one express the thought? Certainly, that welfare has so far been for the most part beyond the scope and concern of municipal law. Perhaps never more so than it is right now. However, a welfare *common* to mankind *at large* could be no other than a welfare extending to every man, woman and child in the world. "Mankind at large" does not mean mankind considered as an entity, but as, rather, a collectivity, and so with a regard for every individual in the world. "At large" signifies "diffusely" or "fully" or "in the full extent."<sup>8</sup>

If "public" means "of or pertaining to the people," public welfare is the welfare of the people. If "public" means "of or belonging to the people at large," public welfare is the welfare of the people at large. Is there any difference between "the welfare of the people" and "the welfare of the people at large"? If "public" means something "common . . . to a nation, state, city or town," in what sense are we to take nation, state, city or town in order that a thing may be *common* to it? If "public" means something "relating to or affecting the whole people of a state, nation or community," is there a difference between "the welfare of the people" and "the welfare of the whole people"? Is a community different from a state or nation? From a city or town? If "public" means "something relating to or affecting a nation, state or community at large," is there a difference between, say, "the welfare of a nation" and "the welfare of a nation at large"?

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<sup>8</sup> WEBSTER'S INTERNATIONAL DICTIONARY.

It is evident that to add "at large" to such expressions as "the welfare of the people," "the welfare of the nation," etc., is only to emphasize both a necessary inclusiveness and a necessary distributiveness in each of those expressions. It is most obvious that such must be the case as far as "the welfare of the people" is concerned. Such welfare must extend to no fewer than the full number of those who are members of the people, and yet somehow touch every one of them individually. "People" does not, in "welfare of the people," denote a mere artificial person. We cannot speak of a welfare *common* to one person, natural or artificial. And a welfare *common* to a nation, state or city (to add "at large" to "nation," "state" or "city" but emphasizes the thought) can be no other than a welfare common to the people (people at large) of such nation, state or city. The "at large" in "welfare of the people at large" does not add anything to, but merely emphasizes something in, the expression "the welfare of the people"—the thought that human beings are involved, and distributively as well as collectively involved; that public welfare is human welfare, and of such sort that it touches the interests of every human being in the collectivity in question. In connection with the public (common, general) welfare, or welfare of the people (people at large), it is evident that artificial persons (corporations and quasi-corporations) can play no part and must receive no consideration as ends in themselves but only as means to the end of human welfare, and are to be fostered and encouraged when they serve that end, discouraged or destroyed when they oppose it. The public welfare is essentially a welfare of natural persons.

It would seem that "whole" prefixed to "people" has the same effect as "at large" following it.<sup>9</sup> "When we use the word *whole*, we refer to a thing as made up of *parts* none of which are wanting."<sup>10</sup> Consequently, "anything relating to

<sup>9</sup> *Vide* Dupee v. Swigert, 127 Ill. 494, 499, 21 N. E. 622, 623 (1889).

<sup>10</sup> WEBSTER'S INTERNATIONAL DICTIONARY.

or affecting the whole people," like anything "of or belonging to the people at large," affects no fewer than should be considered members of the people, and at the same time affects individually, in some manner and to some degree, every person whom the people includes. Either "whole" or "at large" indicates a distribution and its extent.

It is quite obvious that we have not yet asked all the questions that could be raised on the basis of the judicially quoted definitions of "public." This is particularly true in connection with the meaning of "public" in the term "public welfare." If public welfare is the welfare of the people, just what limitations are we to attach to what the term "people" denotes in this connection? Are the people of a city all of mankind within the physical bounds of a city? Only a certain part of mankind within those bounds? If so, what part? Do the people of a city include any part of mankind beyond such bounds? If so, what part? We may ask like questions about the people of a nation, the people of a state, the people of a township, the people of *any* community.

Then let us ask our questions in another way. Who are the *people* of a community? Those who, *wherever* they may be, within or without its physical bounds, are affiliated to the government of the community? Those who, *whoever* they may be, affiliated or not affiliated to its government, are within the community's physical bounds? Or only those who are within such bounds *and* so affiliated? An affirmative answer to the first question is in order. A government exists primarily for the welfare of those who are affiliated to it—*they* are the people, the public, the body politic, of the geographical area which is under that government. Any person who is affiliated to that government is of the people of that community, though beyond the community's physical bounds.<sup>11</sup> Whoever is within those bounds but not affiliated to the government which prevails there, is amenable to that

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<sup>11</sup> *Vide* Quinby v. Duncan, 4 Harr. (Del.) 383, 384 (1846).

government but not *of* the people of that community. He is *in* the community considered in its physical aspect (geographical area) and *among* the assemblage of persons there, but not *of* the community considered in its political aspect—not of the body politic, the people.

