

CONCURRENT POWERS US

UNDERSTANDING CONCURRENT POWERS IN THE US: A SHARED AUTHORITY LANDSCAPE

CONCURRENT POWERS US REFER TO A FASCINATING AND CRUCIAL ASPECT OF AMERICAN FEDERALISM, ILLUSTRATING HOW AUTHORITY ISN'T ALWAYS NEATLY DIVIDED BETWEEN THE NATIONAL AND STATE GOVERNMENTS. INSTEAD, CERTAIN GOVERNMENTAL POWERS ARE SHARED, CREATING A DYNAMIC AND OFTEN COMPLEX SYSTEM OF GOVERNANCE. THIS SHARED AUTHORITY MEANS BOTH THE FEDERAL GOVERNMENT AND INDIVIDUAL STATE GOVERNMENTS CAN ACT WITHIN THE SAME SPHERES, LEADING TO OPPORTUNITIES FOR COOPERATION AND SOMETIMES, POINTS OF CONTENTION. UNDERSTANDING THESE CONCURRENT POWERS IS KEY TO GRASPING HOW THE UNITED STATES OPERATES AS A UNIFIED NATION WITH DIVERSE REGIONAL GOVERNANCE. THIS ARTICLE WILL DELVE INTO THE CORE CONCEPTS OF CONCURRENT POWERS, EXPLORE COMMON EXAMPLES, DISCUSS THEIR IMPLICATIONS, AND EXAMINE HOW THEY SHAPE THE BALANCE OF POWER IN THE US.

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WHAT ARE CONCURRENT POWERS IN THE US?

CONCURRENT POWERS, OFTEN REFERRED TO AS SHARED POWERS, REPRESENT A FUNDAMENTAL PRINCIPLE OF AMERICAN FEDERALISM. UNLIKE ENUMERATED POWERS (EXCLUSIVELY FEDERAL) OR RESERVED POWERS (EXCLUSIVELY STATE), CONCURRENT POWERS ARE THOSE THAT BOTH THE FEDERAL GOVERNMENT AND THE STATE GOVERNMENTS POSSESS SIMULTANEOUSLY. THESE POWERS ARE NOT GRANTED BY ONE LEVEL TO THE OTHER BUT ARE INHERENT TO BOTH SOVEREIGN ENTITIES WITHIN THEIR RESPECTIVE JURISDICTIONS, AS ESTABLISHED BY THE U.S. CONSTITUTION. THINK OF IT LIKE A VENN DIAGRAM, WHERE THE OVERLAPPING SECTION REPRESENTS THESE SHARED AUTHORITIES. BOTH CIRCLES (FEDERAL AND STATE) CAN DRAW FROM THIS COMMON POOL OF POWER TO ENACT LAWS, CREATE PROGRAMS, AND ADMINISTER SERVICES.

THE EXISTENCE OF CONCURRENT POWERS IS A DELIBERATE DESIGN CHOICE EMBEDDED WITHIN THE U.S. SYSTEM OF GOVERNMENT. THE FRAMERS OF THE CONSTITUTION SOUGHT TO CREATE A BALANCE OF POWER, PREVENTING EITHER THE NATIONAL GOVERNMENT OR THE STATE GOVERNMENTS FROM BECOMING TOO DOMINANT. BY ALLOWING BOTH LEVELS TO EXERCISE AUTHORITY IN CERTAIN AREAS, THEY FOSTERED A SYSTEM THAT COULD BE RESPONSIVE TO BOTH NATIONAL NEEDS AND LOCAL CONDITIONS. THIS SHARED AUTHORITY ALLOWS FOR FLEXIBILITY AND ADAPTABILITY IN GOVERNANCE, ENABLING RESPONSES THAT CAN BE TAILORED TO SPECIFIC CIRCUMSTANCES WHILE STILL OPERATING WITHIN THE BROADER FRAMEWORK OF NATIONAL LAW.

