TEXAS POLITICS

FIFTH EDITION

AN INTRODUCTION

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Preface

This book introduces the fascinating world of Texas politics. Our major focus is on the description and analysis of political institutions, processes, and behavior at the state level. However, in addition to including a chapter on local government, we also say much that is pertinent to local politics. We basically view politics not as some form of nefarious or selfish activity (although it may sometimes include such elements), but as the very essence of democracy, involving conflict and struggle among individuals and groups over issues of public policy and governance. Those seeking an exposé of Texas politics, a lot of "inside skinny," or a defense of the status quo will not find it here. We do believe that we have presented a realistic framework for understanding Texas politics, whatever one's particular ideology or interests. We have chosen not to grind our own axes here.

This fifth edition generally updates the material in the book. New or expanded material is included on the 1984 and 1986 elections, the selection of judges, the role of minorities in Texas politics, the growth of the Republican party, legislative logjams, administrative reorganization, taxation and budgeting, and gubernatorial politics. Also, for the first time we have included a number of Ben Sargent's political cartoons.

We have sought to keep this volume reasonably short. To this end, we have not defined or explained all of the basic political science terms and concepts that appear in the text. We assume that students using the book—and they constitute its main audience—either will

have had a course in American national government or will currently be enrolled in one. Such a course should provide the necessary background for our book.

A limited amount of material on political or governmental reform is included, although traditionally this was a major part of the content of textbooks on Texas government and politics. We are neither uninterested in reform nor believers in the perfection of the present Texas political system. Rather, it is our belief that an understanding of existing political institutions and practices and their impact on society must precede the consideration of reform if the latter is to be meaningful and realistic. Not having space for everything, we decided it was proper to devote our full attention to the discussion of existing institutions, practices, and behavior—a large and useful task in itself.

Another way in which we depart from textbook tradition is in our inclusion of only one chapter specifically devoted to public policy matters. Again, a disclaimer and an explanation are in order. We are not uninterested in public policy. A lack of adequate materials, however, makes it impossible to treat many policy areas in other than a fragmentary or formal, descriptive fashion. This we did not want to do. Consequently, we have tried to use policy materials throughout the book as illustrations and examples, in order to provide a better understanding of the substance of Texas politics.

This edition of the book, like the earlier editions, is a joint effort on the part of the authors. Although each of us was primarily responsible for the preparation of particular chapters, all of the chapters were jointly planned, edited, and revised. We have benefited from this collaborative effort; it is hoped that our readers will also.

We wish to acknowledge the assistance of various friends and colleagues who provided information, advice, and helpful criticism. Melissa Collie and Ronald Stidham, the reviewers for Harper & Row, also deserve credit for their valuable comments, suggestions, and encouragement. Ben Sargent of the *Austin American Statesman* graciously gave us permission to reprint some of his cartoons. The editorial staff at Harper & Row did their best to keep the revision process moving and help improve the manuscript. We especially want to acknowledge the efforts of Lauren Silverman and Carla Samodulski. We reluctantly accept responsibility for any errors that somehow may have crept into the book.

James E. Anderson
Richard W. Murray
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TEXAS POLITICS

Contents

chapter 1

The Constitutional Context

In the United States written constitutions provide an overarching legal context for the "great game of politics." A constitution is essentially a set of basic rules, regarded as superior to ordinary law, that are intended to regulate the political process in a particular community, such as the United States or the state of Texas. To this end, a constitution typically indicates the manner in which the government shall be organized, assigns powers and responsibilities to the various units or branches of government, and places some specific limitations on governmental action, as, for example, by a bill of rights. Constitutions may differ substantially in their style, length, and detail in treating these matters, as a comparison of the U.S. and Texas constitutions will readily indicate. The use of written constitutions to limit governmental power is an American contribution to the practice of government, and, as a people, Americans tend to be much enamored with things constitutional.

Although important insights may be gained, an adequate understanding of how a government operates cannot be derived from a study of its constitution. There may, for instance, be a sharp divergence between formal constitutional rules and actual political behavior. Although the Fourteenth Amendment to the U.S. Constitution provides that the states shall not deny equal protection of the laws to anyone within their jurisdiction, in the past (and occasionally still) they have discriminated against racial and religious minorities. Constitutional authorizations for governments to legislate on various matters usually tell us little about the actual policies that result. While it is necessary for a government to have constitutional power to levy taxes, a variety of political and economic factors help determine the types and levels of taxes actually levied, exemptions from particular taxes, how they are collected, and the like.