“The words ‘people of the United States’ and ‘citizens’ are synonymous terms, and mean the same thing. They both describe the political body, who, according to our republican constitutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the ‘sovereign people,’ and every citizen is one of this people and a constituent member of this sovereignty.”<sup>12</sup>

Of course, like almost every other word, the term “people” varies in meaning, but what we may call its point-of-departure meaning identifies the term with the word “citizens.” It has been said that “‘all words, whether they be in deeds or statutes, or otherwise, if they be general and not express and precise, shall be restrained unto the fitness of the matter or person.’”<sup>13</sup>

“This word [people] is a comprehensive one, and is, of course, subject to many different meanings, depending always upon the connection in which it is used, and the subject-matter to which it relates.”<sup>14</sup> Sometimes, for instance, it means the electorate.<sup>15</sup>

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<sup>12</sup> Scott v. Sandford, 60 U. S. 393, 404, 15 L. ed. 691, 700 (1856), quoted, Boyd v. State of Nebraska, 143 U. S. 135, 159, 12 Sup. Ct. 375, 381, 36 L. ed. 103, 109 (1891); In re Silkman, 88 App. Div. 102, 109, 84 N. Y. S. 1025, 1030 (1903).

<sup>13</sup> Union Hotel Co. v. Hersee, 79 N. Y. 454, 461, 35 Am. St. Rep. 536, 537 (1879), citing *Bacon's Maxims of the Law, Regula X*, quoted, In re Silkman, 88 App. Div. 102, 109, 84 N. Y. S. 1025, 1030 (1903), cited note 12, *supra*.

<sup>14</sup> The Itata, 56 Fed. 505, 511, 5 C. C. A. 608, 631 (1893). *Et vide*: United States v. The Three Friends, 166 U. S. 1, 62, 17 Sup. Ct. 495, 41 L. ed. 897, 918 (1896); Koehler v. Hill, 60 Iowa 543, 617, 15 N. W. 609, 616 (1883).

<sup>15</sup> Town of Walnut v. Wade, 106 U. S. 683, 693-4, 26 L. ed. 526, 530 (1880); People v. Counts, 89 Cal. 15, 22, 26 Pac. 612, 614 (1891); Tolbert v. Long, 134 Ga. 292, 296, 67 S. E. 826, 828, 137 Am. St. Rep. 222, 225 (1910); Heuser v. Harris, 42 Ill. 425, 432 (1867); Beverly v. Sabin, 20 Ill. 357, 362 (1858); Rogers v. Jacob, 88 Ky. 502, 505, 11 S. W. 513, 514 (1889); In re Opinion of the Justices, 226 Mass. 607, 611, 115 N. E. 921, 922 (1917); Blair v. Ridgely, 41 Mo. 63, 75,

Obviously, the welfare of the people can not be confined to the welfare of the electorate. Nor can it be confined to the welfare of the government. The government is but the agent of the people,<sup>16</sup> and, according to the point-of-departure general meaning of the term "state," the government is but one, as the people another, of the factors which the state comprises. Basically, the term "state" represents "the combined idea of people, territory and government," but the term may mean any one of these, the most fundamental of which is "people." "It [state] describes sometimes a people or community of individuals united more or less closely in political relations, inhabiting temporarily or permanently the same country; often it denotes only the country or territorial region, inhabited by such a community; not infrequently it is applied to the government under which the people live; at other times it represents the combined idea of people, territory, and government,"<sup>17</sup> "It is not difficult to see that in all these senses the primary conception is that of a people or community."<sup>18</sup> "In one sense it signifies the *territory* inhabited by the people; in the other it means the *body politic* inhabiting the territory," and the latter, "the community as a body politic," is the primary and leading sense of the term "state."<sup>19</sup>

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97 Am. Dec. 248, 257 (1867); *Bryan v. City of Lincoln*, 50 Neb. 620, 622, 70 N. W. 252, 35 L. R. A. 752, 753 (1897); *State v. Boyd*, 31 Neb. 682, 723, 48 N. W. 739, 750 (1891); *State v. City of Albuquerque*, 31 N. M. 576, 587, 249 Pac. 242, 247 (1926); *In re Incurring of State Debts*, 19 R. I. 610, 612, 37 Atl. 14, 15 (1896); *Simkin v. City of Rock Springs*, 33 Wyo. 166, 185, 237 Pac. 245, 251 (1925).

