

Free essay on the problems of texas constitution

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The State of Texas has had several constitutions through its history, all of them were product of specific historical contexts. It has kept, however, many of the original provisions proposed in the first draft, even some that would conflict with our national Constitution. It is considered to be a long and poorly organized document, where responsibilities are not clearly defined and that is difficult to interpret . It is also very restrictive and has many unenforceable provisions known as deadwood, that have been tried to be modified in several occasions .

The Texas Constitution includes features that are very similar of those found in the national Constitution. The powers are separated in the classical form proposed by Montesquieu. Those are executive, legislative and judiciary branches. And there are provisions that limit the government or protect citizens against arbitrary government action .

The Texas Constitution shares many of the principles included in the U. S. document but it might lack legitimacy from a theoretical point of view. For example it organizes and limits the government, establishes the principle of equality under the law, guarantees personal and political freedom, establishes the separation of church and state, and the freedom of speech and press. It is also very different in some other aspects. For example, The Texas Constitution is more rigid and more prone to be amended, it does not give the governor as much strength as the U. S. Constitution gives to the president, and the judiciary system is more complex and confusing. The problem with the Texas constitution is that many of its dispositions are inapplicable, be it because they don't reflect modern situations, or be it because the fact that many dispositions included in it collide with the ones

contained within the U. S. Constitution . According to political philosopher Roger Scruton, a constitution “ is genuine only if it can be enforced” , and this could raise doubts about the genuineness of the Texan Carta Magna. Key features in each branch of the government are best shown with specific examples. The Texas Constitution focuses on actions that the legislative power cannot make, and it is so restrictive that it often forces the government to resort to constitutional amendments in order to allow the legislative process to happen. In Texas, the executive power is fragmented, meaning that the governor is a very weak figure that has to deal with other five different and independent individuals that are elected statewide, reducing the power of the governor. On the judiciary branch, one of the key differences is that judges are not appointed by the executive, they are elected. This makes popularity more relevant than competence when having to elect new judges .

The process of making constitutional amendments is a relatively easy one in Texas. The proposal can be initiated during regular or special sessions of the legislature. It must be voted by two thirds of legislators in both chambers. Then, if passed, the date of the election is specified by the legislature, and three months before the election it must be published once a week for four weeks in newspapers in each county. If a simple majority is achieved the amendment is ratified, and the governor must officially proclaim the results . But it does not give great decision-making powers to their legislative and executive branch.

Given the lack of flexibility of the Texas Constitution and the need to modernize it, many attempts have been made to amend it. Most notably

were those during the decade of 1970. From 1971 to 1974 there was a great effort to modify the Constitution. It was relevant because it resolved that the legislature had the power to become a constitutional convention, even though its proposal was defeated in the end because of two red herring provisions included by rivals of reform that caused certain sectors to oppose the amendment. The effort continued with a new legislature in 1975, and the new drafts were influenced by those suggested in 1973. Major changes included annual sessions, streamlined judiciary system and more power to the governor, though limiting his terms to two. This proposal was ultimately defeated by voters who apparently feared more government spending and power.

In the light of these facts, it seems clear that Alexander Hamilton was right about it being certainly better to have a constitution that is broad and flexible, because no set of laws can predict what changes will be needed in the future . The broader the constitution is, the less need for reform it will have. But it is also wise to consider what professor of law David Strauss has said about amendments. He stated that constitutional amendments are mostly done when societies have already changed, so reform is often a written expression of what people is already doing . This means that people slowly change the way the institutions work until a change in the constitution just means a statement of how things are done . The Texas constitution is indeed rigid and flawed, but it is ultimately the people who decide how to shape their own institutions.

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