Nonetheless, governmental action in the United States appears in substantial conformity with the relevant constitutional rules, which are often quite general. Americans are still much concerned with questions of constitutional power and practice, especially when personal rights and liberties are involved. But the regulation of economic activity, while not lacking in controversy, does not stir the intense constitutional debates it did a few decades ago.

It is useful, and traditional, to begin an examination of the Texas political system with a brief description of its constitutional context. To this we now turn.

THE AMERICAN FEDERAL SYSTEM

As a member of the federal union, the government of the state of Texas is affected in what it can do by the U.S. Constitution and federalism, as well as by the Texas Constitution.[1] The U.S. Constitution divides governmental power between the national government and the several state governments, places some limitations on them, and sets forth some obligations of each to the other.

Certain powers are delegated to the national government such as those to regulate interstate and foreign commerce, establish post offices and post roads, raise and support armies and navies, and tax and spend for the general welfare. The national government is also given all power necessary and proper (implied power) to carry out its delegated powers. Powers not delegated to the national government (residual powers) are left to the states or the people. The basic arrangement is succinctly stated in the Tenth Amendment: "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." Essentially, the U.S. Constitution is a source of power for the national government and a series of limitations on the state governments. The latter are free to do anything not prohibited to them by the U.S. Constitution (unless they limit themselves through their own constitutions) and are thereby in a semiautonomous position.

Some limitations on the states are contained in the main body of the U.S. Constitution. In Article I, Section 10, a variety of state actions are prohibited, such as entering into treaties or alliances, coining money, passing bills of attainder and ex post facto laws, and taxing exports or imports. Other limitations are found in amendments to the Constitution. The Fourteenth Amendment broadly prohibits the states from depriving persons of their lives, liberty, or property without due process of law; abridging the privileges and immunities of citizens of the United States; or denying persons within their jurisdictions the equal protection of the laws. By judicial interpretation, the liberty protected by the due process clause has been held to protect most of the rights listed in the Bill of Rights against state action, including all of the rights enumerated in the First Amendment. The Fifteenth and Nineteenth amendments provide that the right to vote cannot be denied on the grounds of race or color and sex, respectively.

Some limitations on the states are implicit in the U.S. Constitution. By judicial construction, the states are forbidden to burden interstate commerce or interfere unduly with the exercise of national power. As a general rule, the delegations of power to the national government act as limitations on the states,

the inference being that power granted to the national government is denied the states. The two levels of government do have concurrent power to tax, including taxation of the same objects, such as personal income and tobacco products. Neither, however, can use its power to tax to interfere with the basic governmental functions of the other, as in the operation of their court systems.

Article VI provides for national supremacy. According to the "supreme law of the land clause," the Constitution, laws made in pursuance thereof, and treaties made under the authority of the United States take precedence over conflicting provisions in state constitutions and laws. In short, when national and state actions come into conflict and the national government is acting within its area of constitutional power, the conflicting state action must give way. Thus, a provision of the Texas Constitution authorizing separate schools for "the white and colored children" became null and void because it conflicted with the equal protection clause of the Fourteenth Amendment, as interpreted by the Supreme Court in *Brown* v. *Board of Education* (1954). Congress, however, may choose to yield to state action in some matters. A notable example is Section 14(B) of the Taft-Hartley Act, which permits the states to enact laws outlawing the union-shop arrangement, although it is permitted by national law. In the absence of this provision, the Texas "right-to-work" law, which bans the union shop in the state, would be unconstitutional, as it would then conflict with national policy.

Some limitations may also arise out of the obligations the states owe one another. For example, Article IV of the U.S. Constitution ordains that the states shall give "full faith and credit . . . to the public acts, records, and judicial proceedings of every other State" and that fugitives from justice shall be returned, upon request, to the state from whence they fled. The return of fugitives has been held to be a moral rather than a mandatory obligation, there being no effective way to compel a state to meet this obligation against its wishes. Customarily, though, requests for the return of fugitives do receive compliance.