KEY EXAMPLES OF CONCURRENT POWERS

SEVERAL CRITICAL AREAS OF GOVERNANCE ARE SUBJECT TO CONCURRENT POWERS, DEMONSTRATING HOW BOTH THE FEDERAL AND STATE GOVERNMENTS CAN LEGISLATE AND ACT. THESE SHARED AUTHORITIES ARE NOT THEORETICAL; THEY ARE ACTIVELY EXERCISED EVERY DAY ACROSS THE NATION, IMPACTING CITIZENS IN NUMEROUS WAYS. UNDERSTANDING THESE SPECIFIC EXAMPLES HELPS TO DEMYSTIFY THE CONCEPT AND ILLUSTRATE ITS PRACTICAL APPLICATION.

POWER TO TAX

ONE OF THE MOST SIGNIFICANT CONCURRENT POWERS IS THE ABILITY TO TAX. BOTH THE FEDERAL GOVERNMENT AND STATE GOVERNMENTS CAN LEVY TAXES ON INDIVIDUALS AND BUSINESSES. THIS ALLOWS THE FEDERAL GOVERNMENT TO FUND NATIONAL PROGRAMS AND SERVICES, SUCH AS NATIONAL DEFENSE, SOCIAL SECURITY, AND INFRASTRUCTURE PROJECTS. SIMULTANEOUSLY, STATE GOVERNMENTS CAN IMPOSE THEIR OWN TAXES, LIKE INCOME TAXES, SALES TAXES, AND PROPERTY TAXES, TO FUND STATE-SPECIFIC INITIATIVES, EDUCATION, PUBLIC SAFETY, AND LOCAL INFRASTRUCTURE. THIS DUAL TAXING AUTHORITY IS ESSENTIAL FOR THE FUNCTIONING OF BOTH LEVELS OF GOVERNMENT, ALTHOUGH IT CAN SOMETIMES LEAD TO COMPLEX TAX SITUATIONS FOR CITIZENS AND BUSINESSES WHO ARE SUBJECT TO TAXES FROM MULTIPLE JURISDICTIONS.

POWER TO BUILD ROADS

THE CONSTRUCTION AND MAINTENANCE OF ROADS ARE ANOTHER PRIME EXAMPLE OF CONCURRENT POWERS. THE FEDERAL GOVERNMENT PLAYS A SIGNIFICANT ROLE IN FUNDING AND ESTABLISHING STANDARDS FOR INTERSTATE HIGHWAYS AND OTHER MAJOR TRANSPORTATION NETWORKS THROUGH AGENCIES LIKE THE DEPARTMENT OF TRANSPORTATION. THESE NATIONAL PROJECTS ARE CRUCIAL FOR COMMERCE AND NATIONAL MOBILITY. HOWEVER, STATE AND LOCAL GOVERNMENTS ARE PRIMARILY RESPONSIBLE FOR BUILDING AND MAINTAINING INTRASTATE ROADS, LOCAL STREETS, AND BRIDGES WITHIN THEIR BORDERS. THIS SHARED RESPONSIBILITY ENSURES THAT BOTH NATIONAL TRANSPORTATION NEEDS AND LOCAL CONNECTIVITY ARE ADDRESSED.

POWER TO ESTABLISH COURTS

THE JUDICIAL SYSTEM IN THE UNITED STATES ALSO OPERATES UNDER CONCURRENT POWERS. BOTH FEDERAL AND STATE GOVERNMENTS HAVE THE AUTHORITY TO ESTABLISH THEIR OWN COURT SYSTEMS. THE FEDERAL COURT SYSTEM HANDLES CASES INVOLVING FEDERAL LAW, CONSTITUTIONAL ISSUES, AND DISPUTES BETWEEN STATES, CULMINATING IN THE SUPREME COURT. STATE COURT SYSTEMS, ON THE OTHER HAND, HANDLE THE VAST MAJORITY OF LEGAL MATTERS, INCLUDING CRIMINAL LAW, FAMILY LAW, CONTRACT DISPUTES, AND MOST CIVIL LITIGATION, BASED ON STATE STATUTES AND CONSTITUTIONS. WHILE DISTINCT, THESE SYSTEMS CAN SOMETIMES INTERACT, PARTICULARLY WHEN A STATE COURT RULING INVOLVES A FEDERAL QUESTION.

