14.2: State Power and Delegation

Learning Objectives

By the end of this section, you will be able to:

- Explain how the balance of power between national and state governments shifted with the drafting and ratification of the Constitution
- Identify parts of the Constitution that grant power to the national government and parts that support states' rights
- Identify two fiscal policies by which the federal government exerts control over state policy decisions

When the framers met at the Constitutional Convention in 1787, they had many competing tensions to resolve. For instance, they had to consider how citizens would be represented in the national government, given population differences between the states. In addition, they had to iron out differences of opinion about where to concentrate political power. Would the legislative branch have more authority than the executive branch, and would state governments retain as many rights as they had enjoyed under the Articles of Confederation?

Here we look at the manner in which power was divided between the national and state governments, first under the Articles of Confederation and then under the U.S. Constitution. As you read, observe the shifting power dynamic between the national government and subnational governments at the state and local level.

STATE POWER AT THE FOUNDING

Before the ratification of the Constitution, the state governments’ power far exceeded that held by the national government. This distribution of authority was the result of a conscious decision and was reflected in the structure and
framework of the **Articles of Confederation**. The national government was limited, lacking both a president to oversee domestic and foreign policy and a system of federal courts to settle disputes between the states.

Restricting power at the national level gave the states a great deal of authority over and independence from the federal government. Each state legislature appointed its own Congressional representatives, subject to recall by the states, and each state was given the authority to collect taxes from its citizens. But limiting national government power was not the delegates' only priority. They also wanted to prevent any given state from exceeding the authority and independence of the others. The delegates ultimately worked to create a level playing field between the individual states that formed the confederation. For instance, the Articles of Confederation could not be amended without the approval of each state, and each state received one vote in Congress, regardless of population.


It wasn’t long after the Articles of Confederation were established that cracks began to appear in their foundation. Congress struggled to conduct business and to ensure the financial credibility of the new country’s government. One difficulty was its inability to compel the individual states to cover their portion of Revolutionary War debt. Attempts to recoup these funds through the imposition of tariffs were vetoed by states with a vested financial interest in their failure.


Given the inherent weaknesses in the system set up by the Articles, in 1787 the delegates came together once again to consider amendments to the Articles, but they ended up instead considering a new design for the government (**Figure**). To produce more long-term stability, they needed to establish a more effective division of power between the federal and state governments. Ultimately, the framers settled on a system in which power would be shared: The national government had its core duties, the state governments had their duties, and other duties were shared equally between them. Today this structure of power sharing is referred to as **federalism**.

The Articles of Confederation, written in 1777 and adopted in 1781, established the first government of the United States. The Articles were replaced by the Constitution in 1787.

The **Constitution** allocated more power to the federal government by effectively adding two new branches: a president to head the executive branch and the Supreme Court to head the judicial branch. The specific delegated or **expressed powers** granted to Congress and to the president were clearly spelled out in the body of the Constitution under Article I,
Section 8, and **Article II**, Sections 2 and 3.

In addition to these expressed powers, the national government was given **implied powers** that, while not clearly stated, are inferred. These powers stem from the *elastic clause* in **Article I**, Section 8, of the Constitution, which provides Congress the authority “to make all Laws which shall be necessary and proper for carrying into Execution the Forgoing powers.” This statement has been used to support the federal government’s playing a role in controversial policy matters, such as the provision of healthcare, the expansion of power to levy and collect taxes, and regulation of interstate commerce. Finally, **Article VI** declared that the U.S. Constitution and any laws or treaties made in connection with that document were to supersede constitutions and laws made at the state level. This clause, better known as the *supremacy clause*, makes clear that any conflict in law between the central (or federal) government and the regional (or state) governments is typically resolved in favor of the central government.

Although the U.S. Constitution clearly allocated more power to the federal government than had been the case under the Articles of Confederation, the framers still respected the important role of the states in the new government. The states were given a host of powers independent of those enjoyed by the national government. As one example, they now had the power to establish local governments and to account for the structure, function, and responsibilities of these governments within their state constitutions. This gave states sovereignty, or supreme and independent authority, over county, municipal, school and other special districts.

