



GEORGIA

STATE POLITICS

The Constitutional Foundation

Fourth Edition

LEE M. ALLEN
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Georgia State Politics

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Preface

Many states, including Georgia, have laws requiring that public colleges and universities provide their students with a basic education about the practice and theory of state government. Usually textbooks are available to assist professors in satisfying the legal requirements.

The State of Georgia has had several textbooks in the past, but most are out of print. This textbook you are holding in your hand has been written to fill the gap and to satisfy the state law. It is brief enough to remain interesting and long enough to build a solid understanding of Georgia State Government. It is also designed to be compatible with a joint State/American Government course.

Our approach is Constitutional, tracing the development of the various Constitutions of Georgia, linking the current Constitution to the existing institutions of government, and showing how the recent amendments to the Constitution reflect Georgia culture and politics. Government can be a difficult subject, but we believe that this book makes it easier.



Acknowledgments

We are indebted to our colleagues for their advice, suggestions and occasional contributions. We acknowledge the support and assistance offered by the staff and administration of Valdosta State University, and we are grateful to our students for their perspectives and frank comments over the years. Most of all we thank our parents, who encouraged our educational endeavors.

Of course, we accept all the blame for errors of omission and commission which appear herein. Differences on matters of fact and interpretation have been compromised or left to the readers to decide. We believe we have written a readable book for a variety of audiences, and welcome your comments.

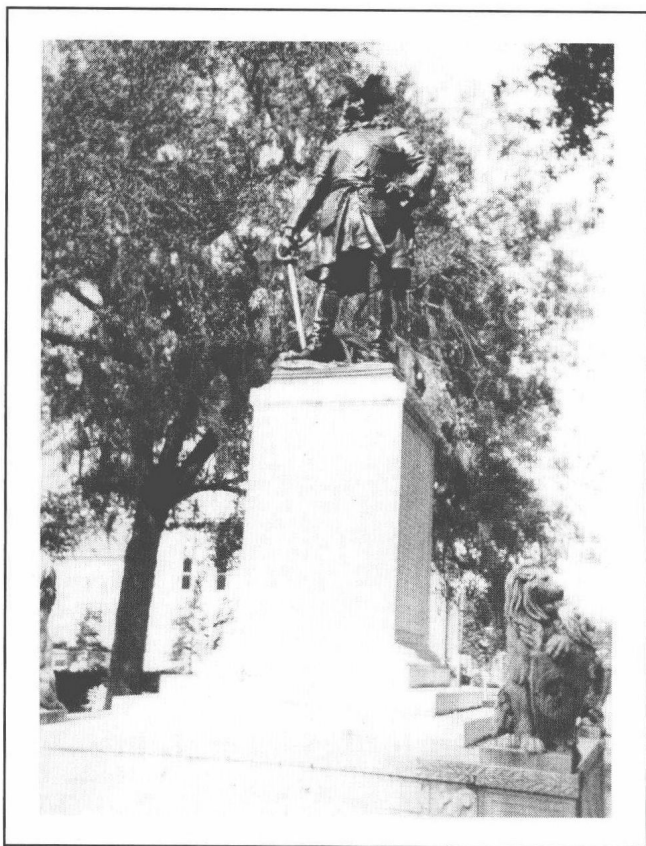
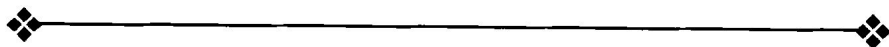


FIGURE 1.1. Monument to James Oglethorpe

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Introduction to Georgia Politics

Chapter

Introduction to Georgia Politics

Georgia is the largest state east of the Mississippi River. It contains 58,977 square miles of land area, which ranges from the Appalachian mountains of the northwest region to the rolling hills and plains of the Piedmont and its great pine forests, and down to the fertile river deltas and the Savannahs, the coastal beaches and the lush off-shore islands. This area is drained by two watersheds, one leading to the Mississippi River and then to the Gulf of Mexico; the other leading south and east, ending in the Atlantic Ocean. Georgia was founded in 1733 and today is inhabited by over eight million people, both rural and urban dwellers. Economically, raw materials and food are produced by an active population of farmers, ranchers and lumbermen; and the people in the Atlanta metroplex staff a world class center of trade, commerce and information. The state population, as of 2001, is estimated at 8,383,915 people. The people of Georgia have created a dynamic and flexible system of public and private sector organizations to help them achieve their goals and aspirations. Until recently, Georgia was a one-party state, with a plural executive and a weak but sometimes influential governor. There are over one thousand government entities in Georgia (Hepburn, 138). Chief among these organizations is the State Government of the State of Georgia, and its agencies.