<sup>16</sup> *Poindexter v. Greenhow*, 114 U. S. 270, 290, 5 Sup. Ct. 914, 29 L. ed. 185, 192 (1884); *Lehigh Valley R. Co. v. State of Russia*, 21 Fed. (2d) 396, 400 (1927); *Grunert v. Spalding*, 78 N. W. 606, 613 (Wis. 1899); *Grunert v. Spalding*, 104 Wis. 193, 212, 80 N. W. 589 (1899).

<sup>17</sup> *Texas v. White*, 74 U. S. (7 Wall.) 700, 720, 19 L. ed. 227, 236 (1868), cited note 1, *supra*.

<sup>18</sup> *Op. cit. supra* note 17.

<sup>19</sup> *State v. Wilmington City Council*, 3 Harr. (Del.) 294, 299 (1840), quoted, *Long v. Ross*, 132 Ga. 288, 299, 64 S. E. 84, 85 (1909). *Et vide*: *Lehigh Valley R. Co. v. State of Russia*, 21 Fed. (2d) 396, 400 (1927), cited note 16, *supra*; *Rosenberg Bros. & Co. v. United States Shipping Board Emergency Fleet Corporation*, 295 Fed. 372, 375 (1923); *Crow v. State*, 14 Mo. 237, 265 (1851); *Montana Auto F. Corp. v. British & Fed. Underwriters*, 72 Mont. 69, 74, 232

“The word ‘people’ may have somewhat varying significations dependent upon the connection in which it is used. In some connections in the Constitution [of Massachusetts] it is confined to citizens and means the same as citizens. It excludes aliens. It includes men, women and children. It comprehends not only the sane, competent, law-abiding and educated, but also those who are wholly or in part dependents and charges upon society by reason of immaturity, mental or moral deficiency or lack of the common essentials of education. All these persons are secured by the fundamental guarantees of the Constitution in life, liberty and property and the pursuit of happiness, except as they may be limited for the protection of society. It is declared in the Preamble to our Constitution that:

“The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.’

“In this sense ‘people’ comprises many who, by reason of want of years, of capacity or of the educational requirements of article 20 of the Amendments of the Constitution, can have no voice in government and who yet are entitled to all the immunities and protection established by the Constitution. ‘People’ in this aspect is coextensive with the body politic.”<sup>20</sup>

Various sorts of noncitizens have been deemed not to be members of “the people.”<sup>21</sup>

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Pac. 198, 199 (1924); *State v. Field*, 31 N. M. 120, 175, 241 Pac. 1027, 1049 (1925); *Ex parte Corliss*, 16 N. D. 470, 511, 114 N. W. 962, 980 (1907); *Union Bank v. Hill*, 43 Tenn. (3 Cold.) 325, 330 (1866).

<sup>20</sup> In re Opinion of the Justices, 226 Mass. 607, 611, 115 N. E. 921, 922 (1917), cited note 15, *supra*. *Et vide*: *Boyd v. State of Nebraska*, 143 U. S. 135, 158, 36 L. ed. 103, 108 (1891) cited note 12, *supra*; *United States v. Cruikshank*, 92 U. S. 542, 549, 23 L. ed. 588, 590 (1875).

<sup>21</sup> Aliens in general: In re Opinion of the Justices, *op. cit. supra* note 15; *In re Silkman*, 88 App. Div. 102, 109, 84 N. Y. S. 1025, 1031 (1903), cited note 12, *supra*.

