

# The U.S. Constitution: Delegated, implied and inherent powers

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Alexander Hamilton (right), James Madison (left) and George Washington (center) were advocates of the federal system. Photos via Wikimedia Commons

America's Founding Fathers came up with a clever system that hoped to balance order with liberty.

It was called the federalist government, and they had several reasons for creating it:

- to avoid tyranny.
- to allow more participation in politics.
- to use the states as "laboratories" for new ideas and programs.

## **Federalism Keeps Control In Check**

As James Madison pointed out in *The Federalist Papers*, If "factious leaders kindle a flame within their particular states," national leaders can check the spread of the "conflagration through the

other states." In other words, federalism prevents a person who takes control of a state from easily taking control of the federal government as well.

Electing both state and national officials also increases the input of citizens into their government. Moreover, if a state adopts a disastrous new policy, at least it would not be a catastrophe for everyone. On the other hand, if a state's new programs work well, other states can adopt their ideas and adjust them to their own needs.

The Constitution gives three types of power to the national government:

### **27 Federal Powers**

Delegated powers are specifically granted to the federal government in Article I, Section 8 of the Constitution. These are also sometimes called "enumerated" or "expressed" powers. The delegated powers include the power to coin money, to regulate commerce, to declare war, to raise and maintain armed forces, and to establish a Post Office. In all, the Constitution delegates 27 powers specifically to the federal government.

Implied powers are not specifically stated in the Constitution. However, they may be inferred from the elastic (or "necessary and proper") clause (Article I, Section 8). This provision gives Congress the right "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and other powers vested in the government of the United States." Since these powers are not completely clear, the courts are often left to decide what constitutes an implied power.

Inherent powers are not specifically listed in the Constitution, but they grow out of the very existence of the national government. For example, the United States has the power to acquire territory by exploration and/or occupancy. This is primarily because most governments in general claim that right.

### **Reserved Powers For States**

The Constitution also identifies reserved powers, which are set aside for the states. Unlike delegated powers, they are not listed specifically, but are guaranteed by the Tenth Amendment: "The powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States respectively, or to the people." Some traditional reserved powers include regulating trade within a state, establishing local government and conducting elections.

Some powers of federal and state governments overlap. For example, both may — and do — levy taxes, make and enforce laws, and borrow money. These powers are not granted exclusively to the national government, nor are they denied the states.

Prohibited powers are denied either to the national government, state governments or both (Article I, Section 9). For example, the national government cannot exercise its powers in such a way as to interfere with the states' abilities to perform their responsibilities. States cannot tax imports or exports, nor can they coin money or issue bills of credit.

States also have responsibilities to one another, as explained in Article IV of the Constitution. One provision is that each state must give "full faith and credit" to the public acts, records and civil judicial proceedings of every other state. Business contracts, then, are recognized by all states, as

are marriages. Extradition, the legal process in which an accused criminal is returned to the state where the crime was committed, is also required by Article IV.

### **Guarding Against Tyranny**

The founders very carefully divided powers between the federal and state governments. They were responding to both the colonial dissatisfaction with the tyranny of King George III as well as the failure of the Articles of Confederation. Their careful separating and blending of state and national powers guarded against tyranny. It also allowed for more citizen participation in government, and provided a mechanism for incorporating new policies and programs.