



Written by [Charles Scaliger](#) on August 22, 2016

Published in the August 22, 2016 issue of [the New American](#) magazine. Vol. 32, No. 16

---

## Why Enumerate Powers?

The Constitution of the United States provides a blueprint for the federal government, including its internal structure, powers, and relationship to the governments of the separate states that brought it into being. It is a mere 4,400 words long and spells out how our government is to work. All of which prompts the question: Given the brevity and simplicity of the U.S. Constitution, how have we ended up with such a gargantuan, expensive, and inefficient federal government, the largest, most expensive, and most powerful government ever created. The answer is that we have neglected the cardinal legal principle upon which the entire Constitution is based: the doctrine of enumerated powers.



Under the Constitution only those powers that are enumerated — that is, granted explicitly — are legitimate. Otherwise put, the federal government has no authority unless it is enumerated in the Constitution; all other aspects of human conduct that may be subject to government control are understood to be reserved to state and local governments — or to be outside the realm of government authority altogether, reserved unto individuals to act upon as they see fit.

The principle of enumerated powers was made explicit by James Madison in *The Federalist*, No. 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.

The Founders understood very well this principle. Hamilton and others were leery of adding a Bill of Rights to the Constitution, lest it eventually undermine the limitations of enumerated powers. A premise of enumerated powers implies that whatever is not permitted is prohibited (which is, of course, the opposite of how civil laws are understood to operate). But a set of amendments that contain explicit prohibitions on what government can do — explicitly protecting, for example, the right to bear arms or the free exercise of religion — might encourage the notion that anything is permissible for government that is not explicitly prohibited. Wrote Hamilton in *The Federalist*, No. 84:

[A Bill of Rights] would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do?

In the end, of course, a Bill of Rights was drawn up and amended to the Constitution shortly after its ratification. But in a nod to the concerns voiced by Hamilton, the 10th and final amendment to the Bill of Rights made explicit the doctrine of enumerated powers, in language that cannot be misunderstood:



Written by [Charles Scaliger](#) on August 22, 2016

Published in the August 22, 2016 issue of [the New American](#) magazine. Vol. 32, No. 16

---

“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 10th Amendment is impossible to misunderstand — which is why it is almost never mentioned in discussions of political policy. In general, proposed legislation is generally evaluated in terms of whether it violates any individual rights mentioned in the Bill of Rights — whether, for example, it constitutes an infringement on the right to keep and bear arms, on the right to free speech, and so forth. Implicit in such arguments is the idea that anything not falling under such explicit prohibitions is permitted. No one would think to criticize federal environmental laws, for example, in terms of violations of free speech, or any other protected right. Yet under the doctrine of enumerated powers, federal environmental laws are entirely unconstitutional, inasmuch as the Constitution makes no grant of power to the federal government to regulate water quality, protect endangered species, etc. The same is true of most of the rest of what the federal government is currently engaged in. There is no constitutional authority to regulate education, healthcare, the financial markets, or the manufacturing sector, or to provide subsidies, welfare payments, Social Security, and numerous other “entitlements” that we now take for granted. In fact, the total number of powers granted to Congress by the Constitution is about 30 (mostly in Article 1, Section 8), and includes authority:

- “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”;
- “To borrow Money on the credit of the United States”;
- “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes”;
- “To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures”;
- “To establish Post Offices and post Roads”;
- “To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water”;
- “To provide and maintain a Navy”; and a few other things.

The enlargement of the federal government far beyond constitutionally admissible bounds is routinely justified in the name of “implied powers,” meaning powers that can be inferred from enumerated powers. For instance, the power to establish post offices implies the power to hire postal workers. But certain clauses in the Constitution, such as the mention of “general Welfare” and the regulation of commerce “among the several states,” have been reinterpreted to grant essentially unlimited power. Anything that can be claimed to be for the “general Welfare,” for example, becomes permissible. Such a distortion of the Founders’ clear intent has all but destroyed the operation of enumerated powers as a check on the federal government.

Our federal government is now held captive by ideologues who believe that all human ills can be solved by the creative application of government power. Only by re-enshrining the doctrine of enumerated powers will limited government be restored.



Written by [Charles Scaliger](#) on August 22, 2016

Published in the August 22, 2016 issue of [the New American](#) magazine. Vol. 32, No. 16

## Subscribe to the New American

Get exclusive digital access to the most informative, non-partisan truthful news source for patriotic Americans!

Discover a refreshing blend of time-honored values, principles and insightful perspectives within the pages of "The New American" magazine. Delve into a world where tradition is the foundation, and exploration knows no bounds.

From politics and finance to foreign affairs, environment, culture, and technology, we bring you an unparalleled array of topics that matter most.



[Subscribe](#)

### What's Included?

- 24 Issues Per Year
- Optional Print Edition
- Digital Edition Access
- Exclusive Subscriber Content
- Audio provided for all articles
- Unlimited access to past issues
- Coming Soon! Ad FREE
- 60-Day money back guarantee!
- Cancel anytime.