



Federalism: States Have More Authority than They Think

By Jack McPherrin

Introduction

The U.S. federal government has grown into a leviathan exceeding any of the Founding Fathers' worst nightmares. Its tentacles have spread into almost every conceivable policy area, which is often in blatant conflict with the powers expressly granted to the federal government by the U.S. Constitution. These areas include but are not limited to education, health care, transportation, firearms, energy, law enforcement, agriculture, housing, and myriad social issues. As the power of the federal government has exponentially grown over the course of the past century in particular, states' rights have exponentially deteriorated in tandem. If it is not reversed, this phenomenon will eradicate the entire notion of federalism—one of the most important foundations of our constitutional republic.

Federalism is a system of government in which power is shared and divided between a central government and regional governments; regional governments are not subordinate to the central government, nor is the central government subordinate to regional governments. Federalist systems are particularly well-suited for geographically large and heavily populated countries in which citizens' needs, priorities, and cultural values are heterogenous, of which the United States is a prime example. This system allows regional governments—such as states—to more adequately serve and protect the rights of their constituents

through tailored approaches, as opposed to a one-size-fits-all policy promulgated by the central government.¹

The Founding Fathers constructed the United States as a federalist system. In addition to separating power between the legislative, executive, and judicial branches, the Founders created a system in which states would provide a meaningful check upon the federal government. The U.S. Constitution was deliberately written to limit the power of the federal government and promote the rights of states and the people. As James Madison—the chief author of the Constitution—noted in *Federalist 45*: “The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.”² In fact, the Constitution does not provide the federal government with the authority to administer any of the policy areas listed above, as not even one is explicitly enumerated. Rather, those rights are supposed to be retained by individual states and the people.

The Constitution and the Founders' Intent

The U.S. Constitution is clear about the powers granted to states versus those granted to the federal government. The Tenth Amendment stipulates: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the

States, are reserved to the States respectively, or to the people.”³ Legally speaking, while the Tenth Amendment does not add anything specific to the Constitution, it serves as a “rule of construction,” which is crucial for interpreting the document.⁴ Essentially, the Tenth Amendment’s purpose is to explicitly clarify that the federal government can only wield such powers enumerated to it within the Constitution, with states retaining the authority to exercise all non-enumerated powers—other than the powers expressly prohibited to the states by the Constitution.

There are only 18 powers delegated to the federal government in Article 1, Section 8 of the Constitution,⁵ though a small number are found in other articles and later amendments.⁶ Some of the powers granted to Congress—which is supposed to be the sole policymaking authority, as opposed to the executive and judicial branches—are very specific, such as declaring war, raising armies, providing and maintaining a navy, establishing post offices, and coining money. Other clauses in Section 8, however, are less specific, particularly the “general welfare clause,”⁷ the “commerce clause,”⁸ and the “necessary and proper clause,”⁹ which are clauses 1, 3, and 18, respectively. Misinterpretations of these three clauses, as well as the “supremacy clause,”¹⁰ have been the primary causal factor leading to the dramatic expansion of the federal government’s power, at the expense of states’ rights.

Such misinterpretations directly conflict with the intent and the words of the Founding Fathers, who—though they disagreed amongst themselves about interpreting specific provisions—were largely aligned regarding the limited and defined scope of the federal government’s powers and the importance of states’ rights.

James Madison, condemning a proposal for the federal government to subsidize a failing

industry, explained: “[T]hose who proposed the constitution... [and] those who ratified the constitution conceived that this is not an indefinite government deriving its powers from the general terms prefixed to the specified powers—but, a limited government tied down to the specified powers, which explain and define the general terms.”¹¹ Specifically referring to the “common defence and general welfare” clause, Madison elaborated: “[I]t was never supposed or pretended that they conveyed any such powers as is now assigned to them. On the contrary, it was always considered as clear and certain, that the old Congress was limited to the enumerated powers; and that enumeration limited and explained the general terms.”¹²

In *Federalist* 33, Alexander Hamilton similarly asserted that these broader clauses—particularly the “necessary and proper clause” and the “supremacy clause”—conferred no additional power upon the federal government: “[I]t may be affirmed with perfect confidence that the constitutional operation of the intended government would be precisely the same, if these clauses were entirely obliterated, as if they were repeated in every article. They are only declaratory of a truth which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government, and vesting it with certain specified powers.”¹³

Thomas Jefferson conveyed the same viewpoint in a letter to George Washington, in which he argued that the establishment of a national bank was unconstitutional: “I consider the foundation of the Constitution as laid on this ground: that ‘all powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states or to the people.’ ... To take a single step beyond the boundaries thus specially drawn around the powers of Congress is to take possession of a

boundless field of power, no longer susceptible to any definition.”¹⁴

Many other Founders, including James Monroe, Samuel Adams, Patrick Henry, George Mason, James Wilson, Elbridge Gerry, Thomas McKean, Luther Martin and Richard Henry Lee, expressed the same intent.¹⁵