Hence "people" does not equal "inhabitants" as the latter word is used in its broadest sense.<sup>22</sup> However, in certain connections (*i. e.*, context considered) "the people" may mean all persons who are within certain geographical limits.<sup>23</sup>

That "the people" are those affiliated to a given government becomes quite obvious when certain questions arise concerning the rights, privileges and immunities which, pursuant to the Federal Constitution, the states of the United States should accord to one another's citizens, or concerning alienage and the right or privilege of coming into or remaining within the United States or of holding or acquiring certain interests here. Aside from the observance of limits set by constitution, treaty or international law, as the case may be, the extent to which the United States or one of our states precludes itself from advancing its own welfare without regard for the welfare of those who are not members of the community depends upon the intellectual and the moral qualities of those who *are* its members.

Can "the welfare of the people" mean the welfare of the people as a unit? We have already answered the question, in effect. But we may answer the question further by asking another. May the welfare of a corporation (a business corporation, let us say) mean exclusively the welfare of the corporation as an entity, an artificial person—its welfare unconnected with the welfare of its members, the stockholders? It is idle, in trying to posit the welfare of the

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Members of the Indian tribes: *Scott v. Sandford*, *op. cit. supra* note 12; *The Cherokee Nation v. The State of Georgia*, 30 U. S. 1, 8 L. ed. 25 (1831); *Roche v. Washington*, 19 Ind. 53, 81 Am. Dec. 376 (1862); *In re Silkman*, 88 App. Div. 102, 109, 84 N. Y. S. 1025, 1031 (1903), cited note 12, *supra*.

Slaves: *Scott v. Sandford*, *op. cit. supra* note 12; *In re Silkman*, 88 App. Div. 102, 109, 84 N. Y. S. 1025, 1031 (1403), cited note 12, *supra*.

<sup>22</sup> *Quinby v. Duncan*, 4 Harr. (Del.) 383, 384 (1846), cited note 11, *supra*; *In re Silkman*, 88 App. Div. 102, 110, 84 N. Y. S. 1025, 1030 (1903), cited note 12, *supra*.

<sup>23</sup> *Rushton v. Woodham*, 68 S. C. 110, 46 S. E. 943, 944 (1904); *Rossmiller v. State*, 114 Wis. 169, 187, 89 N. W. 839, 844, 58 L. R. A. 93, 99, 91 Am. St. Rep. 910, 920 (1902). *Et vide* *State of Ohio v. Trustees of Section 29*, etc., 11 Ohio 24, 27 (1841).

people as a unit, to think of such welfare as if it could be divorced, in substance and reality, from the individual welfare of every member of the community, notwithstanding that upon some of the citizens the public welfare might reflect, in some respects, only indirect and remote individual welfare.

As to the term "community," it would seem that it may well be used as a generic term applicable to nation, state, city, township, etc.<sup>24</sup> The term means: "The people who reside in one locality and are subject to the same laws, or have the same interests, etc.; a body politic, whether village, town, city or state; hence, the public, society at large."<sup>25</sup> "Community," by which we sometimes indicate the "combined idea," whether in connection with the nation on the one hand or the township on the other, seems to emphasize "the people" in the people-territory-government trinity.<sup>26</sup> Even the word "state" sometimes means simply "people,"<sup>27</sup> and the welfare of the state can in reality be no other than the welfare of its people.

Since the use to which we are putting the term "community" is clear, we shall not quibble over whether there may be citizens of, say, a township.<sup>28</sup> One may be affiliated

<sup>24</sup> *Vide*: United States v. The Three Friends, 166 U. S. 1, 56, 17 Sup. Ct. 495, 41 L. ed. 897, 916 (1896), cited note 14, *supra*; Texas v. White, 74 U. S. 700, 721, 19 L. ed. 227, 236 (1868), cited note 1, *supra*; Lehigh Valley R. Co. v. State of Russia, 21 Fed. (2d) 396, 400 (1927); The Lucy H., 235 Fed. 610, 612 (1916); State v. Wilmington City Council, 3 Harr. (Del.) 294, 299 (1840); Ex parte Corliss, 16 N. D. 470, 511, 114 N. W. 962, 980 (1907); State v. White & Chiles, 25 Tex. 465, 595 (1868); O'Connor v. State, 71 S. W. 409, 410 (Tex. Civ. App. 1902).

<sup>25</sup> NEW STANDARD DICTIONARY.

<sup>26</sup> *Vide* Texas v. White, 74 U. S. 700, 720, 19 L. ed. 227, 236 (1868), cited note 1, *supra*.