States were also given the power to ratify amendments to the U.S. Constitution. Throughout U.S. history, all amendments to the Constitution except one have been proposed by Congress and then ratified by either three-fourths of the state legislatures or three-fourths of the state conventions called for ratification purposes. This process ensures that the states have a voice in any changes to the Constitution. The Twenty-First Amendment (repealing the Eighteenth Amendment’s prohibition on alcohol) was the only amendment ratified using the state ratifying convention method. Although this path has never been taken, the U.S. Constitution even allows for state legislatures to take a direct and very active role in the amendment proposal process. If at least two-thirds of the state legislatures apply for a national convention, constitutional amendments can be proposed at the convention.

**DEBATING THE NEED FOR A NATIONAL CONVENTION**

As of 2015, twenty-seven states had passed applications to hold a national convention. These states are pushing for the opportunity to propose a constitutional amendment requiring the national government to balance its budget in the same way most states are mandated to do. For a national convention to be held, at least thirty-four states must submit applications. Thus, only seven states currently stand in the way of the first national convention in U.S. history.


Proponents see the convention as an opportunity to propose an amendment they argue is necessary to reduce federal spending and promote fiscal responsibility. Conservatives and Tea Party members believe reducing the deficit is important to maintaining the country’s future economic health and its competitive strength in global markets. They also believe the growing roster of states favoring a convention may encourage Congress to take action on its own.

Opponents feel a balanced budget amendment is not realistic given the need for emergency spending in the event of an economic recession. They also worry about the spending cuts and/or tax increases the federal government would have
to impose to consistently balance the budget. Some states fear a balanced-budget requirement would limit the federal government’s ability to provide them with continued fiscal support. Finally, other opponents argue that states balance only their operating budgets, while themselves assuming massive amounts of debt for capital projects.

But perhaps the greatest fear is of the unknown. A national convention is unprecedented, and there is no limit to the number of amendments delegates to such a convention might propose. However, such changes would still need to be ratified by three-fourths of the state legislatures or state conventions before they could take effect.

*What are the potential benefits of a national constitutional convention? What are the risks? Are the benefits worth the risks? Why or why not?*

Despite the Constitution’s broad grants of state authority, one of the central goals of the Anti-Federalists, a group opposed to several components of the Constitution, was to preserve state government authority, protect the small states, and keep government power concentrated in the hands of the people. For this reason, the **Tenth Amendment** was included in the Bill of Rights to create a class of powers, known as reserved powers, exclusive to state governments. The amendment specifically reads, “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.” In essence, if the Constitution does not decree that an activity should be performed by the national government and does not restrict the state government from engaging in it, then the state is seen as having the power to perform the function. In other words, the power is reserved to the states.

Besides reserved powers, the states also retained concurrent powers, or responsibilities shared with the national government. As part of this package of powers, the state and federal governments each have the right to collect income tax from their citizens and corporate tax from businesses. They also share responsibility for building and maintaining the network of interstates and highways and for making and enforcing laws (Figure). For instance, many state governments have laws regulating motorcycle and bicycle helmet use, banning texting and driving, and prohibiting driving under the influence of drugs or alcohol.

*State (and sometimes local) governments regulate items having to do with highway safety, such as laws against cellphone use while driving. (credit right: modification of work by “Lord Jim”/Flickr)*

**THE EVOLUTION OF STATE POWER**

Throughout U.S. history, the national and state governments have battled for dominance over the implementation of public policy and the funding of important political programs. Upon taking office in 1933 during the Great Depression (1929–1939), President Franklin D. **Roosevelt** initiated a series of legislative proposals to boost the economy and put
people back to work. The enacted programs allowed the federal government to play a broader role in revitalizing the economy while greatly expanding its power. However, this result was not without its critics. Initially, the Supreme Court overturned several key legislative proposals passed under Roosevelt, reasoning that they represented an overreach of presidential authority and were unconstitutional, such as *Schechter Poultry Corp. v. United States*.


Eventually, however, the Supreme Court shifted direction to reflect public opinion, which was decisively behind the president and the need for government intervention in a time of economic turmoil.


Just three decades later, during the 1964 presidential election campaign, incumbent President Lyndon B. Johnson declared a “War on Poverty,” instituting a package of Great Society programs designed to improve circumstances for lower-income Americans across the nation. The new programs included Medicare and Medicaid, which are health insurance programs for seniors and low-income citizens respectively, and the food stamp program, which provides food assistance to low-income families. These initiatives greatly expanded the role of the federal government in providing a social safety net.