The Importance of State Government

The late U.S. Senator Everett McKinley Dirksen of Illinois used to complain that the way things were going, pretty soon the only people who would care about state boundaries would be Rand-McNally (the mapmakers). What Senator Dirksen was lamenting was the transfer of power from the states to the national (federal) government in Washington, D.C. The Senator's complaint was that states were losing their very reason for existing as they allowed or encouraged the national government to become involved in more and more areas of public policy. And,

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to be sure, the states have given up a great deal of their power to the national government.

Since the 1930s, the relationship between the national government and the states has become much more cooperative, replacing the competitive federalism (the relationship between the national government and the states is known as federalism) that existed before President Roosevelt's New Deal (the name for the programs that F.D.R. proposed to get the nation out of the Great Depression). This cooperation frequently takes the form of the national government's identifying a problem, passing legislation to address that problem, and providing carrots (inducements often in the form of money) or sticks (threats to withhold money if the states don't comply) to tackle the problem. Normally, the states do not have the option of choosing to do nothing. Cooperation, then, really becomes coerced cooperation.

To draw the conclusion that this transfer of power to Washington has left the states powerless would be to go far beyond what the facts warrant. In fact, this is an error of thinking which assumes that there is a finite amount of power, and that if one side gains power, then the other side must lose power. In fact, the power of all governments to regulate their citizens, and to control nature and improve living conditions, has grown tremendously over the years. The states are hardly powerless; they just don't have the same kinds of power they used to have in relation to the national government. The national government started off small but has grown very large in recent years, in our complex federal system. Many people believe that the federal government has become **too large**, and much of its power should devolve to the states. The watchword of the Republican "revolution" that captured control of the 104th Congress in 1994 was, in fact, "devolution."

Also, other levels of government operate in the United States and Georgia, such as international treaties and organizations, multistate agencies, and sub-local neighborhood compacts, which work together well. The unity of federalism has been highlighted by studies which stress the increasing vertical bureaucratization of programs in the United States, created by the lobbying of special interest groups (Beer). In fact, every policy and program exists at every level, administratively integrated, with costs shared by all three levels.

States may no longer discriminate on the basis of race; they may, however, enact affirmative action guidelines that exceed federal guidelines. States cannot pollute the environment; they may, however, pass environmental protection laws that exceed the national pollution standards. States have lots of powers. What they lack is the power to deprive their citizens of the equal protection of the laws, or to subject them to unreasonable dangers. In other words, the states' power to do evil is curtailed; their power to do good is limitless.

We look to state governments to provide us with education, with transportation, with police protection, with health care and sanitation, with jobs and economic development, with recreation, and with justice. The national government cooperates with the states in all of these areas. States, however, bear most of the responsibility. States then, are not merely important; in the areas that affect us most directly, states are the most important tier of our governments. And their strength is a protection against factions and special interest groups that dominate the nation (Madison).

The Constitutional Basis of State Government

Because some state governments existed prior to the writing of the Constitution of the United States, the national Constitution could not be said to have created the states. Nor did the states create the national government; rather, the people created both levels of government. And although each level of government has its own powers, ultimately some political authority has to decide which level has which powers. Article VI of the U.S. Constitution contains the "Supremacy Clause" which states that "This Constitution . . . the laws . . . and all treaties . . . of the United States, shall be the supreme law of the land." Therefore, any state constitution or state law (states can make treaties or compacts only with congressional approval) that contravenes the U.S. Constitution, federal law, or a U.S. Treaty is unconstitutional on the face of it.

If Georgia wanted a state constitutional provision or a law establishing a state church, the state could not do so because it would violate the federal laws, particularly the Establishment Clause of the First Amendment of the U.S. Constitution. If Georgia wanted to reestablish slavery, the Thirteenth Amendment to the U.S. Constitution would preclude the state from doing so. And if Georgia wanted a law prohibiting interracial marriage (in fact, such a law existed until fairly recently), provisions of the U.S. Constitution and federal law would invalidate such a blatant violation of personal freedom. In short, states are free to exceed federal constitutional protections; they are not free, however, to supersede those protections. They are not free to deny, disparage, or abuse peoples' rights. Thus states sometimes offer greater protections than does the federal government.

