The Texas Constitution Of 1876 Essay, Research Paper

The Constitution of 1876 is the sixth constitution by which Texas has been governed since independence from Mexico was achieved in 1836. It was framed by the Constitutional Convention of 1875 and adopted on February 15, 1876, by a vote of 136,606 to 56,652, and it remains the basic organic law of Texas. The constitution contains some provisions that are uniquely Texan, many of which are products of the state’s unusual history. Some, for example, may be traced to Spanish and Mexican influence. Among them are sections dealing with land titles and land law in general, debtor relief, judicial procedures, marital relations and adoption, and water and other mineral rights. Other atypical provisions may be attributed to the twin influences of Jacksonian agrarianism and frontier radicalism-both prevalent when Texas first became a state and both widely supported by the bulk of immigrants to Texas before the Civil War. Those influences produced sections prohibiting banks and requiring a stricter separation of church and state than that required in older states. Reconstruction, under the highly centralized and relatively autocratic administration of Governor Edmund J. Davis and his fellow Radical Republicans, prompted provisions to decentralize the state government. Upon regaining control of both the legislative and executive branches of the government, the Democrats determined in 1874 to replace the unpopular Constitution of 1869. They wanted all officials elected for shorter terms and lower salaries, abolition of voter registration, local control of schools, severely limited powers for both the legislature and the governor, low taxation and state expenditures, strict control over corporations, and land subsidies for railroads.

Early in 1874 a joint legislative committee reported an entire new constitution as an amendment to the Constitution of 1869. Because the document had not been prepared by a convention and because of the possibility that its adoption might antagonize the federal government, the legislature rejected the proposal. On the advice of Governor Richard Coke, the next legislature submitted the question of a constitutional convention to the voters, who, on August 2, 1875, approved the convention and elected three delegates from each of the thirty senatorial districts. In the convention, which convened on September 6, seventy-five members were Democrats and fifteen, including six blacks, were Republicans. Not one had been a member of the Convention of 1868-69, forty-one were farmers, and no fewer than forty were members of the Patrons of Husbandry (the Grange), the militant farmers’ organization established in response to the Panic of 1873. In the convention the Grange members acted as a bloc in support of conservative constitutional measures. To assure that the government would be responsive to public will, the convention precisely defined the rights, powers, and prerogatives of the various governmental departments and agencies, including many details generally left to the legislature.

The Constitution of 1876 began with a lengthy bill of rights. It declared that Texas was a free and independent state, subject only to the Constitution of the United States, that all free men have equal rights, and that the writ of habeas corpus could not be suspended or unduly delayed. The article also forbade religious tests for office, unreasonable searches, and imprisonment for debt, and it guaranteed liberty of speech and press, the right of the accused to obtain bail and to be tried by a jury, and the right of citizens to keep and bear arms. The legislative article defined the powers and limitations of the legislature in great detail. The legislature was to be composed of two houses, a Senate to consist of thirty-one members and a House of Representatives never to exceed 150 members. Senators and representatives were to serve terms of four and two years, respectively. Legislators were to receive mileage allowance and not more than five dollars a day for the first sixty days of each session and two dollars a day thereafter. The legislature, which was to meet biennially, could incur no indebtedness greater than $200,000 and could establish no office for longer than two years. It was required to levy taxes on all property in proportion to its value and to hold its sessions in Austin. The executive article provided for seven officers governor, lieutenant governor, secretary of state, comptroller of public accounts, treasurer, commissioner of the land office, and attorney general. All except the secretary of state were to be elected by the voters for a term of two years but with no limitations on eligibility for new terms. All salaries were reduced, that of the governor from $5,000 to $4,000. The governor was empowered to convene the legislature in special sessions, to call out the militia to execute the laws, to suppress insurrections, to protect the frontier against hostile Indians, and to veto laws and items in appropriations bills; his veto, however, could be overridden by a two-thirds vote of both houses. The governor was also empowered to make certain appointments, fill vacancies, and cause the laws to be faithfully executed but was given no control over local or other elected state officials. The judicial article provided for a supreme court, a court of appeals, district courts, county courts, commissioners’ courts, and justices of the peace. All judges were to be elected by popular vote, with terms of six years for the supreme and criminal appeals courts, four years for the district courts, and two years for all other courts. The number of district courts was placed at twenty-six, but the legislature was authorized to establish others as needed. The Texas Supreme Court, composed of three judges, was vested with appellate jurisdiction in civil cases only, and the court of appeals, composed of three judges, was vested with appellate jurisdiction over all criminal cases and certain classes of civil cases. The district courts received original jurisdiction (in criminal cases) over felonies and over misdemeanors involving official misconduct and (in civil cases) over a long list of classes of suits. The district courts were given appellate jurisdiction over the county courts in probate matters. The article also mandated a court in each organized county with original jurisdiction over misdemeanors not granted to the courts of justices of the peace and certain civil cases and appellate jurisdiction in cases originating in the justice of the peace courts. The courts of the justices of the peace, not fewer than four or more than eight in each county, were granted jurisdiction in civil and criminal matters involving not more than $200 in controversy or in penalties. The commissioners’ court was to consist of the county judge and four elected commissioners, one from each commissioner’s precinct.

