Chapter 13: State Government

Federal and State Powers

The US has a federal system of government. In a federal system, the national government and the state government share and divide powers. Both build highways.

Some powers are left to the state and some powers are left to the federal government. Some powers are shared by both. Some people favor states’ rights over the power of the national government, others argue that the powers of the national government should be increased.

States in the Constitution

In the Articles of Confederation, the nation was a loose union of states. In writing the Constitution, the Framers created a stronger central government. They also believed that state governments were important as well. Anti-Federalists like Patrick Henry were against giving states less power. Even James Madison, who believed in a strong central government, knew that it was important for states to keep certain powers.

The Framers created a federal system that divides powers between state and federal governments. The Constitution limits the power of states while offering states protections:

1. Article IV, Section 1 says that each state must respect legal actions taken by other states. One state accepts a driver’s license given by another state.
2. Article IV, Section 2 promises that each state will treat the people of other states equally. States cannot give people of another state a harsher penalty for a crime than their own citizens would get.
3. Article IV, Section 3 guarantees each state’s area. The section says that land cannot be taken from any state to make a new state without its approval. It also says two states cannot be joined together to make a new state unless they both agree.
4. Article IV Section 4 promises each state a republican form of government. It also vows to protect that government against an enemy attack or a revolt.

Sharing and Dividing Powers

The key to federalism is the way the Constitution assigns powers. The federal government has 3 types of powers:

1. Expressed powers are those listed in the Constitution. Most of these powers are given in Article 1 Section 8.
2. Implied powers are not listed in the Constitution but can be based on it. For instance it says the president is commander in chief of the armed services. Therefore, the president may send troops in response to a serious crisis.
3. Inherent powers are the kind of powers a government has simply because it’s the government. Buying land from another country.

Reserved powers are given only to states. Reserved powers are from the 10th Amendment. All powers not given to the federal government are reserved for the states.

Concurrent powers are powers held by both state and federal governments. The Constitution does NOT mention concurrent powers. Yet, both levels of government need such powers in order to function. Examples:

1. Taxes
2. Set up courts
3. Enforce and create laws

Limits on State Power

The Constitution does put some limits on the powers of the states. For example:

1. States cannot declare war
2. Impose taxes on imports from other countries or states
3. Issue their own money
4. Make treaties with another country

14th Amendment states, that states cannot take away the rights of citizens “without due process of law.” Also, states are required to give every citizen “equal protection of all laws.”

Courts have used this amendment to make the Bill of Rights apply to the states. Bill of Rights was originally aimed at the federal government. Yet, states did take away peoples’ rights. For example states in the South passed laws to limit the rights of African Americans. The 14th Amendment gives courts a tool to stop states from making such laws.

The supremacy clause, Article VI says the Constitution, and all federal laws, “shall be the supreme Law of the Land.” If a state law conflicts with the words of the Constitution or a federal law, the state law is thrown out.

Working Together

The federal and states governments also work together. Each year the federal government gives billions of dollars to the sates in grants-in-aid. This money is used to meet goals set by Congress. Grants might be for education, health care, or other purposes. Some grants give specific instructions to states, others set goals but do not detail how to reach those goals.

At times, Congress tells states to take certain actions without giving money to pay for those actions. State officials call these unfunded mandates. Critics say these laws are unfair and violate the rights of states.

Sometimes states do not want to follow laws Congress passes. The Real ID Act is an examples, the law set tough new standards for granting new ID’s. Congress called it necessary, but within a few years half the states legislatures formally protested the law.

State governments work with one another too. Some neighboring states, such as New Jersey and Pennsylvania, have agreed not to charge income tax to people who work in their state but live in the other.

State Constitutions

Different state governments compare and contrast to each other.

Similarities in State Constitutions

Each state has its own constitution. It creates the structure of the state’s government. All state constitutions split the government into three branches – the executive, the legislative, and the judicial. They also describe the powers of each branch. State constitutions also list the specific rights guaranteed to state citizens. Florida’s list, called the Declaration of Rights, is nearly 3x longer than the Bill of Rights.