Sometimes government agencies or overzealous bureaucrats, both state and federal, do "ride roughshod" over rights and must be ordered to stop. Frequently, it is a state's Attorney General who offers the opinion that an action, law or constitutional provision is legally unenforceable. Occasionally, it is the state courts which rule that a law violates the

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state constitution or that a state law or the state constitution violates federal law or the U.S. Constitution. On even rarer occasions, it is a federal appellate court, exercising the power of judicial review (determining whether a law is consonant with the Constitution) that holds some state law or constitutional provision to be in violation of federal laws and the U.S. Constitution. Regardless of which legal authority reviews it, they all agree that the hierarchy of law in the United States is in the following order:

1. the U.S. Constitution
2. Federal laws
3. Treaties of the United States
4. State constitutions
5. State laws;
6. Local (City and County) Ordinances.

Each must be consistent with all the laws above it.

Relationships among the various levels of government in the United States are not always about power or high principles. Sometimes mundane business matters and strategies of economic growth at the local government level take center stage. In the Five Points Neighborhood in the City of Atlanta, the federal government proposed to operate a new office complex, the Atlanta Federal Center, and to relocate about 8,000 workers to that facility (land and building would be owned by the city). The consolidation would allow federal employees to work together with associated savings in amenities such as a cafeteria, day-care center and a clinic. One impact study estimated that the entire project would add \$68.6 million to the local economy (Salter, C7). While the merchants in the area were optimistic about the proposed project, other merchants and politicians worried that the relocations and changes in work habits and transportation would injure existing businesses (Parker, C7).

In a democracy such as ours, politicians are always in the market for new ideas to impress the voters and to inspire other politicians to close ranks and pursue a mutually beneficial program. Such was the necessity facing Governor Zell Miller at the beginning of the 1994 legislative session. Although his previous legislative agenda, *Georgia Rebound*, could be considered a success (the economy *did* improve), every program has its critics and naysayers. Yet, at least theoretically new programs have one advantage: they lack a track record to be attacked by opponents during the heat of an election campaign. Usually the flag, mom, and apple pie are good old standbys, but in Georgia, the issues of the flag (confederate symbol or historical tradition?) and mom (affected by the gay

rights problem) were tarnished; and apple pie is not a top priority in the Peach State. Governor Miller had been burned pretty badly during the flag controversy, so he needed some new issue. Ah, how about anti-crime and educational issues? So suddenly there was a new agenda for the 1994 legislative session, a package the people wanted and needed, and the Governor could tie into the traditional conservative values of the state, and he and his fellow Democrats could face the Republican party candidates in the fall with a politically popular platform. In fact, this strategy worked so well, that Miller would continue to employ it throughout the rest of his second term. Roy Barnes, his successor, followed much the same strategy. But that strategy failed on November 5, 2002, when Barnes was defeated by “Sonny” Perdue, the first Republican elected governor of the State of Georgia since Reconstruction in the 1870s.

State Constitutions

Although the theory of constitutional government has a long history, real constitutions were first created by colonists in North America. In addition to the national constitution, every one of the fifty states has a constitution. To a significant extent all are modeled on American revolutionary ideas and reflect a common pattern. They all reflect a belief in popular sovereignty and democracy, they all contain preambles, which state the basic purposes of the state government. They all have bills of rights, which largely mimic the original Virginia Bill of Rights written by Thomas Jefferson, although most expand on it. They all have articles outlining the organization, powers and selection procedures for the three branches of government: legislative, executive, and judicial. They all spell out the methods of selection for these branches.

But beyond these similarities there are also significant differences. One such difference is length. The U.S. Constitution is short, containing only about 8,700 words. State constitutions tend to be much longer (averaging 26,000 words), although the newer ones are much shorter than the older ones. One reason why they are longer is because they usually have articles pertaining to the specific duties of the state government. For example, they contain articles on taxation, boards and commissions, education, the environment, licensing, transportation, etc. Another reason why they are longer is that they tend to be amended more often. The U.S. Constitution has only twenty-seven amendments. Alabama’s has over seven hundred. Georgia has had 61 in nineteen years (as of 2002). Since Georgia does not have statewide elections in odd-numbered years, and since voters must ratify state amendments in statewide elections, the next amendments must be ratified in 2004).