State and local governments became partners in their implementation and also came to rely on the financial support they received from the federal government in the form of program grants.


As the federal government’s role in policy creation expanded, so did its level of spending. Spending by the federal government began to surpass that of state and local governments shortly after 1940 (Figure). It spiked temporarily during the Great Depression and again during World War II, resuming a slow climb with the implementation of Johnson’s Great Society programs noted above.
After spiking during World War II, spending by the federal government has consistently exceeded that of state and local governments. Between 2000 and 2010, the gap between federal and state spending steadily widened.

Growing financial resources gave the federal government increased power over subnational governments. This increased power was because it could use categorical grants to dictate the terms and conditions state governments had to meet to qualify for financial assistance in a specific policy area. Over time, the federal government even began to require state and local governments to comply with legislative and executive authorizations when funding was not attached. These requests from the federal government are referred to as unfunded mandates and are a source of dissatisfaction to political actors at the state and local level. To provide more transparency to state and local governments and reduce the federal government’s use of mandates, the Unfunded Mandates Reform Act was passed in 1995. This act requires the Congressional Budget Office to provide information about the cost of any proposed government mandate that exceeds a specified threshold before the bill can be considered in Congress.


Explore the latest news on federal mandates at the Congressional Budget Office and the Catalog of Cost Shifts to States at the National Conference of State Legislatures website.

Despite the national government’s power to pass and fund policy that affects lower-level governments, states still have gained considerable headway since the late twentieth century. For instance, with the passage of the Personal Responsibility and Work Opportunity Reconciliation Act in 1996, known as the welfare reform bill, states were given great discretion over the provision of welfare. The federal government reduced its level of monetary support for the program and, in exchange, the states gained more authority over its implementation. States were able to set more restrictive work requirements, to place caps on the number of family members who could receive aid, and to limit the length of time someone could qualify for government assistance.


Since then, states have been granted the flexibility to set policy across a number of controversial policy areas. For instance, a wide array of states require parental consent for abortions performed on minors, set waiting periods before...
an abortion can be performed, or require patients to undergo an ultrasound before the procedure. As another example, currently, almost half the states allow for the use of medical marijuana and three states have fully legalized it, despite the fact that this practice stands in contradiction to federal law that prohibits the use and distribution of marijuana.

For more on these two controversial policy areas, explore "An Overview of State Abortion Laws" and "State Medical Marijuana Laws."

Today, it is not uncommon to see a patchwork of legal decisions granting states more discretion in some policy areas, such as marijuana use, while providing the federal government more authority in others, such as same-sex marriage. Decisions about which level controls policy can reflect the attitudes of government officials and the public, political ideology and the strategic advantage of setting policy on a state-by-state basis, and the necessity of setting uniform policy in the face of an economic downturn or unanticipated national security threat. What has not changed over time is the central role of the U.S. Supreme Court’s views in determining how power should be distributed in a federalist system.

POWER AT THE SUBSTATE LEVEL

The U.S. Constitution is silent on the dispersion of power between states and localities within each state. The fact that states are mentioned specifically and local jurisdictions are not has traditionally meant that power independent of the federal government resides first with the state. Through their own constitutions and statutes, states decide what to require of local jurisdictions and what to delegate. This structure represents the legal principle of Dillon’s Rule, named for Iowa Supreme Court justice John F. Dillon. Dillon argued that state actions trump those of the local government and have supremacy.


In this view, cities and towns exist at the pleasure of the state, which means the state can step in and dissolve them or even take them over. Indeed, most states have supremacy clauses over local governments in their constitutions.

However, for practical purposes, state and local governments must work together to ensure that citizens receive adequate services. Given the necessity of cooperation, many states have granted local governments some degree of autonomy and given them discretion to make policy or tax decisions.


This added independence is called home rule, and the transfer of power is typically spelled out within a charter. Charters are similar to state constitutions: they provide a framework and a detailed accounting of local government responsibilities and areas of authority. Potential conflicts can come up over home rule. For example, in 2015, the State of Texas overruled a fracking ban imposed by the City of Denton.

Like state governments, local governments prioritize spending on building and maintaining the transportation infrastructure, supporting educational institutions, promoting community protection, and funding healthcare.

Roberton Williams and Yuri Shadunsky. “State and Local Tax Policy: What are the Sources of Revenue for Local Governments?” www.taxpolicycenter.org/brief...al_revenue.cfm (March 14, 2016).