Within the framework of these various limitations, the states can legally take whatever actions they see fit on economic, social, and political matters, subject to whatever limitations they may impose upon themselves. Indeed, the states are probably more restricted in many matters, such as taxation and economic regulation, by their own constitutions than they are by the U.S. Constitution. Although much comment relating to the decline in power of the states is made, the "march of power to Washington" and the like, the states have greatly expanded the range of their activities in the twentieth century. They have frequently been encouraged to do this by national grant-in-aid programs, which in 1987 funneled $103 billion to state and local governments.

At this point it should be helpful to indicate the general scope of governmental powers available to the states. They are grouped conventionally into four categories.

Police Power This can be defined broadly as the power of the states to protect and promote the public health, safety, welfare, and morals. This can entail such actions as the enactment and enforcement of criminal laws, licensing of occupations, regulation of local businesses and utilities, regulation of wages and working

conditions, control of fire hazards, operation of welfare programs, promotion of economic activity, and control of diseases and pests (e.g., fire ants). Exact definition of the police power is not possible.[2]

Taxing Power The states possess full power to tax, subject to self-imposed limitations and the requirement of noninterference with national governmental activities. Although the basic purpose of taxation is to raise revenue to finance the government, it can be used for other purposes. The various states have shown substantial ingenuity in the types of taxes they levy. High tax rates may be used to discourage the consumption of some products, and favorable tax provisions may be used to encourage or promote desired activities.

Proprietary Power This designates the power of the states, or their subdivisions, to own and operate economic enterprises. As far as the U.S. Constitution is concerned, the states are free to engage in as much government ownership of enterprises (which some might call "socialism") as their inhabitants desire. Although there is no single standard definition of *public enterprise* (as is the case with most political phenomena), the term can usefully be held to designate activities of a commercial or businesslike nature that could be handled by private enterprise. Collectively a variety of government enterprises can be found in the several states—power production facilities, public forests and parks, recreational facilities, liquor stores, airports, subways, bus companies, cement plants, and insurance companies, to name a few. Texas is among the less innovative and active states in the enterprise field.

Eminent Domain The states possess power to take private property for public use, upon payment of just compensation for the property so taken. This power can be used, for example, to acquire rights-of-way for highways, sites for public buildings, and land for public parks. It can also be granted to public utility companies to secure easements and the like for utility lines. In cases of the sort mentioned, the theory runs that private rights should give way to the general welfare. Public officials, of course, make these determinations; this may stir considerable controversy, as when a utility company seeks land for a nuclear power plant.

These four categories comprise the "pool of power" available to Texas and the other states under the U.S. Constitution. The extent and purposes for which a state exercises the power available depends first of all on two general factors: (1) limitations imposed by the state constitution and (2) internal political processes. To illustrate the first factor, the Texas Constitution (as of 1988) prohibits the state government from spending more than $80 million annually on public assistance programs for the needy. (Texas is the only state to have such a limitation.) Although the state is constitutionally free to levy personal or corporate income taxes, it has not done so—despite revenue needs—because of the strong political opposition to such taxes, especially from conservative citizens and businesspersons; here, then, the limitation is political rather than constitutional.

The Position of the States

Two comments need to be made here concerning the division of power between the national and state governments in the American federal system. First, the division of power is not a clear-cut, never-changing allocation. The actual division of power has fluctuated as changing social, economic, and political conditions have given rise to new or different interpretations of the broad general language of the U.S. Constitution or to action to shift the balance of power. Second, the two levels of government do not operate in separate and distinct spheres but, rather, act jointly in many areas (e.g., highway construction, welfare, and pollution control), with both cooperation and conflict characterizing their relationship. To use a metaphor, the American federal system is best thought of as a marble cake, rather than a layer cake, because of the extensive intermingling of national, state, and local activities, as in the several hundred federal grant-in-aid programs.