POWER TO MAKE AND ENFORCE LAWS

PERHAPS THE MOST PERVASIVE CONCURRENT POWER IS THE AUTHORITY TO CREATE AND ENFORCE LAWS. BOTH THE FEDERAL AND STATE GOVERNMENTS CAN PASS LEGISLATION COVERING A WIDE RANGE OF SUBJECTS. FOR INSTANCE, BOTH LEVELS OF GOVERNMENT HAVE THE POWER TO ESTABLISH CRIMINAL LAWS, THOUGH THE SPECIFIC OFFENSES AND PENALTIES MAY DIFFER. THE FEDERAL GOVERNMENT MIGHT LEGISLATE ON ISSUES LIKE INTERSTATE DRUG TRAFFICKING OR COUNTERFEITING, WHILE STATE GOVERNMENTS WILL HANDLE CRIMES LIKE PETTY THEFT OR LOCAL ORDINANCE VIOLATIONS. THIS DIVISION AND OVERLAP ENSURE THAT LAWS CAN ADDRESS BOTH NATIONAL PRIORITIES AND LOCAL CONCERNS, THOUGH IT REQUIRES CAREFUL COORDINATION TO AVOID CONFLICTS.

POWER TO CHARTER BANKS

THE ABILITY TO CHARTER BANKS IS ANOTHER AREA WHERE CONCURRENT POWERS ARE EXERCISED. THE FEDERAL GOVERNMENT, THROUGH AGENCIES LIKE THE OFFICE OF THE COMPTROLLER OF THE CURRENCY, CAN GRANT CHARTERS TO NATIONAL BANKS.

SIMILARLY, STATE GOVERNMENTS HAVE THE AUTHORITY TO CHARTER STATE BANKS. THIS ALLOWS FOR A ROBUST AND DIVERSE BANKING SYSTEM, WITH BOTH FEDERALLY REGULATED AND STATE-REGULATED INSTITUTIONS OPERATING WITHIN THE ECONOMY. THIS DUAL SYSTEM PROVIDES CHOICE AND COMPETITION WITHIN THE FINANCIAL SECTOR.

THE INTERPLAY OF FEDERAL AND STATE AUTHORITY

THE EXERCISE OF CONCURRENT POWERS CREATES A DYNAMIC INTERPLAY BETWEEN FEDERAL AND STATE AUTHORITY. IT'S NOT A STATIC DIVISION BUT A CONSTANTLY EVOLVING RELATIONSHIP. THIS INTERACTION CAN MANIFEST IN SEVERAL WAYS, SHAPING POLICY AND GOVERNANCE ACROSS THE NATION. THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION IS A KEY ELEMENT IN UNDERSTANDING THIS INTERPLAY. IT STIPULATES THAT THE CONSTITUTION AND FEDERAL LAWS MADE PURSUANT TO IT ARE THE SUPREME LAW OF THE LAND. THIS MEANS THAT IF A FEDERAL LAW AND A STATE LAW CONFLICT, THE FEDERAL LAW WILL GENERALLY PREVAIL, PROVIDED IT IS A LEGITIMATE EXERCISE OF FEDERAL POWER.

HOWEVER, THIS DOESN'T NEGATE THE IMPORTANCE OR VALIDITY OF STATE LAWS IN AREAS OF CONCURRENT AUTHORITY. OFTEN, FEDERAL AND STATE LAWS IN THESE OVERLAPPING AREAS COMPLEMENT EACH OTHER. FOR EXAMPLE, FEDERAL ENVIRONMENTAL REGULATIONS SET MINIMUM STANDARDS, BUT STATES CAN ENACT STRICTER REGULATIONS TO ADDRESS LOCAL ENVIRONMENTAL CONCERNS. THIS COOPERATIVE APPROACH, OFTEN TERMED "COOPERATIVE FEDERALISM," ALLOWS FOR A MORE NUANCED AND EFFECTIVE APPROACH TO GOVERNANCE, ADDRESSING BOTH BROAD NATIONAL GOALS AND SPECIFIC REGIONAL NEEDS. IT'S A BALANCING ACT THAT REQUIRES CONTINUOUS NEGOTIATION AND ADAPTATION BETWEEN DIFFERENT LEVELS OF GOVERNMENT.