As shown in Figure, local governments, just like state governments, receive a sizeable chunk of their revenue from grants and transfers from other levels of the government. The next biggest source of revenue for local governments is property tax collections.

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Property taxes can be assessed on homes, land, and businesses. The local government’s reliance on property tax revenue can be problematic for a number of reasons. First, unlike sales tax, the collection of which is spaced out in small increments across multiple transactions, property tax is collected in one or two lump sums and is therefore highly visible and unpopular.


In fact, in response to tax rate increases, many states have placed legal or constitutional limits on regional governments’ ability to raise property taxes. The trend began in California with the 1978 passage of Proposition 13. This citizen-driven initiative capped the real estate tax at 1 percent of the cash value of property and stopped the practice of reassessing properties for tax purposes whenever a home in the neighborhood was sold.


After its passage, a number of other states followed suit, making it more difficult for states to reap the rewards of sharp increases in the market value of property.

Another drawback to local governments’ reliance on property tax is that property values vary with the economic health of a given area, the quality of school districts, and the overall desirability of a state, municipality, or county. Significant
parcels of land in many cities are also tax-exempt, including property occupied by colleges, churches, and other nonprofit organizations. Boston is a good example as almost 50 percent of the assessed value of property is tax-exempt.


College towns face the same challenge. When the mortgage crisis began in 2007, property values decreased in many areas of the country, and many homeowners defaulted on their mortgages because their homes were now worth less than they had borrowed to buy them. With the decline in property values, local governments faced a loss in tax revenue at the same time states were cutting back on aid; tax collections were also down because of economic conditions and the inability to derive income tax from internet sales. A number of municipalities filed for bankruptcy in the face of fiscal distress during the economic recession. Perhaps the best known municipality was Detroit, Michigan, which filed for Chapter 9 bankruptcy in 2013 (Figure).

This photo shows the wreckage of the ballroom at the Lee Plaza Hotel in Detroit, Michigan. Once a landmark, this building is an example of the city’s crumbling infrastructure. (credit: modification of work by Mike Boening)

Detroit filed for bankruptcy due to massive debt obligations and demands for repayment that it could not meet due to a perfect storm of economic and democratic factors. The city owed money to investors who had loaned it money, and it had liabilities resulting from its failure to fulfill its pension and healthcare obligations to city workers. The bankruptcy allowed the city time to develop an exit strategy and negotiate with creditors and union representatives in an effort to restructure its debt load.


Indeed, Detroit recently emerged from bankruptcy and has started to rebuild economically.

Detroit’s fiscal condition only highlights the unique challenges municipalities face. Local governments have to provide many of the same services as state and national governments, but they are often constrained by the boundaries the
state prescribes. They may not have the authority to raise revenue above a certain threshold, and they do not have the ability to pass expenses on to another level of government because they lack sovereignty.

**Summary**

The power structure of government established in the Articles of Confederation was rebalanced in the Constitution to ensure that both the central and the regional governments had some degree of authority and autonomy. Federal and state governments have managed to work out sharing power throughout history, with the federal government often using fiscal policy to encourage compliance from the states. The taxing power of local governments means they face unique pressures during economic downturns.

________ dictate the terms and conditions state governments would have to meet in order to qualify for financial assistance in a specific policy area.

1. Categorical grants  
2. Block grants  
3. Unfunded mandates  
4. Crossover sanctions

The Tenth Amendment created a class of powers exclusive to state governments. These powers are referred to as ________.

1. enumerated powers  
2. implied powers  
3. reserved powers  
4. none of the above

Dillon’s Rule gives local governments the freedom and flexibility to make decisions for themselves.

1. True  
2. False

Under the Articles of Confederation, the federal government was quite weak relative to the states. What changes were made to strengthen the role of the federal government under the U.S. Constitution?

**Glossary**

**charter**  
a document that provides a framework and detailed account of local government responsibilities and areas of authority
Dillon’s Rule
a legal principle that holds state power and actions above those of local governments and declares state
governments to be sovereign relative to local governments

expressed powers
those powers specifically provided to the Congress and the president in the U.S. Constitution

home rule
principle that provides local governments some degree of independence from the state government, typically detailed
in a charter

implied powers
those powers not specifically detailed in the U.S. Constitution but inferred as necessary to achieve the objectives of
the national government