<sup>27</sup> Texas v. White, 74 U. S. 700, 720, 19 L. ed. 227, 236 (1868), cited note 24, *supra*; Tevis v. Randall, 6 Cal. 632, 635, 65 Am. Dec. 547 (1856), quoted, People v. Love, 19 Cal. 676, 681 (1862); Brown v. The State, 5 Colo. 496, 499 (1881); W., St. L. & P. Ry. Co. v. The People, 105 Ill. 236, 240 (1883); Crow v. State, 14 Mo. 237, 264 (1851), cited note 19, *supra*; The Union Bank v. C. A. Hill, 43 Tenn. (3 Cold.) 325, 330 (1866).

<sup>28</sup> *Vide*: State v. City of Albuquerque, 31 N. M. 576, 587, 249 Pac. 242 (1926) (Reference to "citizen of the City of Albuquerque."); Union Hotel Co. v. Hersee, 79 N. Y. 454, 35 Am. Rep. 536 (1879) (Meaning of "citizen of Buffalo," context considered.); cases cited, 11 C. J. 774, footnotes 15-17, 21.

at the same time to the government of a city or village, the government of a township, the government of one of our states or territories, and the government of the nation, thus belonging, in a way, to four "peoples," each with a general welfare peculiar to itself. "The powers which are exercised by a city government are, it thus appears, superadded to those exercised by the state in the same locality. The people of towns and cities are governed that much more than are the people of the state generally."<sup>29</sup>

We may, then, state the meaning of "public welfare" by saying that it means the welfare of all who are of a given political community such as a city, a state or the United States. We say not "community" merely, but "political community"—political community *such* as a city, a state or the United States. A political party or economic class is not *such* a community.

Are we not at a point where we may safely designate the public welfare, simply and briefly, as the welfare of *all*?

We realize perfectly that this is open to an objection similar to one made to the definition of a *jus in rem* as a right against all. "Sometimes a right exists only as against one or more individuals, capable of being ascertained and named; sometimes it exists generally against all persons, members of the same political society as the person to whom the right belongs; or, as is commonly said, somewhat arrogantly, it exists against the world at large."<sup>30</sup> When we speak of the general welfare as the welfare of all, and mean anything less than the welfare of the whole world, we speak "somewhat arrogantly." But the phrase "welfare of all" is no more likely to be misunderstood than is the phrase "right against all," which has not been misapprehended, either in itself

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<sup>29</sup> *Waldo v. Wallace*, 12 Ind. 569, 584 (1859), quoted, *Long v. Rose*, 132 Ga. 288, 294, 64 S. E. 84, 86 (1909).

<sup>30</sup> MARKBY, *ELEMENTS OF LAW* (6th ed.) § 164; *cf.* Remarks about the "whole world" in *Carr v. Lewis Coal Co.*, 96 Mo. 149, 156, 9 Am. St. Rep. 328, 331 (1888).

or in its application. Nor, if we define general welfare as the welfare of all, is there any serious danger that the "all" will not be taken to be at least as extensive as the sort of communal all of which we have been speaking.

"All," it seems, points to every one in, excludes no one from, the body to which, as noun or adjective, it refers. "A more comprehensive word than 'all' cannot be found in the English language. . ." <sup>31</sup> "All," whether used as adjective or noun, may refer to "the whole collectively considered" ("the complete totality") or to "the whole distributively considered." <sup>32</sup> "All" as a noun, and likewise "all" as an adjective, does double duty, being allied in meaning with the collective noun *totus* (*cf.* the adjectives *cunctus* and *universus*) of the Latin, and being also allied, in meaning, with the Latin distributive adjective *omnis*. "One of the definitions given the word 'all' by the Standard Dictionary is 'the entire number of, each individual or member being taken separately,' and under the word 'distributive' the Standard also says 'all' and 'every' are distributive words.' From this it appears that 'all' has a distributive as well as a collective meaning." <sup>33</sup>

A distinction is taken, in certain connections, between "general" and "universal." "The fourth and fifth definitions given by Webster of the word 'general,' as an adjective, are as follows: 'Common to many, or the greatest number; widely spread; prevalent; extensive; though not universal; as, a general opinion; a general custom. (5) Having a relation to all; common to the whole; as "Adam, our general sire." Milton.' And the synonym as follows: "'Common" denotes primarily that in which many share; and

<sup>31</sup> *Moore v. Virginia Fire & Marine Ins. Co.*, 28 Gratt. 508, 516, 26 Am. St. Rep. 373, 375 (1877). *Et vide* *Pittsburgh, C. C., & St. L. Ry. Co. v. Lighthouse*, 163 Ind. 247, 259, 71 N. E. 218, 222 (1904).