WHY CONCURRENT POWERS MATTER

CONCURRENT POWERS ARE NOT JUST AN ABSTRACT LEGAL CONCEPT; THEY ARE FUNDAMENTAL TO THE PRACTICAL FUNCTIONING OF AMERICAN DEMOCRACY AND ITS ABILITY TO ADAPT TO A CHANGING WORLD. THEY ARE THE ENGINE THAT DRIVES MUCH OF THE LEGISLATIVE AND ADMINISTRATIVE ACTIVITY WE SEE AT BOTH NATIONAL AND STATE LEVELS. ONE OF THE PRIMARY REASONS CONCURRENT POWERS MATTER IS THAT THEY ALLOW FOR A MORE RESPONSIVE AND FLEXIBLE GOVERNMENT. BY GIVING BOTH FEDERAL AND STATE GOVERNMENTS THE ABILITY TO ACT IN CERTAIN AREAS, POLICIES CAN BE DEVELOPED THAT ARE SENSITIVE TO BOTH NATIONAL PRIORITIES AND LOCAL CONDITIONS.

FURTHERMORE, CONCURRENT POWERS FOSTER INNOVATION. STATES CAN OFTEN SERVE AS "LABORATORIES OF DEMOCRACY," EXPERIMENTING WITH NEW POLICIES IN AREAS OF SHARED AUTHORITY. IF A STATE'S INNOVATIVE APPROACH PROVES SUCCESSFUL, IT CAN THEN BE ADOPTED OR ADAPTED BY OTHER STATES OR EVEN INFLUENCE FEDERAL POLICY. THIS CREATES A DYNAMIC FEEDBACK LOOP THAT CAN LEAD TO BETTER GOVERNANCE OVER TIME. WITHOUT THIS SHARED AUTHORITY, POLICY DEVELOPMENT COULD BECOME MORE CENTRALIZED AND LESS RESPONSIVE TO THE DIVERSE NEEDS OF THE AMERICAN POPULACE.

CHALLENGES AND BENEFITS OF CONCURRENT POWERS

THE SYSTEM OF CONCURRENT POWERS, WHILE BENEFICIAL, IS NOT WITHOUT ITS CHALLENGES. THE OVERLAP IN AUTHORITY CAN SOMETIMES LEAD TO CONFUSION, DUPLICATION OF EFFORTS, AND INTERGOVERNMENTAL DISPUTES. FOR INSTANCE, BUSINESSES MIGHT FACE COMPLEX REGULATORY LANDSCAPES WHEN OPERATING ACROSS STATE LINES, DEALING WITH DIFFERING FEDERAL AND STATE REGULATIONS ON THE SAME ISSUE. THIS CAN INCREASE COMPLIANCE COSTS AND CREATE ADMINISTRATIVE BURDENS. MOREOVER, DISAGREEMENTS CAN ARISE WHEN FEDERAL AND STATE GOVERNMENTS HAVE DIFFERING PRIORITIES OR INTERPRETATIONS OF LAW WITHIN THEIR SHARED SPHERES OF AUTHORITY, POTENTIALLY LEADING TO LEGAL BATTLES AND POLICY GRIDLOCK.

DESPITE THESE CHALLENGES, THE BENEFITS OF CONCURRENT POWERS ARE SUBSTANTIAL. THEY PROMOTE A SYSTEM OF CHECKS AND BALANCES BETWEEN DIFFERENT LEVELS OF GOVERNMENT, PREVENTING ANY SINGLE ENTITY FROM ACCUMULATING TOO MUCH POWER. THIS DIVISION OF AUTHORITY ENSURES THAT A WIDER RANGE OF PERSPECTIVES IS CONSIDERED IN POLICYMAKING.

CONCURRENT POWERS ALSO FACILITATE A MORE EFFECTIVE DISTRIBUTION OF GOVERNMENTAL RESPONSIBILITIES, ALLOWING THE FEDERAL GOVERNMENT TO FOCUS ON NATIONAL ISSUES WHILE STATES CAN ADDRESS MORE LOCALIZED CONCERNS. THIS DIVISION OF LABOR, WHEN MANAGED EFFECTIVELY, CAN LEAD TO MORE EFFICIENT AND EFFECTIVE GOVERNANCE, BETTER SERVING THE DIVERSE NEEDS OF THE AMERICAN PEOPLE.