Ultimately, the intent and the meaning of the Constitution have been subverted, all to the benefit of an increasingly monolithic and

authoritarian central government. Whether such subversion has been based upon malice or ignorance is immaterial in terms of charting a path forward. States possess significantly more power to govern their own affairs than they might realize. State policymakers should understand that they possess both the authority and the moral imperative to push back against the federal leviathan, thereby restoring states’ rights, individual freedoms, and the true form of federalism that the Founders envisioned.

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1. For more information about federalism and its importance in the United States, see: State Policy Network, “What Is Federalism?” June 11, 2021, <https://spn.org/articles/what-is-federalism/>
 2. James Madison, “*The Federalist Number 45*,” January 26, 1788, accessed from *Founders Online*, National Archives, <https://founders.archives.gov/documents/Madison/01-10-02-0254>
 3. U.S. Constitution, Amendment X, accessed from the National Constitution Center, <https://constitutioncenter.org/the-constitution>
 4. Tenth Amendment Center, “The Tenth Amendment,” accessed October 19, 2024, <https://tenthamendmentcenter.com/the-10th-amendment/>
 5. U.S. Constitution, Article I, Section 8, accessed from the National Constitution Center, <https://constitutioncenter.org/the-constitution/full-text>
 6. For a full list, see: Tenth Amendment Center, “Thirty Enumerated Powers,” accessed October 19, 2024, <https://tenthamendmentcenter.com/historical-documents/united-states-constitution/thirty-enumerated-powers/>
 7. U.S. Constitution, Article I, Section 8, Clause 1 states “[The 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.”
 8. U.S. Constitution, Article I, Section 8, Clause 3 states “[The Congress shall have Power To] regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”
 9. U.S. Constitution, Article I, Section 8, Clause 18 states “[The Congress shall have Power To] make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”
 10. U.S. Constitution, Article VI, Clause 2 states “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”
 11. James Madison, “Bounty Payments for Cod Fisheries,” February 6, 1792, accessed from *Founders Online*, National Archives, <https://founders.archives.gov/documents/Madison/01-14-02-0192>
 12. James Madison, “Bounty Payments for Cod Fisheries.”
 13. Alexander Hamilton, “*The Federalist Number 33*,” January 3, 1788, accessed from The Avalon Project, Yale Law School, https://avalon.law.yale.edu/18th_century/fed33.asp
 14. Thomas Jefferson to George Washington, *Opinion on the Constitutionality of a National Bank*, February 15, 1791, accessed from the Library of Congress, https://www.loc.gov/resource/mtj1.013_0984_0990/?sp=1&st=text
 15. See: David Barton, “Limiting an Overreaching Federal Government: Is State Nullification the Solution? A Constitutional Analysis,” *Wallbuilders*, May 29, 2023, <https://wallbuilders.com/resource/limiting-an-overreaching-federal-government-is-state-nullification-the-solution/>

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Key Takeaways:

- The U.S. federal government inserted itself into almost every conceivable policy area, in blatant conflict with the Constitution.
- States' rights have exponentially deteriorated as the federal government has grown into a leviathan, eradicating the federalist system the Founding Fathers created.
- Federalism is a system of government in which power is shared and clearly divided between a central government and regional governments. This allows regional governments—such as states—to better serve their constituents.
- The U.S. Constitution was deliberately written to limit the power of the federal government and promote the rights of states and the people.
- The Tenth Amendment stipulates: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”
- The Tenth Amendment's purpose is to explicitly clarify that the federal government can only wield such powers enumerated to it within the Constitution, with states retaining the authority to exercise all non-enumerated powers.
- There are only 18 powers delegated to the federal government in Article 1, Section 8 of the Constitution.
- Misinterpretations of these clauses have been the primary causal factor leading to the dramatic expansion of the federal government's power, at the expense of states' rights.
- These misinterpretations conflict with the **Intent and Words of the Founding Fathers:**
 - **James Madison:** “[T]hose who ratified the constitution conceived that this is not an indefinite government deriving its powers from the general terms prefixed to the specified powers—but, a limited government tied down to the specified powers, which explain and define the general terms.”
 - **Alexander Hamilton:** “[I]t may be affirmed with perfect confidence that the constitutional operation of the intended government would be precisely the same, if these clauses were entirely obliterated, as if they were repeated in every article.”
 - **Thomas Jefferson:** “To take a single step beyond the boundaries thus specially drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible to any definition.”