<sup>32</sup> NEW STANDARD DICTIONARY.

<sup>33</sup> *Young v. Du Bois*, 60 Misc. Rep. 381, 113 N. Y. S. 456, 457 (1908). *Et vide* *Heitman v. Commercial Bank of Savannah*, 6 Ga. App. 584, 598, 65 S. E. 590, 597 (1909).

hence that which is often met with. "General" is stronger, denoting that which pertains to a majority of the individuals which compose a genus or whole. "Universal," that which pertains to all without exception. To be able to read and write is so common in this country that we may pronounce it "general," though by no means "universal." ' ' ' ' <sup>34</sup>

If the distinction between "general" and "universal" were good in connection with the term "general welfare," general welfare would be less than the welfare of all the members of a community. It would be merely a welfare extensive or widespread but not all-embracing. General welfare, to be public, or common, welfare, can not be distinguished from, but must be identified with, a welfare which (again we speak "somewhat arrogantly") is *universal*. Although we may speak of the general welfare of a class, such welfare is precisely one of the things we do *not* mean when, without qualification, we speak of general welfare. The welfare of an individual or a class may be quite in line with general welfare, but is not, by itself, the general welfare.

That which, in one aspect, is the welfare of only one, may in another aspect be the welfare of every one. That which is directly for the welfare of a few may bring welfare indirectly to all others, so that, in the ultimate, the welfare of *all* is promoted. So, even though an act confers a direct benefit upon an individual or a class, if the object of the act is to benefit, not the individual or the class, but the public at large (*all* individuals), the object of the act is general welfare. There is a decided difference between an act which has for its sole object the benefit of an individual or class and an act which benefits an individual or class with a view to achieving the ultimate benefit of the public—between an individual or class benefit as an end in itself and such a benefit as a means to a public end.

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<sup>34</sup> Koen v. State, 35 Neb. 676, 678, 53 N. W. 595, 596, 17 L. R. A. 821, 822 (1892). *Et vide* Puget Sound Pub. Co. v. Times Printing Co., 33 Wash. 551, 558, 74 Pac. 802, 805 (1903).

Not in direct connection with "welfare," but nevertheless with results serviceable to us in that connection, courts have called lexicographers to their aid in taking a distinction between "general" and "special."

"The terms 'general' and 'special' are antonyms. . . .

"'General. a. . . . 2. Pertaining to the majority; common to the greatest number, but not to all; true of a large number or proportion; widespread or prevalent, as distinguished from universal; as, a general practice; general rainfall.' Funk & Wagnall's New Standard Dictionary, p. 1018.

"'Special. a. 1. Having in a peculiar and distinguishing degree some characteristic or characteristics; out of the ordinary; singular or unique; express; particular; as, a special reduction; special favor; special care. . . . 4. Pertaining to one or more individuals, as distinguished from the class to which they belong; logically singular; individual; as, what is your special business?' Id. p. 2331."<sup>85</sup>

"The terms ["general" and "special"] are antonyms. 'General' is defined in Webster's International Dictionary as follows: '(4) Common to many, or the greatest number; widely spread; prevalent; extensive though not universal.' The same eminent authority defines 'special' thus: '(2) Particular; peculiar; different from others. . . . (3) . . . Designed for a particular purpose. . . . (4) Limited in range; confined to a definite field of action. . . .'"<sup>86</sup>

If "general," in the sense of widespread merely, is the antonym of "special," "general" in the arrogant sense of "universal" is, *a fortiori*, such an antonym. And if "public . . . is opposed to private,"<sup>87</sup> so, of course is "general" as meaning "public."

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<sup>85</sup> Steele-Smith Dry Goods Co. v. Birmingham Ry., Light & Power Co., 15 Ala. App. 271, 274, 73 So. 215, 216 (1916).