The twentieth century has seen a vast expansion of national governmental power and activity, whether measured by such indexes as civilian personnel employed (208,000 in 1900, 2.9 million in 1987), size of the national budget ($521 million in 1900, $1 trillion in 1987), or number and range of programs undertaken. Among the causes often mentioned for the expansion of national action are the following: (1) Many problems, such as inflation, unemployment, monopoly, energy shortages, and poverty, are national in scope and can be dealt with only by a government having nationwide jurisdiction. (2) National defense, of course, is solely the prerogative of the national government. (3) The states have been unable or unwilling to act, or act effectively, on many matters because of constitutional limitations, deficient legislatures, poor administrative systems, and internal political factors. (4) The national government has better financial resources and greater ability to act than have the states. But whatever the causes, and whether or not one considers the expansion of national power desirable, the national government is clearly a much more powerful and active entity today than it was at the turn of the century.

Various attempts have been made in recent years to "return" more power to the states. One notable effort was the State and Local Fiscal Assistance Act of 1972, better known simply as "revenue sharing," which was initiated by the Nixon administration. Through this program state and general local governments (cities, counties, and townships) were provided as much as $6.5 billion annually to use largely for whatever activities they chose. General revenue sharing proved to be very popular with state and local officials, one of whom called it "the best thing since the milking machine." This program was terminated in 1986 (the state governments were dropped from it in 1983) at the request of the Reagan administration and because of the financial pressures created by large federal budget deficits.

A second notable effort was the Reagan administration's "New Federalism," which was intended to separate more distinctly the roles of the national and state and local governments. In 1981, 57 categorical federal grant-in-aid programs, which provided funding for fairly narrowly defined purposes (such as rural library services), were combined into nine block grant programs. Block grants

cover broader areas, such as urban development, and give state and local governments more discretion in the use of funds. In 1982 the administration proposed that the national government take over the Medicaid program for the needy, which is administered by the state and local governments. In return, the states would assume complete responsibility for Aid to Families with Dependent Children (AFDC) and the food stamp program. Strong opposition to this proposal quickly emerged and no action was taken. State officials, for instance, were concerned that it would require increased state spending.

Although the growth of national power and programs has produced much handwringing and many dismal proclamations about both the present and future positions of the states in the American federal system, the states and their local governments remain important governmental units. They have a large and immediate impact on the day-to-day lives and happiness of most citizens. To neglect state and local governments in the study of American government and politics is to neglect much of the subject.

The states, as well as the national government, have greatly expanded their activities in recent decades and appear considerably stronger than in the past, at least in a relative sense. Thus, total expenditures by state and local governments in the United States increased from $10.9 billion in 1942 to $465 billion in 1983. In Texas, the state's expenditures increased from $165 million in 1940 to $16.2 billion in 1985. Focusing our attention only on *domestic* expenditures, we find that spending by all governments in the United States totaled $864 billion in 1983. Of this sum, the state and local governments accounted for $465 billion, or 54 percent. Again, in 1984, of the 16.4 million government civilian employees in the United States, 13.5 million (82 percent) were employed by state and local governments.[3] Such policy areas as public and higher education, highway and street construction and maintenance, law enforcement, land use control (e.g., zoning), regulation of consumer utilities, local business regulation, occupational licensing, and the management of parks, recreation, and wildlife are still significantly under the control and financing of the states and their subdivisions. Although these are rough measures of state and local government activity and importance, collectively they convey an image of vitality rather than decline.

THE TEXAS CONSTITUTION

The present constitution of the state of Texas, adopted in 1876, is the seventh constitution under which the state has been governed. Previous constitutions were adopted in 1827, for Texas and Coahuila (under the Republic of Mexico); in 1836, for the Republic of Texas after it became independent from Mexico; in 1845, when Texas entered the Union; in 1861, when Texas left the Union to join the Confederacy; in 1866, when Texas reentered the Union; and in 1869, to meet the requirements for Reconstruction laid down by the Radical Republicans in Congress. The Constitution of 1876 has thus lasted substantially longer than all of its predecessors combined, notwithstanding long-continued criticism and a variety of efforts toward revision.

Framing the Constitution

After the Constitution of 1869 was adopted, a Radical Republican regime led by Governor E. J. Davis (1870–1874) came to power. Both the constitution and the Republicans apparently caused a great amount of dissatisfaction within the state, especially on the part of the Democrats. A standard interpretation of the era asserts, "The Radical Republican regime in Texas was one of oppression, corruption, graft, and blackmail. It sought to centralize the government and brought about a large growth in government expenditures, an increase in taxation, and a rapid accumulation of a comparatively heavy debt."[4] Whether fully accurate or not—and some recent historical research indicates it is not—this was apparently the view of things that influenced the majority of the framers of the Constitution of 1876. It is, after all, what people *believe* to be real or true that influences their behavior.