NAVIGATING THE LEGAL FRAMEWORK OF CONCURRENT POWERS

THE LEGAL FRAMEWORK GOVERNING CONCURRENT POWERS IS COMPLEX, PRIMARILY STEMMING FROM THE U.S. CONSTITUTION AND SUBSEQUENT SUPREME COURT INTERPRETATIONS. THE TENTH AMENDMENT PLAYS A CRUCIAL ROLE, STATING THAT 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. HOWEVER, THIS AMENDMENT IS INTERPRETED IN CONJUNCTION WITH THE NECESSARY AND PROPER CLAUSE (ARTICLE I, SECTION 8) OF THE CONSTITUTION, WHICH GRANTS CONGRESS THE POWER TO MAKE ALL LAWS WHICH SHALL BE NECESSARY AND PROPER FOR CARRYING INTO EXECUTION ITS ENUMERATED POWERS. THIS CLAUSE HAS BEEN A SIGNIFICANT SOURCE OF FEDERAL AUTHORITY, OFTEN EXPANDING THE SCOPE OF FEDERAL ACTION INTO AREAS THAT MIGHT ALSO BE CONSIDERED CONCURRENT.

THE SUPREME COURT ACTS AS THE ULTIMATE ARBITER IN DISPUTES OVER FEDERAL AND STATE AUTHORITY. THROUGH LANDMARK CASES, THE COURT HAS DEFINED THE BOUNDARIES AND INTERACTIONS OF CONCURRENT POWERS. THESE JUDICIAL DECISIONS ESTABLISH PRECEDENTS THAT GUIDE HOW BOTH LEVELS OF GOVERNMENT CAN EXERCISE THEIR SHARED AUTHORITIES. UNDERSTANDING THIS LEGAL LANDSCAPE IS VITAL FOR POLICYMAKERS, LEGAL SCHOLARS, AND CITIZENS ALIKE, AS IT DICTATES THE PRACTICAL APPLICATION OF THESE SHARED GOVERNMENTAL POWERS AND THE BALANCE OF POWER WITHIN THE FEDERAL SYSTEM.

THE FUTURE OF CONCURRENT POWERS IN AMERICAN GOVERNANCE

THE LANDSCAPE OF CONCURRENT POWERS IN THE UNITED STATES IS NOT STATIC; IT'S A CONTINUOUSLY EVOLVING ASPECT OF AMERICAN FEDERALISM. AS SOCIETY FACES NEW CHALLENGES, FROM TECHNOLOGICAL ADVANCEMENTS TO GLOBAL CRISES, THE LINES OF AUTHORITY AND THE SCOPE OF SHARED POWERS WILL LIKELY CONTINUE TO BE DEBATED AND REDEFINED. ISSUES SUCH AS DATA PRIVACY, ARTIFICIAL INTELLIGENCE REGULATION, AND PANDEMIC RESPONSE ALL PRESENT COMPLEX QUESTIONS THAT WILL REQUIRE BOTH FEDERAL AND STATE GOVERNMENTS TO ACT, POTENTIALLY EXPANDING OR CLARIFYING EXISTING CONCURRENT POWERS.

THE TREND TOWARDS GREATER FEDERAL INVOLVEMENT IN AREAS TRADITIONALLY HANDLED BY STATES, OR VICE VERSA, WILL LIKELY PERSIST. THIS ONGOING NEGOTIATION OF POWER IS A TESTAMENT TO THE DYNAMIC NATURE OF FEDERALISM. HOW THESE CONCURRENT POWERS ARE EXERCISED IN THE FUTURE WILL BE SHAPED BY POLITICAL WILL, JUDICIAL INTERPRETATION, AND THE EVER-CHANGING NEEDS OF THE NATION. ULTIMATELY, THE EFFECTIVE MANAGEMENT OF CONCURRENT POWERS REMAINS CRITICAL TO MAINTAINING A BALANCE BETWEEN NATIONAL UNITY AND STATE AUTONOMY, ENSURING A ROBUST AND RESPONSIVE GOVERNMENT FOR ALL AMERICANS.

FAQ

Q: WHAT IS THE PRIMARY DIFFERENCE BETWEEN ENUMERATED POWERS AND CONCURRENT POWERS?