The article on education drastically changed the system established by the Republicans in 1869. In the first section the framers ordered the legislature to establish and make provision for the support and maintenance of an efficient system of public free schools but then added provisions that made that directive impossible. To support the system the article authorized the legislature to levy a poll tax of one dollar on all male inhabitants between the ages of twenty-one and sixty and to appropriate not more than one-fourth of the general revenue. In addition, it set aside as a perpetual fund all proceeds from lands previously granted to the schools, including all the alternate sections of land already reserved for the state or afterwards reserved out of grants to railroads or other corporations (as specified in the Constitution of 1866), and the proceeds from the sale of one-half of all other public lands (as prescribed by an act of the legislature in 1873). The document abolished the office of state superintendent, founded a board of education composed of the governor, comptroller, and secretary of state, eliminated compulsory attendance, provided for segregated schools, and made no provision for local school taxes. The Constitution of 1876 provided for the establishment of the University of Texas and made Texas A&M, which had been founded by the legislature in 1871, a branch of it. The constitution further required the legislature to establish an institution of higher education for the instruction of the black youth of the state. To support the university and its branches the constitution set aside one million acres of the public domain, with all sales and proceeds therefrom to be placed in a Permanent University Fund. It also provided that proceeds from the lands previously granted for the establishment and maintenance of the university (including the fifty-league grant by the legislature in 1858 but not the one-tenth of the alternate sections of land granted to railroads) and all future grants would permanently belong to the university.

The constitution also provided for precinct voting and mandated a poll tax, but not as a prerequisite for voting. It provided for homestead grants of 160 acres to heads of families and eighty acres to single men eighteen or more years of age, and for protection against the forced sale of a homestead for debt. It declared railroads to be common carriers, forbade their consolidation and further aid in grant of money or bonds, and authorized the legislature to enact regulatory laws, including maximum freight and passenger rates. To promote the construction of new track, the document authorized the legislature to grant the railroads sixteen sections of public land for each mile of road constructed. It prohibited the state from chartering banks but mandated the legislature to enact general laws for the establishment of private corporations other than banks, which would provide fully for the adequate protection of the public and individual stockholders.

Overall, the Constitution of 1876 complied with public opinion. It provided for biennial sessions of the legislature, low salaries for public officials, precinct voting, abolition of the road tax, and a return to the road-working system; for a homestead exemption clause, guarantees of a low tax rate, a less expensive, locally controlled, segregated school system, and a less expensive court system; for county and justice of the peace courts; and for popular election of officers. It also prohibited the registration of voters and grants of money or bonds to railroads. The document was adequate for a rural people engaged principally in subsistence farming, but not for an urban-industrial-commercial society. Very few changes were made during the first half-century of the constitution’s existence, but since then it has been changed at a steadily increasing rate. Changes are made through amendments submitted to the voters by consent of two-thirds of the members of each house of the legislature and approved by a majority of those voting. Of ninety-nine amendments submitted by September 1928, only forty-three were adopted, but by 1980 the voters had approved 235 proposals. No provision was made in the constitution for calling another constitutional convention. On several occasions there has been considerable agitation for a new document, but the voters defeated a proposal for a constitutional convention in 1919, and in 1975 they rejected an extensive revision prepared by the legislature. The constitution’s more than 63,000 words make it one of the most verbose of state constitutions. Its wealth of detail causes it to resemble a code of laws rather than a constitution. Its many requirements and limitations on both state and local governments make it one of the most restrictive among state constitutions. Some of its passages are so poorly drafted as to need clarification for understanding, and others have been declared by the Texas Supreme Court to be beyond interpreting. Finally, since many of its provisions relating to the same subject are scattered widely throughout the text, a detailed index is necessary.

Most of the numerous amendments have dealt with the legislature, the judiciary, public education, and state finances. Those relating to the legislature have generally removed existing limitations on legislative action. Changes in the article on the judiciary have been so sweeping that the article has been almost completely rewritten. Alterations in provisions relating to public education have also removed original limitations and permitted expansion of the public school system. Provisions relating to the state’s financial system have been altered to permit adoption of new expenditure programs and exploitation of new sources of revenue. Other constitutional changes have relieved some of the burden of detail imposed on the governor’s office in 1876, revamped the basic suffrage requirements, altered the method of chartering municipal corporations, lengthened the term of office for many state and local officials, and established an ever-growing number of specifically allocated funds in the state treasury.

In spite of its cumbersomeness, of its need for frequent amendment, and its occasional obscurity, however, Texans have continued to hold on to the Constitution of 1876.