In 1872 the Democratic party had regained control of the legislature and in the following year elected the governor and other state officials. Two years later, after the Democrats had taken complete control of the state government, they turned their attention to the state constitution, which to them was a symbol of Republicanism and carpetbag domination. After an abortive attempt to use a joint legislative commission to write a new constitution, in 1875 the legislature adopted a resolution calling for a constitutional convention, subject to the approval of the voters. The voters agreed, and three delegates from each of the state's 30 senatorial districts were elected to a constitutional convention that met in Austin in the fall of 1875.

The constitutional convention was composed of 76 Democrats and 14 Republicans (of whom 5 were blacks).[5] Forty-one of the delegates were farmers, 29 were lawyers, and the others had occupations such as merchant, editor, and physician. Many were either members of the legislature or had other governmental experience. Thirty-eight were members of the Grange, a major nineteenth-century farm organization, which had a strong following in the state. More than 20 had served as officers in the Confederate Army. Generally, the delegates were "old-line Texans" and were of a conservative mood. Accounts of the constitutional convention agree that the Grange, with its program of "Retrenchment and Reform" in government, was the most important single influence on the convention. The economy-mindedness of the delegates was manifested in such actions as their refusal to employ a stenographer or have the proceedings of the convention published because of the financial costs involved.

The constitution written by the delegates provided for a governmental system intended to be characterized by more popular control, greater economy in operation, and less power to act than that under the Constitution of 1869. Most state officials, including judges, were to be elected; they were generally bestowed with low salaries, short terms of office, and limited power. Many limitations were imposed on the legislature, and the state debt was limited to $200,000. Adequate provision was made for regulation of railroads and corporations, matters of especial concern to the Grangers. Concerning the handiwork of the convention, Professor Rupert N. Richardson comments:

> All in all, the constitution complied with public opinion quite faithfully. Biennial sessions of the legislature, low salaries, no registration for voters, precinct voting [the previous constitution had required voting at the county seat], abolition of the road tax and a return to the road-working system, a homestead exemption clause, guarantees of a low tax rate, a more economical [and segregated] school system under local control, a less expensive court system, popular election of officials—all these were popular measures with Texans in 1876. The constitution was the logical product of its era. It was to be expected that men who were disgusted with the vagaries of a radical regime would design a government that was extremely conservative. Furthermore, the low prices and low wages of hard times had created a demand for the severest economy in government.[6]

Although there was considerable criticism of the new constitution (especially in more urban counties) because of its restrictive nature, it received popular ratification in February 1876 by a vote of 136,606 to 56,652. Generally, rural areas voted strongly in favor of it, while most larger cities, including Dallas, Galveston, Houston, and San Antonio, were opposed.

Constitutional Development

The meaning of a constitution can be altered and expanded or restricted in a number of ways to meet new needs and conditions. Methods of change include custom and usage, judicial interpretation, statutory elaboration, formal amendment, and general revision. All of these except the last one have been important in the development of the U.S. Constitution, while formal amendment has been the primary means of constitutional change in Texas since 1876. The state courts have generally taken a restrictive view in their interpretations of the Texas Constitution, which has had the effect of further stimulating and necessitating formal amendment. Between 1881 and 1987 some 443 amendments to the Texas Constitution were proposed, of which 274 were adopted. Partly a consequence of the length, detail, and rigidity of the constitution, this plethora of amendments has further added to its length, detail, and rigidity. In a very real sense, detail begets detail.

The procedure for amending the constitution was itself changed by a constitutional amendment adopted in 1972. Amendments are proposed by resolutions approved by two-thirds of the members elected to each house of the legislature. This can be done either during a regular biennial session or (since 1972) a special session opened to such action by the governor. Although the governor can recommend amendments or approve proposed amendments, the governor has no constitutional power to veto proposed amendments.

The ratification of amendments is a task for the voters, at either regular general elections or other elections called specifically for the purpose, as determined by the legislature. A brief explanatory statement of the amendment, including the way the proposition will be worded on the election ballot, is prepared by the secretary of state with the approval of the attorney general. The approval