Differences Among State Constitutions

Massachusetts has the oldest constitution still in use. Its framework was written in 1780. Florida has had six constitutions. The one we use now was written in 1969. State constitutions also vary in length with New Hampshire’s being the shortest at about 9,000 words. Florida’s is about 57,000 words. One reason state constitutions are long is that they are often more specific than the more general US Constitution which is about 7,000 words long. Florida’s constitution for instance, has a long passage that defines the state’s boundaries.

Alabama has the longest constitution and has added the most amendments – more than 800. Florida has more than a 100 (125) amendments, which is many more than the 27 amendments of the US Constitution.

The Constitution of Florida

Florida was settled by Native Americans about 12,000 years ago. Europeans arrived in the late 1500’s. By the 1700’s war and disease had killed most of the native population. In 1821 the US purchased Florida from Spain, becoming a state on March 3, 1845.

Early Constitutions

Florida’s first constitution was drafted in 1838. It began with a declaration of rights, including voting. Many rights applied only to white free men. The constitution made it clear that Florida was a slave territory. It banned lawmakers from passing “laws for the emancipation of slaves.” It allowed them to pass laws to stop African Americans from entering the state.

In 1861 Florida seceded from the Union and joined the Confederacy. After the Civil War, 1868, Florida adopted a new constitution reflecting the changes that occurred. It outlawed slavery and gave voting rights to all male citizens 21 and over. In 1885, a new constitution let the state limit voting rights by putting a tax on voting, or poll tax. Poll taxes kept many African Americans and poor whites from voting. The 1885 constitution lasted more than 80 years. But as Florida grew and changed it was amended 149 times. In 1968 a new constitution was ratified.

Florida’s Constitution Today

Our current constitution has been in effect for more than 40 years. Unlike the US Constitution, it lists the rights guaranteed to citizens in the first article.

Article 1: all people are equal before the law, regardless of sex, race, religion, or any other factor. It guarantees many of the same rights as the Bill of Rights, such as rights to free speech, free press, and freedom of assembly. Other provisions include the rights of crime victims, taxpayer bill of rights, and a definition of marriage.

Article II: defines state boundaries and the location of the state government. English is Florida’s official language. Sets rules for public officials and protects Florida’s natural resources and scenic beauty.

Article III, IV and V: establishes the 3 branches of government.

Article VI: describes voting and election rules

Article VII: tax rules for state and local governments

Article VIII: describes the organization and powers of county and municipal governments in the state. States that each county is to be governed by a board of county commissioners. Commissioners are to be elected by the people and serve 4 year terms. Counties may also draft their own charters or type of constitution, if they don’t conflict with the state constitution.

Article IX: creates Florida’s public schools and a state university system. Stresses that the state must provide a good education to “all children residing within its borders.”

Article X: Titled Miscellaneous. 27 sections covering a range of topics: lotteries, the minimum wage, and animal cruelty. Conservation of Florida’s resources (Everglades Trust Fund source of revenue to maintain and conserve the Florida Everglades) also establishes the need for a high speed ground system, a monorail.

Article XI: Florida’s constitution requires a review every 20 years to see if it still meets the state’s needs. The review commission has 37 members, including the state attorney general plus 15 members selected by the governor, 9 members selected by the speaker of the house, 9 members selected by the senate president, and 3 members selected by the chief justice of the state supreme court. The commission can propose an amendment or revision. The article further states that the state legislature and the people can also propose an amendment. Any proposed amendment must be approved by 60 percent of the state’s voters before it can take effect. Since the constitution was enacted it has gone through two comprehensive reviews, the most recent in 1997-1998, the commission and the legislature recommended 13 amendments, all but 1 of them was approved.

Article XII: Schedule, lays out the complex process for moving from the 1885 to the 1968 constitution. Issues include preserving laws, transferring jobs, and dealing with money issues such as taxes and investments.