

## Strings Attached

Strings are always attached when it comes to shifting responsibilities, especially when money is involved. As the states allow the federal government to help fund state programs and set standards for state policies these strings become more apparent and more difficult to untangle.

There is an entire chapter devoted to federalism in constitutional law textbooks, focusing on what powers are state powers and what powers are held by the federal government. Federalism, by definition, is a system whereby power is shared between national and state governments.



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In the founding days of this country, widespread debate amongst the framers took place as they tried to decide how much power to allocate to the states and how much power should be held by the national government. In conflict were two concerns. First, with too strong a national government, they feared the creation of a system identical to the one they had fled; they did not want another king. On the other hand, as the Articles of Confederation had taught them, too weak of a national government would lead to failure.

In response to these concerns, the founders fashioned a constitution that granted enumerated powers to the national government (Articles 1, 2, and 3 of the U.S. Constitution). With this came the understanding that with the people and the states remained the other powers (later added to the Constitution in the 9<sup>th</sup> and 10<sup>th</sup> amendments).

Article 1, after enumerating Congress' powers in section 8 of the Constitution, includes the infamous phrase, "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers..." This phrase known as the "Necessary and Proper Clause" has caused widespread debate in U.S. constitutional history. What did the founders mean by adding this phrase to the Constitution?

Almost unbelievably to us now, the framers did not debate this clause during the Constitutional Convention. The reasons for this are unclear. Some scholars have argued that it was purposely left ambiguous so that both the supporters and the opponents could use it to argue for their interpretations later. Yet other scholars have pointed to a more likely reason being that no debate ensued due to the fact that the power to make the laws was implicit in the enumerated powers. As much as the founders liked to debate, it seems more likely that the clause was not thought to be ambiguous otherwise both sides would have wanted to voice their opinions at the Constitutional Convention.

During the state ratification conventions, however, opponents of the Constitution thought that this phrase was too broad and gave the national government

unlimited powers. In response, the Federalists (supporters of the Constitution), reassured the opponents that the Necessary and Proper clause did not grant boundless power; rather it granted Congress the power to execute the powers already enumerated.

The Necessary and Proper Clause coupled with the Commerce Clause has led to expansion of national government powers year-by-year. But what's the problem, doesn't it make sense to have the national government create uniform policies?

States should fight back when faced with questions like that above. The U.S. is a large country with 50 distinct states. Part of the beauty of the federal system is allowing local governments to be responsive to the people. Removing power from the states takes policies one step, indeed one large leap, away from the people whom these laws affect. Moreover, each state has specialized needs and its own culture. What works in New York might not work in Wyoming.

Federalism allows the states to serve as laboratories for policies. Instead of trying one plan, up to fifty plans can be enacted and from that which policies work best will become apparent.

The trend, unfortunately, is towards nationalization of most everything. From education to healthcare, more and more the national government is dictating what the states shall do. It's not always obvious and direct, but with the purse strings the federal government exerts a strong influence on the states.

But states should be wary of "free money" because strings are usually attached and local governments lose control of local decisions while becoming dependent on federal money. One example of this is the Federal Medical Assistance Percentage which provides Medicaid dollars to the states based on their Medicaid spending. While designed to help impoverished states it has actually led to subsidization of wealthier states by other states (Kansas is one such "donor" state).

The national government should be reminded of just what Article 1, section 8 allows them to do, while states should resist the temptation to allow federal control over state policies. People should be aware of what is going on both in their state governments and the national government. For once the strings are attached they are harder and harder to untangle.

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