A: ENUMERATED POWERS ARE SPECIFICALLY LISTED IN THE CONSTITUTION AND GRANTED EXCLUSIVELY TO THE FEDERAL GOVERNMENT, SUCH AS THE POWER TO DECLARE WAR OR COIN MONEY. CONCURRENT POWERS, ON THE OTHER HAND, ARE AUTHORITIES THAT BOTH THE FEDERAL GOVERNMENT AND STATE GOVERNMENTS CAN EXERCISE SIMULTANEOUSLY, LIKE THE POWER TO TAX OR BUILD ROADS.

Q: CAN A STATE LAW CONTRADICT A FEDERAL LAW IN AN AREA OF CONCURRENT POWER?

A: GENERALLY, NO. THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION STATES THAT THE CONSTITUTION AND FEDERAL LAWS MADE PURSUANT TO IT ARE THE SUPREME LAW OF THE LAND. IF A STATE LAW CONFLICTS WITH A VALID FEDERAL LAW IN AN AREA OF CONCURRENT POWER, THE FEDERAL LAW WILL TYPICALLY PREVAIL.

Q: WHY ARE CONCURRENT POWERS IMPORTANT FOR THE BALANCE OF POWER IN THE US?

A: CONCURRENT POWERS ARE CRUCIAL FOR MAINTAINING A BALANCE BETWEEN FEDERAL AND STATE AUTHORITY. THEY PREVENT EITHER LEVEL OF GOVERNMENT FROM BECOMING TOO DOMINANT BY ALLOWING BOTH TO OPERATE WITHIN OVERLAPPING SPHERES OF INFLUENCE, FOSTERING COOPERATION AND PROVIDING A SYSTEM OF CHECKS AND BALANCES.

Q: WHAT ARE SOME COMMON EXAMPLES OF CONCURRENT POWERS BEYOND TAXATION AND ROAD BUILDING?

A: OTHER COMMON EXAMPLES OF CONCURRENT POWERS INCLUDE THE POWER TO ESTABLISH COURTS, THE POWER TO MAKE AND ENFORCE LAWS (INCLUDING CRIMINAL LAWS), THE POWER TO CHARTER BANKS, AND THE POWER TO CONDEMN PRIVATE PROPERTY FOR PUBLIC USE (EMINENT DOMAIN).

Q: HOW DO CONCURRENT POWERS CONTRIBUTE TO POLICY INNOVATION?

A: CONCURRENT POWERS ALLOW STATES TO ACT AS "LABORATORIES OF DEMOCRACY." THEY CAN EXPERIMENT WITH NEW POLICIES IN AREAS OF SHARED AUTHORITY. IF A STATE'S INNOVATIVE APPROACH PROVES SUCCESSFUL, IT CAN INFLUENCE OR BE ADOPTED BY OTHER STATES OR EVEN IMPACT FEDERAL POLICYMAKING.

Q: WHAT HAPPENS IF A STATE LAW AND A FEDERAL LAW IN A CONCURRENT POWER AREA DO NOT DIRECTLY CONFLICT BUT ARE STILL DIFFERENT?

A: IN SUCH CASES, THE STATE LAW MAY STILL BE ENFORCEABLE AS LONG AS IT DOES NOT UNDERMINE OR CONFLICT WITH THE FEDERAL LAW'S OBJECTIVES. THE INTERACTION IS OFTEN DETERMINED BY HOW EXPLICITLY FEDERAL LAW OCCUPIES THE FIELD, OR IF THERE IS A DIRECT CONFLICT THAT THE SUPREMACY CLAUSE WOULD RESOLVE.

Q: DOES THE CONCEPT OF CONCURRENT POWERS APPLY TO LOCAL GOVERNMENTS AS WELL?

A: WHILE THE CORE CONCEPT OF CONCURRENT POWERS PRIMARILY DESCRIBES THE RELATIONSHIP BETWEEN THE FEDERAL AND STATE GOVERNMENTS, STATE GOVERNMENTS DELEGATE MANY POWERS TO LOCAL GOVERNMENTS (CITIES, COUNTIES, ETC.). THESE LOCAL POWERS, WHILE DERIVED FROM THE STATE, OFTEN OPERATE IN AREAS WHERE STATES ALSO SHARE AUTHORITY WITH THE FEDERAL GOVERNMENT, LEADING TO A MULTI-LAYERED SYSTEM OF GOVERNANCE.

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