<sup>86</sup> Platt v. Craig, 66 Ohio St. 75, 63 N. E. 594, 595 (1902).

<sup>87</sup> Chamberlain v. City of Burlington, *op. cit. supra* note 3.

A statement that "general" and "special" are antonyms or that "public" is *opposed* to "private" must be received with caution, at least so far as the application of these adjectives to "welfare," "good," etc., is concerned. If it is permissible to say that the special benefit of a street improvement spells a measure of special welfare, such welfare is in line with any benefit which the public as a whole may gain from the improvement—a benefit identifiable with general welfare. If it is permissible to say that the private ownership of property spells a measure of private welfare, that welfare may certainly be compatible with the welfare we call "public." "Public," "common," and "general" are not, as a rule, identical in meaning, although, as we have seen, they have the same meaning in modification of "welfare," "good," etc. Are such words as "particular," "special," "private," etc., identical in meaning? As a rule? In modification of "welfare," "good," etc.? Since every one has a concern in the general welfare, to what extent, if any, after all, are we justified in speaking of a particular or a special or a private welfare in connection with something that is detrimental to the welfare of the public? Answers to these and similar questions lie outside of the scope of this article.

The expression general welfare, as we have seen, concerns many individuals and classes—all. Moreover, it relates to many and diverse matters. General (public, common) welfare undoubtedly embraces every matter which, with respect to any interest, whatever it may be (*e. g.*, any social, political or economic interest), involves the welfare of all who are of a given community.

"As our civic life has developed, so has the definition of 'public welfare' until it has been held to embrace regulations

'to promote the economic welfare, public convenience, and general welfare of the community.'"<sup>38</sup> According to the phraseology of the passage we have just quoted, it would seem that the general welfare is but part of, instead of the same as, the public welfare, but, in spite of the phraseology, the basic idea intended to be conveyed by the passage is entirely clear.

"The public welfare embraces a variety of interests calling for public care and control. These are: 'The primary social interests of safety, order and morals; economic interests; and non-material and political interests.'"<sup>39</sup>

The police power has been said to be "the law of overruling necessity, for the preservation of the general welfare,"<sup>40</sup> and many police-power cases serve to demonstrate that the fundamental object of the exercise of the power is the promotion of the welfare of the community as a whole, through the removal or prevention of detriments or dangers that threaten or beset it as a whole, and that questions of general welfare touch upon a great variety of interests.<sup>41</sup> "The power has always been as broad as the public welfare and as strong as the arm of the state."<sup>42</sup> The phrase "general welfare" is, therefore, as it has been called, "a very broad one."<sup>43</sup>

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<sup>38</sup> *Miller v. Board of Public Works*, 195 Cal. 477, 485, 234 Pac. 381, 383 (1925), quoted *v. Alpha Alpha Chapter of Phi Beta Pi*, 115 Neb. 525, 532, 213 N. W. 835, 838 (1927).

<sup>39</sup> *State v. Hutchinson Ice Cream Co.*, 168 Iowa 1, 10, 147 N. W. 195, 199, L. R. A. 1917B, 198, 202 (1914), quoting FREUND, *POLICE POWER*, § 9, 15.

<sup>40</sup> *Cook County v. City of Chicago*, 311 Ill. 234, 247, 142 N. E. 512, 516, 31 A. L. R. 449 (1924).

<sup>41</sup> *E. g.*: Cases cited, 12 C. J. 921, footnote 56; also, *Nebbia v. People*, 54 Sup. Ct. 505 (1934), and cases cited therein.

<sup>42</sup> *State v. Mountain Timber Co.*, 75 Wash. 581, 588, 135 Pac. 645, 648 (1913).

<sup>43</sup> *Standard Oil Co. v. City of Bowling Green*, 244 Ky. 362, 364, 50 S. W. (2d) 960, 961 (1932).

The difficulty of determining whether a thing is hostile to the public interest is often very great, but can never be admitted to be *too* great for the legislator or the judge. Nor let the judge say he does not make law. He does not make written law (legislation), but he is continually interpreting the written law and often must declare whether a written law is constitutional. Within certain limits, then, he can mould the law according to criterion. What better criterion can he or the legislator have than that of the general welfare?—a criterion that is as sociologically useful as it is ethically sound!

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